

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Bruce Whitford
Represented by: Self-represented

RESPONDENT: Mr David Goddard, trading as Goddard Builders
Represented by: Self-represented

Tribunal Members: Mrs P Brierley (Chairman)
Mrs C Latham
Mr P Woodward

Hearing date(s): Friday, 20 November 2015

Decision of the Tribunal

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 presented to it, the Tribunal unanimously finds that under Sections 5(2)(a) and 5(2)(c) of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed from his employment. The Tribunal therefore makes no award.

Mrs Paula Brierley
.....
Signature of the Chairman

15 January 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 (Guernsey) Law, 1998, as amended (the Law)

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Mr Bruce Whitford, claimed he had been unfairly dismissed within the meaning of Section 5(2)(c) of the Law in that he had just cause to consider himself dismissed by reason of the employer's conduct.
- 1.2 The Applicant represented himself.
- 1.3 The Applicant gave witness testimony in person under Affirmation.
- 1.4 The Applicant did not call any witnesses.
- 1.5 The Respondent, Mr David Goddard, trading as Goddard Builders, represented himself.
- 1.6 The Respondent denied that a dismissal had occurred.
- 1.7 Mr Goddard gave witness testimony in person under Oath.
- 1.8 The Respondent did not call any witnesses.
- 1.9 Document bundles marked EE1 and EE2 were submitted by the Applicant. EE2 included handwritten transcripts of texts taken from the Applicant's mobile phone.
- 1.10 Document bundle marked ER1 was submitted by the Respondent.
- 1.11 Both parties agreed that the Applicant had been in receipt of an hourly rate of £13.00.
- 1.12 Both parties agreed that the hours worked during the last six months of employment were as per section 3 of ER1, titled 'Details of Hours Worked'. Therefore, the gross remuneration for the last six months of employment totalled £5,642.00.
- 1.13 The Tribunal requested that Miss Ammina Evans (also an employee of the Respondent) attend the hearing to give witness testimony.

2.0 Facts Found

- 2.1 The Applicant originally commenced employment as a driver/labourer in 1992 for Mr G Goddard Builder (the employer was Mr G Goddard, Mr David Goddard's brother). Mr David and Mr G Goddard were partners. Mr David Goddard used to do the accounts, pricing, wages etc.
- 2.2 Mr G Goddard decided to end the partnership in 2005 as he did not want to continue full time employment.

- 2.3 On 6 July, 2005, a new partnership was formed (Goddard Builders) between Mr David Goddard and his son, Mr Shaun Goddard.
- 2.4 All employees had new contracts to sign.
- 2.5 The Applicant left his employment with Goddard Builders in June 2012 as he found driving, along with the other jobs he was undertaking, was causing him too much pressure.
- 2.6 The Applicant said that he was asked to return to work for the Respondent by Mr Shaun Goddard. The Respondent disputed this fact saying that it was the Applicant that had requested his return.
- 2.7 Upon his return the Applicant did not want to drive the truck, therefore, there was not enough work to reemploy him on a full time basis. However, an agreement was reached that the Applicant would be reemployed on a casual basis, working when there was work available.
- 2.8 The Applicant returned to employment with the Respondent in November 2012, on the condition that there was no requirement for the Applicant to have to drive.
- 2.9 During 2013, the Respondent experienced some difficulties with a customer which seriously affected the cash flow of the business. The matter went to arbitration.
- 2.10 During 2014 Mr Shaun Goddard's health began to deteriorate. This situation had an effect on the work which the Respondent could take on.
- 2.11 Sadly, on 2 March 2015 Mr Shaun Goddard passed away.
- 2.12 Mr David Goddard was responsible for sorting out the personal family affairs as well as taking sole responsibility for the business including the arbitration proceedings.
- 2.13 Following Mr David Goddard's son's death he had to rely on his staff to work on their own initiative, as he was not doing that much work himself.
- 2.14 On 30 April 2014 Mr David Goddard had a serious car accident which kept him out of action for several weeks.
- 2.15 The Applicant felt that his work was being given to another employee, employee 'A'.
- 2.16 The 'Details of Hours Worked' document (ER1, Section 3 refers) shows one week (week ending 13 May 2015) during which the Applicant did not work and employee A did.
- 2.17 Mr Goddard sent the Applicant a text on 7 May 2015 explaining that there were jobs to start but that he (Mr Goddard) did not want them started until he was active again. In the same text Mr Goddard explained that the costs for the 'Bouet job' had got out of hand and he needed to sort it out. Mr Goddard further explained in the text that he had "been looking through" but could not find any other jobs that needed doing.

- 2.18 On the morning of 9 June, 2015, the Applicant went to collect the work van in order to use it to clear the site that the Company had been working on. At the point of discovering that the van was not at the car park the Applicant considered his employment had been terminated.
- 2.19 The Applicant sent Mr Goddard a text on 9 June 2015, stating, employee A “has let me know that I am sacked is this right Dave”.
- 2.20 On 10 June 2015, a text from Mr Goddard to the Applicant stated that he had not spoken with employee A “for a few hours so not sure what you are talking about work wise the job we were supposed to start is cancelled so we are stopped again”.

3.0 Mr Bruce Whitford

- 3.1 The Applicant read from a witness statement (EE1 first document refers).
- 3.2 The Applicant said that he had been told that there was not enough work, yet work was being given to one of the other members of staff, employee A, by Mr Goddard.
- 3.3 The Applicant said that employee A had returned from a four to five-month trip abroad at the end of April and at that point the Applicant was asked to stop the job he was doing (the ‘Bouet job’). When the Applicant went to collect his tools from the job the following week, he said that he found the other member of staff there.
- 3.4 The Applicant said that he was not a qualified decorator but did do decorating.
- 3.5 The Applicant said that he had been given more work two weeks later.
- 3.6 The Applicant stated that on Monday 8 June 2015 he and employee A had had a disagreement which resulted in the latter leaving the site saying the he would be speaking with Mr Goddard.
- 3.7 On Tuesday 9 June 2015, the Applicant drove to Grandes Rocques car park to pick up the work truck, so that he could clear the job which they had been working on, however, the truck was not there.
- 3.8 In response to a question from the Tribunal, the Applicant stated that it was at this point he considered his employment had terminated.
- 3.9 The Applicant said that he phoned Mr Goddard and asked why the truck was not there.
- 3.10 The Applicant said that Mr Goddard had stated that he did not know and that Miss Ammina Evans (another employee) must have picked it up.
- 3.11 The Applicant said that Mr Goddard said that he could not get hold of Miss Evans; however, without the truck he had no work for the Applicant.
- 3.12 The Applicant said that he had got hold of Miss Evans and she had said that she had been asked to collect the truck the night before by Mr Goddard. Both Miss Evans and Mr Goddard denied this.

- 3.13 In response to questions from the Tribunal, the Applicant said that there had not been any prior arrangement between Miss Evans and himself with regard to who would be using the truck on the morning of 9 June, 2015.
- 3.14 In response to questioning by the Tribunal, the Applicant explained that it was only he and Miss Evans who used the truck and the common practice was whoever needed it, would pick it up from Grandes Rocques car park.
- 3.15 The Applicant said that he would usually use the truck once a week. Mr Goddard disputed this, saying that the Applicant did not use it often.
- 3.16 The Applicant said that he had received phone calls from employee A saying how pleased he was that he had gotten the Applicant 'the sack'.
- 3.17 There were other texts/extracts of texts between the Applicant and employee A (EE2 refers) however, these were sent after 9 June 2015 (the date that the Applicant said that he had considered his employment ended) therefore, the Tribunal did not consider them relevant.

4.0 Mr David Goddard

- 4.1 Mr Goddard read from a witness statement (ER1 first document refers).
- 4.2 Mr Goddard said that the Applicant had refused to work after 3.30 pm.
- 4.3 Mr Goddard disputed that work had been given to employee A instead of the Applicant.
- 4.4 Mr Goddard said that the Applicant refused to do 'ladder work'.
- 4.5 Mr Goddard explained that he had been involved in an arbitration hearing held on 27, 28, 29 April 2015 (as a plaintiff) and had been involved in a car crash on 30 April 2015 with the outcome leaving him unable to work for six weeks. As a result of the accident he had his driving licence revoked early in May.
- 4.6 Mr Goddard said that the Applicant had been burning off paint on a particular job, (the 'Bouet job') for three weeks, when he expected the job to take three days; therefore he had to stop the Applicant because of the cost.
- 4.7 Mr Goddard said that following the accident he had not been well enough to price jobs, therefore, work had not been coming in.
- 4.8 Mr Goddard said that he had been surprised to receive an email of 17 June, 2015, from the Applicant asking for a reference.
- 4.9 In response to questions from the Tribunal, Mr Goddard said that there had been no supervisor on site on 8 June 2015. Mr Goddard further confirmed that employee A was not in a position of authority over the Applicant.

- 4.10 In response to a question from the Tribunal, Mr Goddard said that he did not remember what he had thought when the Applicant had not turned up to work on 9 June 2015. Adding that his past experience of the Applicant had been that there were times when he didn't turn up for work.
- 4.11 In response to a question from the Tribunal, Mr Goddard said that when he had received the text from the Applicant on 9 June 2015 stating employee A "has let me know that I am sacked is this right Dave" (EE2 refers) he did not know what he was talking about.
- 4.12 Mr Goddard said that at no time did he tell the Applicant that he had been made redundant or had been 'sacked'.

5.0 Miss Ammina Evans

- 5.1 Miss Evans attended the hearing to give evidence, at the Tribunal's request.
- 5.2 Miss Evans was called to the hearing with no notice and answered questions in a very frank, candid and credible manner.
- 5.3 Miss Evans gave evidence under Oath.
- 5.4 Miss Evans had been employed by the Respondent for 10 years.
- 5.5 The witness undertook jobs such as plumbing, tiling, decorating and driving the truck to collect goods and dump rubbish.
- 5.6 Originally Miss Evans, Mr Shaun Goddard and the Applicant used the Company truck.
- 5.7 By June 2015 it was only Miss Evans and the Applicant using the truck.
- 5.8 Although Miss Evans could not recall specifically events of the morning of 9 June, 2015 she said that if the truck had not been at Grandes Rocques car park, it was because she had taken it.
- 5.9 Miss Evans said that she and the Applicant did not contact each other to let the other know if they needed the truck, they just took it.
- 5.10 Miss Evans said that she could not recall being asked to remove the truck from the car park by Mr Goddard.

6.0 The Law

The Law referred to in this section is the Employment Protection (Guernsey) Law, 1998, as amended.

- 6.1 In determining whether or not a dismissal occurred Section 5(1) of the Law notes that *"In this Law "dismiss" and "dismissal" shall be construed in accordance with the following provisions of this section. (2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if –*

(a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice,” and

(c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct”.

7.0 Conclusion

7.1 In making its decision the Tribunal considered the claim under Sections 5(2)(a) and 5(2)(c) of the Law.

7.2 The Applicant was very clear in evidence that he considered his employment terminated on 9 June 2015, at the point he went to the car park and the truck was not there. Thus he considered these events constituted the act of dismissal. Therefore, the evidence around the custom and practice of the use of the truck is extremely important. On this issue the Tribunal prefers the evidence of Miss Evans. On the balance of probabilities Miss Evans collected the vehicle in order to carry out her job not because Mr Goddard had requested that she move the truck so that the Applicant could not use it.

7.3 It was not reasonable for the Applicant to consider that his employment had been terminated by the Respondent based on the fact that the truck was unavailable to him on the morning of 9 June, 2015.

7.4 The Tribunal found that the evidence did not support that a dismissal had occurred.

8.0 Decision

8.1 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 presented to it, the Tribunal unanimously finds that under Sections 5(2)(a) and 5(2)(c) of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed from his employment. The Tribunal therefore makes no award.

Mrs Paula Brierley
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Signature of the Chairman

15 January 2016
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Date