

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Darren Iles  
Represented by: (Self-represented)

**RESPONDENT:** Guernsey Financial Consultants Limited  
Represented by: Mr Mark Perry

**Tribunal Members:** Mrs Helen Hubbard (Chairman)  
Mr Roger Brookfield  
Mrs Christine Le Lievre

**Hearing date(s):** Wednesday, 2 March 2016

**Decision of the Tribunal**

A claim for costs was made by the Respondent ahead of the hearing for a complaint, by the Applicant, of (constructive) unfair dismissal. The Applicant withdrew his complaint before the date of the hearing.

Having considered all the evidence presented, whether recorded in this judgment or not and the representations of both parties and having due regard to all the circumstances, the Tribunal, in respect of the proceedings before it, makes no award for costs.

Ms Helen Hubbard  
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Signature of the Chairman

29 April 2016  
.....  
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

**The Legislation referred to in this document is as follows:**

The Employment Protection (Recoverable Costs) Order, 2006 (the 'Order')

**1.0 Extended Reasons**

- 1.1 The claim for (constructive) unfair dismissal against Guernsey Financial Consultants Limited was withdrawn by the Applicant, Mr Darren Iles and the hearing date of Thursday, 17 December 2015 vacated.
- 1.2 The Respondent's representative, Mr Mark Perry, submitted a claim for costs under the Employment Protection (Recoverable Costs) Order, 2006.
- 1.3 It was determined that a hearing would be held to enable the full Tribunal to hear the claim for costs in circumstances where the Tribunal hearing for (constructive) unfair dismissal had been vacated.
- 1.4 The Respondent was represented by Mr Mark Perry and was supported by document bundle ER1.
- 1.5 The Applicant represented himself and was supported by document bundle EE1.
- 1.6 The Tribunal ordered the production of the following:
  - An email sent by Mr Mark Perry to the Secretary to the Tribunal on 14 December 2015, marked Trib 1
  - A bank statement of Mr J Stephen shown on a mobile phone, referred to as Trib 2

**2.0 Facts Found**

- 2.1 There had been considerable correspondence between the parties and with the Secretary to the Tribunal leading up to the original hearing date, which included requests, by both parties, for supporting documents to be provided. There were delays in sourcing these documents and a change in the Respondent's representative during the preparation for the Tribunal hearing which delayed matters. Two case management meetings were held where various administrative matters were considered and Chairman's Orders were issued in relation to the production of the various documents and witnesses that were to be called to the hearing.
- 2.2 Mr Perry, on behalf of the Respondent, submitted a claim for costs, by email, copied to the Applicant, at 11.50 am on Monday 14 December 2015. The Applicant withdrew his claim, by email at 12.36 pm on the same day. Later that day Mr Perry sent an email to the Secretary to the Tribunal stating that the Respondent still wished to pursue the costs claim.
- 2.3 The Respondent's representative claimed that his witness, Mr Jon Stephen, had travelled to Guernsey from his home in France for the hearing and that costs should be reimbursed on the basis of:

- Board and Lodging - 5 days at £50 per day
- Loss of earnings – 5 days at £100 per day
- Claim for Jon Stephen as Expert Witness - £600
- Travel Expense on Condor - £200

2.4 In addition, within document bundle ER1, the Respondent's representative claimed £100 for photocopying and preparing documents for the hearing and eight hours at £60 per hour for the day of 17 December 2015 (the hearing date), totalling £580.

2.5 Inconsistent and insufficient evidence was put forward to support the claim for travel and the associated costs. In the email TRIB 1, sent to the Secretary to the Tribunal by Mr Mark Perry, Mr Perry states he had paid for a return flight from France for Mr Jon Stephen. This evidence contradicted that presented to the Tribunal in document bundle ER1 stating that Mr Stephen travelled to Guernsey by boat resulting in a claim for board and lodgings for five days. During the Tribunal Mr Perry presented evidence on his mobile phone (Trib 2 refers) of the cost of the travel by boat as 200 Euros and not £200 as claimed.

### **3.0 Conclusions**

3.1 The Tribunal heard oral evidence and representations from both parties. It also considered all the written evidence before it, whether specifically referenced in this judgment or not.

3.2 The Tribunal dismissed the costs claim in relation to Mr Jon Stephen's attendance at the hearing as an expert witness because of the lack of independence of the witness and because his attendance in such a capacity had not been communicated to the Secretary of the Tribunal or agreed by the Chairman prior to the Tribunal hearing.

3.3 The Tribunal regarded the reported five day visit of the witness Mr Jon Stephen, for a one day hearing, as excessive in the circumstances. In addition, the Tribunal was not satisfied that the visit to Guernsey by Mr Stephen was made solely in relation to the original Tribunal hearing date.

3.4 In relation to the difficulties with document exchange and time and costs associated with preparing for the hearing the Tribunal did not regard the Applicant's actions as improper or vexatious and therefore dismissed the claim for £100 towards the cost of preparation for the hearing and the claim for £480 for planned attendance at the hearing.

3.5 In concluding, the Tribunal noted that, after the Applicant had submitted his claim, the Respondent had sought to strike out the Company and that this was a key factor in relation to the Applicant's decision to withdraw his claim and not proceed to the hearing. In addition, the Tribunal noted Mr Iles also took into consideration that the hearing may have been prejudicial to his future employment and reputation. The Tribunal noted that Mr Iles had accrued considerable costs himself in preparing for the hearing and as a corollary he had not sought to claim costs in circumstances where he had determined that he had no choice but to withdraw his claim.

3.6 The Tribunal concluded that the claim for (constructive) unfair dismissal had been made with a genuine belief that it was appropriate in the circumstances and that the Applicant had not withdrawn his claim for frivolous reasons.

**4.0 Decision**

4.1 Taking into account the information noted above and in accordance with the Order, the Tribunal dismisses the claim for costs.

Ms Helen Hubbard  
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Signature of the Chairman

29 April 2016  
.....  
Date