

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

APPLICANT: Mr Adam Eborall  
Represented by: Mr Bob Lanning, union representative

RESPONDENT: Sandpiper CI Limited  
Represented by: Ms Jane Ronge, Head of HR

**Tribunal Members:** Ms Georgette Scott  
Ms Christine Le Lievre  
Mr Roger Brookfield

**Hearing date(s):** Wednesday 26 November 2014

**Decision of the Tribunal**

The Applicant claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, which was contested by the Respondent.

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that under the provisions of Section 5(2)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed and therefore makes no Award.

**Amount of Award (if applicable):**

Ms Georgette Scott	19 January 2015
.....	.....
Signature of the Chairman	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 Adam Eborall, was represented by Mr Bob Lanning, Regional Officer, Unite the Union.

1.2 The Applicant gave oral evidence in addition to his submission on form ET1 and a shared document bundle (ER1).

1.3 The Applicant alleged unfair dismissal due to false presumption of theft by the Respondent based on insufficient evidence.

1.4 Ms Jane Ronge, Head of HR, represented the Respondent and relied upon documents in the shared bundle (ER1) in addition to documents ER2 and ER3.

1.5 The Respondent called the following witnesses:

- Ms Linda Hodgson, Senior HR manager;
- Ms Patrycja Zakrezewska, HR Officer;
- Ms Jane Ronge, Head of HR.

The Respondent also submitted additional witness statements.

1.6 The Respondent claimed that it had reasonable belief that on the balance of probability Mr Eborall was responsible for the alleged theft and that it conducted a procedurally fair investigation and disciplinary procedure before dismissing Mr Eborall.

1.7 Prior to the main evidence the Tribunal considered the proposal to view the CCTV footage of the alleged theft and decided that it would defer the decision until later in the proceedings as early indications of the documents provided suggested sufficient description of the content of the CCTV footage.

**2.0 Facts Found by the Tribunal**

2.1 The Applicant had been employed by Sandpiper CI Limited (Sandpiper) as a Customer Assistant from 19 July 2010, until 8 July 2014. The Applicant also had a short period of employment with Sandpiper in 2009.

2.2 On 23 June 2014 the Applicant was cashing up in the absence of a Manager at the Landes du Marche shop.

2.3 On 25 June 2014 G4S Securicor (the security company advising Sandpiper) alerted Sandpiper that there was an £80 discrepancy in the cash submitted by the Landes du Marche store for 23 June 2014.

- 2.4 On 3 July 2014 Ms Patrycja Zakrezewska, HR Officer and Mr Ashley Conquest, Store Manager met to review the CCTV footage. The meeting had been delayed due to annual leave.
- 2.5 The same day Ms Zakrezewska and Mr Conquest began a formal investigation with the Applicant and he was asked to attend an investigatory meeting. He was offered the opportunity to have a colleague present but declined. Ms Zakrezewska and Mr Conquest decided, based on the investigatory meeting, to move the process forward to a full disciplinary hearing and suspend the Applicant on full pay, without prejudice, due to the nature of the allegations.
- 2.6 On 8 July 2014 the Applicant attended a disciplinary hearing held by Ms Linda Hodgson, Senior HR Manager and Mr Jason McCormack-Grey, Senior Store Manager. The Applicant was again offered the opportunity to have a colleague to attend in support and he again declined. At the hearing the facts of the case were reviewed and Ms Hodgson and Mr McCormack-Grey made the decision to terminate the Applicant's employment based on the balance of probability that he was responsible for the theft of £80.
- 2.7 The Applicant lodged an appeal against the decision to dismiss him.
- 2.8 On 12 August 2014, following delays caused by changes to the Applicant's representative and to a change of Sandpiper personnel, an appeal hearing was convened.
- 2.9 On 18 August 2014 the Applicant was informed that the Appeal had failed and the decision to dismiss for Gross Misconduct had been upheld.

### **3.0 The Law**

- 3.1 The Applicant claimed he had been unfairly dismissed within the meaning of paragraph 5(2)(a) of the Employment Protection (Guernsey) Law, 1998 as amended; *"the contract under which he/she is employed is terminated by the employer, whether it is so terminated by notice or without notice."*
- 3.2 The Tribunal took into account paragraph 6(3) which states *"the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the circumstances (including size and administrative resources of an employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case."*

### **Summary of Parties' Main Submissions**

#### **4.0 The Applicant's case**

- 4.1 Mr Lanning advised that Sandpiper had employed the Applicant for five years, his latest position being that of General Assistant.

- 4.2 From February 2014 the Applicant was given responsibility for cashing up store takings.
- 4.3 On 23 June 2014 the Applicant was tasked with sorting through the takings of three days. This was a task he believed he undertook to the best of his ability, although he had minimal training.
- 4.4 It was from this set of takings that the £80 was found to be missing.
- 4.5 Mr Lanning stated that the system for counting money in an office that was not locked and to which other people had access, including access to the safe, was inadequate and provided little protection to either the Company's takings or the staff responsible for it.
- 4.6 The only evidence produced by the Company to support its presumption of theft was the CCTV footage. This footage showed other members of staff entering and leaving the room where the Applicant was counting the money. The CCTV footage also showed the Channel Islands Lottery representative entering the room and changing lottery tickets for cash. Mr Lanning stated that the CCTV footage provided no definitive proof of theft by the Applicant.
- 4.7 Mr Lanning added that following the disciplinary meeting where the Applicant was dismissed; he was immediately arrested by the Police and subjected to eight hours in a Police cell followed by two hours of questioning before being released without charge.
- 4.8 The Police had gone through the CCTV footage with the Applicant and could find no evidence that he had taken the money. The Company, however, were of the view that the bond of trust had been broken. Mr Lanning said that this was the wrong conclusion.

## **5.0 Testimony of the Applicant**

- 5.1 The Applicant attested that he had processed the takings correctly and had not taken the money. He added that he was a trusted person and would not jeopardise his position.
- 5.2 The Applicant added that on this occasion he did the takings alone as the Manager was absent, but if his Manager were present they would do the takings and cashing up together.
- 5.3 With regard to a call made, shown on the CCTV footage of the cashing up, the Applicant said that he had called a colleague in IT regarding a till system fault. Under examination the Applicant was asked to refer to call records and identify which telephone number it was that he called. He believed it was likely to be the mobile number listed at 10.32 am on 23 June 2014 (Tab 6 ER1 refers).
- 5.4 The Applicant was asked to refer to various elements of the CCTV footage including an occasion when he was cashing up and a colleague asked him to change money including two £50 notes.

- 5.5 Asked why the Applicant had chosen not to be accompanied at the investigatory and disciplinary hearing, he stated that it was not the first investigation he had been involved with at Sandpiper and as he did not doubt his innocence and he believed that the money would reappear, as it had done on previous occasions, he did not see the need for a representative to support him.
- 5.6 Asked at what point he had realised the seriousness of the process the Company was following, the Applicant replied that it was not until the end of the disciplinary hearing.

**6.0 The Respondent's case**  
**Testimony of Ms Jane Ronge, Head of HR**

- 6.1 Ms Ronge stated that Sandpiper was a fair and reasonable employer and had followed a process that was available to all staff to view in its Staff Handbook (Tab 10 ER1 refers).
- 6.2 At each stage of the process followed by the Company it had ensured that two different members of staff were involved. Their investigation, though criticised by the Applicant, was robust and had the benefit of using CCTV footage, available to either side in the process, to corroborate the facts.
- 6.3 Ms Ronge stated that CCTV surveillance was a useful tool in both protecting the Company's interests and protecting staff. She added that the CCTV footage in this case showed that the Applicant was the only person handling the money during the cashing up process. There are sections in the recording that caused concern, specifically when the Applicant was making a telephone call and on another occasion where he leant forward and obscured the camera for a period.
- 6.4 In response to questions regarding alternative reasons for the missing £80, Ms Ronge said that these were investigated and discounted. The money had not since turned up and was still missing.

**7.0 Testimony of Ms Patrycja Zakrezewska, HR Officer**

- 7.1 Ms Zakrezewska took the Tribunal through the investigatory process and the investigatory meeting where the Applicant was present. She explained the two-person investigation process with one person questioning and the other note taking. Ms Zakrezewska explained that they investigated and understood the various comings and goings in the office during the cashing up and were satisfied that they had asked all relevant questions.
- 7.2 Regarding the CCTV footage Ms Zakrezewska confirmed that there was a small portion of the cash on the table that was not in view. She also explained her understanding of the exchange of notes for the CI Lottery and the exchange of 5 x £20 notes for the 2 x £50 notes.
- 7.3 On the matter of tills occasionally being short of money, or over on money against transactions, the Tribunal heard that these were routinely investigated at all stores throughout both Guernsey and Jersey, and that on occasion the money would be found.

7.4 Ms Ronge added that since the Applicant had left the Company they had reviewed their security procedures and made a few modifications.

## **8.0 Testimony of Ms Linda Hodgson, Senior HR Manager**

8.1 Ms Hodgson explained that she was the disciplinary hearing Manager and took the Tribunal through the process that had been followed.

8.2 Under questioning Ms Hodgson explained that she had spoken to the Applicant about his right to a supporting colleague being present for him during the hearing, but that he had declined.

8.3 The Tribunal heard that the disciplinary hearing had again reviewed the CCTV footage and questioned the Applicant in detail and referred to the notes of the investigation meeting.

8.4 Ms Hodgson confirmed the Respondent's belief that the Applicant was the only person to handle the money and process it for collection. Theft was determined on the balance of probability.

8.5 The Tribunal heard that the Applicant had been responsible for cashing up takings since February that year and there had been no previous incidents of missing cash.

8.6 Under questioning Ms Hodgson could not confirm that she had asked the Applicant directly during the disciplinary hearing whether he had committed the theft; however she confirmed that they had taken in to account his previously unblemished record with the Company.

8.7 The Company investigated all occasions where takings showed errors of £5 or more on any takings and were consistent in their approach. Across the Islands this meant there were five cases that resulted in Disciplinary Hearings during 2014, against 50 stores and 1,000 staff.

## **9.0 Conclusions**

9.1 The Tribunal considered all the oral and documentary evidence placed before it, whether specifically referenced in this judgment or not.

9.2 The focus of the Tribunal was upon the process and procedures followed by the Respondent leading up to and including the disciplinary action that was taken against the Applicant, and the appeal outcome, between 3 July and 18 August 2014. It is not for the Tribunal to undertake a secondary investigation into the allegations of the theft of money. It was for the Respondent to prove that the process followed up to the point of dismissal was fair and that the decision to dismiss was, on the balance of probabilities, within the range of reasonable responses open to it as the employer.

9.3 The efforts of the Respondent in pursuing a documented investigatory and disciplinary process were considerable, well recorded and documented. Whilst there were a few delays in the process these were quickly overcome and the

Applicant was afforded every opportunity to have someone accompany him. Whilst the only opportunity he took to use this right was during the Appeal process this does not detract from a broadly robust, fair and equitable procedure.

- 9.4 The Tribunal found the testimony of the Applicant to be candid and credible but it is not a matter for the Tribunal to replace the investigation carried out by the Respondent.
- 9.5 The Tribunal equally found that the Respondent had carried out a reasonable investigation and ably demonstrated and presented its belief that, on the balance of probability, the CCTV evidence showed that it had suffered a theft at the hands of the Applicant.
- 9.6 For this judgment the standard of proof of evidence does not need to be “beyond all reasonable doubt” and, as the Police demonstrated when no charges were pressed against the Applicant, the proof was circumstantial. For the employer, and for this Tribunal, the standard of proof needs to be one of reasonableness in all the circumstances. In this case the Respondent determined and demonstrated, after due process, that the balance of probabilities weighed against the Applicant and provided sufficient evidence to breach the bond of trust. The Tribunal therefore found, in these circumstances, that the dismissal was fair and reasonable.

**10.0 Decision**

- 10.1 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that under the provisions of Section 5(2)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed and therefore makes no Award.

Ms Georgette Scott  
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Signature of the Chairman

19 January 2015  
.....  
Date