

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Ms Maria June Robilliard (known as June Robilliard)  
Represented by: Mr Shaun Le Prevost

**RESPONDENT:** The Medical Specialist Group Limited  
Represented by: Advocate Rachel Guthrie of Mourant Ozannes

**Tribunal Members:** Mrs Paula Brierley (Chairman)  
Ms Christine Le Lievre  
Mr Roger Brookfield

**Hearing date(s):** 10 December 2014

**Decision of the Tribunal**

The Applicant contended that she had been dismissed and that the dismissal had been unfair within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, which was contested by the Respondent.

Having considered all the evidence presented, whether recorded in this judgment or not, the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Law), 1998, as amended, the Applicant was not dismissed unfairly by her employer.

The Tribunal therefore makes no Award.

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

15 January 2015  
.....  
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, Ms Maria June Robilliard (known as June Robilliard), was represented by Mr Shaun Le Prevost.
- 1.2 The Respondent, The Medical Specialist Group Limited (MSG), was represented by Advocate Rachel Guthrie of Mourant Ozannes.
- 1.3 The Applicant claimed that she had been unfairly dismissed on 28 April 2014 during a return to work meeting after a period of illness.
- 1.4 The Applicant also claimed that she had not been provided with a written statement giving the reason(s) for dismissal.
- 1.5 The Respondent denied that the Applicant had been dismissed on 28 April 2014 during the return to work meeting.
- 1.6 The Applicant gave both written and oral evidence.
- 1.7 In addition to ET1, the Applicant submitted a bundle of evidence (EE1), a written opening statement (EE2) and various copies of email correspondence (EE3).
- 1.8 The Respondent gave both written and oral evidence.
- 1.9 In addition to ET2, the Respondent submitted a bundle of evidence (ER1), a written opening statement (ER2) and a written closing statement (ER3).
- 1.10 The Applicant requested one witness to be summonsed on her behalf, which the Tribunal agreed to and therefore oral evidence was provided for the Applicant by:
  - Mrs Gillian Staples (summons issued 18 November 2014).
- 1.11 The Respondent called the following witnesses who gave both oral and written evidence:
  - Mr Jon Lenfestey (Deputy Chief Executive Officer at MSG and Applicant's line manager).
  - Ms Emma-Jayne Sarahs (Human Resources Manager of MSG).
- 1.12 As it was contested whether or not a termination of employment took place on 28 April 2014 the burden of proof rested on the Applicant to prove that a dismissal had taken place.

1.13 At the outset of the hearing the Applicant confirmed that she was not contesting anything other than that a dismissal had taken place during the meeting of 28 April 2014. She contended that the dismissal was unfair.

## **2.0 Facts Found**

2.1 The Applicant commenced employment at the MSG in October 2002 as a Records Clerk.

2.2 The Applicant had been suffering from problems with both wrists for a number of years which were aggravated by the heavy duty nature of the work she carried out as a Records Clerk for the Respondent. The Applicant has suffered pain in her left wrist since 2009 and her right wrist since 2011.

2.3 The Applicant's role involved pulling out sets of clinic notes from filing shelves, often above head height and carrying these notes up a maximum of four flights of stairs. These actions would be repeated a number of times a day with a number of notes carried at any one time dependent on the thickness and weight of the notes.

2.4 Approximately three years ago the filing system had been changed so that the notes were not packed so tightly and therefore it was not required to grip and pull so hard to retrieve the notes from the shelves. There had also been a resting shelf put in place.

2.5 The main part of the Applicant's job had been filing. The Applicant would sit at her desk putting notes into folders for approximately five to six hours per day. The Applicant would spend approximately one hour per day working on a computer inputting patient numbers.

2.6 The Applicant had undergone treatment on a number of occasions from an Orthopaedic Surgeon, such treatment included steroid injections and operations on both wrists.

2.7 The Applicant had had an operation on her left wrist in 2011. Prior to that she had had two steroid injections. In April 2013 and February 2014 she had two further ultrasound-guided steroid injections into the left wrist.

2.8 The Applicant had had a tendon release on her right wrist in 2012 and a steroid injection into the right wrist on 14 March 2014.

2.9 The Applicant enjoyed her work for the MSG, and had made many friends whilst working there.

2.10 The Applicant had found that often she would start the working week pain free but as the working week continued the pain would build up. The Applicant noticed that the pain would settle completely after four or five days' holiday.

2.11 Specific jobs that caused worsening of her pain in her wrists included pulling out the filing, working above head or chest height-and also filing itself. The Applicant did not get any pain when working with a computer.

- 2.12 The Applicant had seen her doctor about her ongoing pain and her doctor had offered to sign her off work on a number of occasions, however the Applicant had not wanted to be signed off.
- 2.13 The Applicant expected to continue working in her role up to her retirement which she expected to be within the following four years.
- 2.14 Due to increasing pain causing her concern, the Applicant made a request to reduce her working hours from 36 to approximately 30 hours per week. The Applicant felt that the reduction in hours would allow for a period of rest in the middle of the week, which would in turn enable her to continue in her role. The request was made to Human Resources, through her supervisor (Mrs Gillian Staples).
- 2.15 In response to the request for a reduction in hours, the Applicant was asked, by the Respondent, to attend an appointment with an Occupational Health Therapist.
- 2.16 The Applicant was, initially, very concerned about attending such an appointment because she thought this would result in her losing her job. However, once the purpose of the appointment was explained to her in detail, she agreed to the appointment.
- 2.17 The Applicant attended an appointment with the Occupational Health Therapist on Wednesday 26 March 2014. Following the appointment a full report dated 2 April 2014 was produced by the Occupational Health Therapist (EE1 page 41 and ER1, Section B, page 74 refers).
- 2.18 The Occupational Health report noted that at the time of the appointment the Applicant was unfit for work and the advice was that the Applicant rest in order to give the injection time to work and provide long term benefit. Therefore, the Applicant's doctor was to sign the Applicant off work.
- 2.19 The report further stated that the Occupational Therapist was concerned that the Applicant's work, as a records clerk, was directly related to the pain she was suffering. Further noting that it was essential that the Applicant was able to work pain free as there was concern that if this was not possible there would be a recurrence of the problems which would require intervention from the Orthopaedic Surgeons and that, long term, that would not be good for the Applicant's overall health.
- 2.20 A phased return to work was recommended with a gradual build-up of hours "as tolerated". The report further noted that, if the Applicant did get pain in the longer term then she really needed to consider an alternative role. Also noting that there would need to be significant adjustments to the working pattern required.
- 2.21 The Occupational Health report is dated 2 April 2014 and date stamped as received by the Respondent on 4 April 2014.
- 2.22 The Applicant was signed off by her doctor for one month.
- 2.23 The Applicant attended an appointment with her doctor on Wednesday 23 April 2014 and was confirmed fit to recommence work at the expiry of her sickness

certificate the following Monday (28 April 2014) provided she followed the recommendations of the Occupational Health report.

- 2.24 The Applicant attended a physiotherapy session on 25 April 2014 to obtain splints to support her wrists when she returned to work.
- 2.25 The Applicant telephoned Mrs Staples (her supervisor) on 25 April 2014 to let her know that she would be returning.
- 2.26 In line with the Respondent's 'Sickness Absence Policy, 01 December 2013', paragraph "Return to Work Following Long-Term Sickness Absence" (EE1 page 62 refers), a Return to Work meeting was arranged.
- 2.27 Given the seriousness of the Applicant's condition as stated in the Occupational Therapy report, the HR Manager, Ms Sarahs decided to also attend the return to work meeting along with the Applicant's line manager, Mr Lenfestey.
- 2.28 Ms Sarahs telephoned the Applicant on Friday, 25 April 2014 to arrange the meeting for 10.00 am on Monday 28 April 2014.
- 2.29 Ms Sarahs said that she had given the Applicant the opportunity to bring someone along to the meeting if she wished. The Applicant denies that this option was given to her.
- 2.30 There was disagreement between the Applicant and Respondent with regard to what was said during the return to work meeting. However, both agreed that the Occupational Health report was discussed and that it said that the Applicant would not be able to do 90% of her role.
- 2.31 Ms Sarahs said that the Applicant had said that she was already looking for another role, the Applicant denied that she said this.
- 2.32 Ms Sarahs said that she had told the Applicant that if she had made up her mind to look for alternative employment then Ms Sarahs would be willing to speak to her contacts in the employment agencies and would forward their details to the Applicant.
- 2.33 File notes of the meeting of 28 April produced by the Applicant differed from the one produced by Ms Sarahs and Mr Lenfestey.
- 2.34 A file note dated 2 May (ER1 page 84 refers) records a meeting which Mr Lenfestey had with the senior receptionist on 28 April to investigate options within that area. It should be noted that this meeting would have taken place prior to the Applicant's email dated 28 April sent at 8.50 pm (ER1 page 81 refers).
- 2.35 There is a dispute over the use of the word 'investigation' in Ms Sarahs' email to the Applicant of 28 April 2014 at 11.48 am following the meeting of 10.00 am that same day. The Applicant said that 'investigation' referred to Ms Sarahs looking into whether or not the Applicant could be given some type of severance payment, whilst Ms Sarahs said it referred to the ongoing investigation into the options available for the Applicant's continued employment.

- 2.36 In response to the Applicant's email to Ms Sarahs of 28 April 2014 at 8.50 pm, Ms Sarahs replied on 30 April 2014 at 5.13 pm explaining that there had not been a dismissal but there was an ongoing investigation into options for ongoing employment, given the content of the Occupational Health report. Additionally, there was a request for a follow up meeting with the Applicant on 8 May 2014.
- 2.37 The Respondent then received emails from a lawyer instructed by the Applicant noting that the Applicant would not be attending the meeting on 8 May 2014 due to the stress that the matter had caused their client.
- 2.38 The Respondent made a further attempt to set up another meeting on 20 May 2014 to discuss the Applicant returning to work.
- 2.39 Throughout the period 28 April to 30 June 2014 the Respondent continued to pay the Applicant discretionary sick pay, which the Applicant accepted. The Applicant also continued to receive all benefits associated with an employee of the Respondent.
- 2.40 A letter dated 18 June 2014 from the Respondent's legal adviser to the Applicant's legal adviser gives the Applicant one final opportunity to engage with the Respondent, by Friday, 20 June 2014, to discuss her return to work, noting that failure to do so would leave the Respondent with "no choice but to consider" the Applicant being in repudiatory breach of her contract, bringing it to an end.
- 2.41 The Applicant did not contact the Respondent by Friday 20 June 2014 to discuss her return to work.

### **3.0 The Law**

- 3.1 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."*

### **4.0 Conclusion**

- 4.1 For the Applicant to succeed in her claim that she was unfairly dismissed, she must first show that a dismissal took place during the meeting of 28 April 2014.
- 4.2 The Tribunal concluded that on the balance of probabilities the Respondent did not terminate the Applicant's employment during the meeting held on 28 April 2014.
- 4.3 The Tribunal was sufficiently persuaded that there continued to be an investigation into alternative roles/working patterns for the Applicant as noted in Ms Sarah's email of 28 April 2014 at 11.48 am to Ms Robilliard, following the meeting of the same date. Additionally, Mr Lenfestey's discussion with the Senior Receptionist (during the working day) of 28 April 2014 was further evidence to this point.

4.4 The Tribunal also took into account that, when the Respondent received the Applicant's e-mail of 28 April 2014, sent at 8.50 pm, it sought to rectify any confusion by explaining to the Applicant that she had not been dismissed. On two further occasions the Respondent sought to engage with the Applicant to discuss the return to work.

4.5 The Tribunal concluded that the Applicant was not dismissed during the meeting of 28 April 2014 and since there was no dismissal under section 5 of the Law at that time, there was no unfair dismissal under section 6 of the Law.

**5.0 Decision**

5.1 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, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law 1998, as amended, the Applicant was not dismissed unfairly by her employer. The Tribunal therefore makes no Award.

Mrs Paula Brierley  
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Signature of the Chairman

15 January 2015  
.....  
Date