

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Richard White
Represented by: Advocate Thomas Crawford

RESPONDENT: Mercury Distribution (Guernsey) Limited
Represented by: Mr Lee Dumont

Tribunal Members: Mr P Woodward (Chairman)
Ms G Scott
Mr N Harris

Hearing date(s): 19 May 2014

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, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended that the Applicant was constructively unfairly dismissed. In respect of this decision the Tribunal awards £9,873.60

The Tribunal considered whether there were any circumstances which might argue for a reduction in the award in accordance with section 23 (2) of the Law. The Tribunal has concluded that given the seriously deficient disciplinary process adopted by the Respondent that no such reduction should be ordered.

Mr Peter Woodward
.....
Signature of the Chairman

26 June 2014
.....
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 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 Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

Extended Reasons

1.0 Introduction

- 1.1 The Applicant claimed that he was constructively unfairly dismissed under Section 5(2)(c) of the Employment Protection (Guernsey) Law 1998, as amended, (The Law), by virtue of the Respondent acting in repudiatory breach of his contract of employment. The breach was alleged through the implied duties as to trust and confidence and health and safety, in response to which the Applicant resigned timeously and for no other reason. The Applicant further claimed that the alleged constructive unfair dismissal was an automatically unfair dismissal under section 11 (1)(e) of the Law on the basis that the principal reason for his dismissal was that, in circumstances of danger which he reasonably believed to be serious and imminent, he took appropriate steps to protect himself from the danger by engaging in self-defence on a Client's premises.
- 1.2 The Respondent, resisted this complaint; it was the Respondent's contention that it could not reasonably anticipate that its instructions to the Applicant would place him in circumstances of danger and that the disciplinary process adopted by the Respondent in response to this incident was fair and reasonable.
- 1.3 The Applicant, Mr Richard White, gave both oral and written evidence and was represented by Advocate Thomas Crawford.
- 1.4 The Respondent Mercury Distribution (Guernsey) Limited, ('Mercury') was represented by Mr Lee Dumont who gave both oral and written evidence.
- 1.5 A joint bundle was submitted as ER1 and a copy of the Applicant's closing statement was also entered, ER2.
- 1.6 In the six months immediately preceding the Effective Date of Termination, 9 January 2014, the actual pay by the Respondent to the Applicant was £9,873.60.

2.0 Facts Found

- 2.1 The Applicant started his employment with the Respondent on 6 July 2009 and was employed as a Refrigeration & Catering Equipment Engineer.
- 2.2 Mercury Distribution is one of the main suppliers of janitorial and catering equipment in the Channel Islands and provides the sale and repairs of commercial refrigerators. The business employs 20 employees in Guernsey.
- 2.3 The Applicant was contracted to work 25 hours per week, that is, five hours per day Monday to Friday, in accordance with page three of his employment contract of employment dated 6 January 2010 (page 37 of the joint bundle). Whilst the employment contract stated these 25 hours were flexible, in practice the Applicant normally worked from 8.00 am to 1.00 pm each day.

2.4 The Applicant was supervised by Mr Lee Dumont who is the Operations Director of Mercury. Mr Dumont was in charge of his daily activities and was always the Applicant's first point of call for any problems.

3.0 Mr Richard White

3.1 The Applicant stated that he had to work closely with Mr Dumont in his daily employment. A typical working day would involve the Applicant turning up at Mercury's offices in Pitronnerie Road where Mr Dumont would hand him his job sheets for the day. The job sheets would specify the particular job that needed to be done and the client's name and address. The Applicant would then carry out the jobs listed on the job sheets prior to finishing work for the day at about 1.00 pm.

3.2 On Friday 27 December 2013, the Applicant arrived at the Respondent's office in the morning and, as was common practice, was given his job sheets for the day by Mr Dumont.

3.3 Whilst the Applicant was completing his last scheduled job for the day at one of the hotels in town Mr Dumont telephoned him and asked him to call in at a particular client on his way home. He was asked to look at a thermostat controller on a fridge unit in this particular client's (the 'Client') kitchen which had been reported as not working correctly.

3.4 The Applicant arrived at the Client's premises at around 12.55 pm and carried out an initial examination of the fridge and performed some diagnostic testing on it. His initial conclusion was that the problem lay with the compressor or a possible refrigerant leak rather than the temperature thermostat which he found to be working correctly. In the Applicant's opinion to confirm the problem he would have needed to carry out further investigations which would take a good deal of time and could not be carried out there and then whilst the kitchen was in the middle of a busy lunchtime service. The Applicant also recalled it was past 1.00 pm and thus the end of his normal working day.

3.5 The Applicant proceeded to explain the situation to the Chef who seemed to be in charge of the kitchen and said that he would have to return to deal with the problem after the weekend. The Chef was disgruntled about this and insisted that the Applicant repair the fridge right away.

3.6 The Applicant reiterated that the problem was not something he could fix straightaway and told the Chef that the best thing for him to do was to contact Mr Dumont and make arrangements for it to be fully investigated and repaired.

3.7 The Applicant told the Tribunal that this was not him being unhelpful or shirking his responsibilities; it not being practical to investigate and repair the fridge straightaway whilst the kitchen was in operation and it being past the end of his normal working day. The Applicant stated that Mr Dumont did not allow engineers to take it upon themselves to arrange future appointments with clients even in the case of an incomplete repair job that required further investigation. Mr Dumont had also made it clear in the past that he was not to undertake extensive work for customers without express instruction from him as this could lead to costs which the customer was not prepared to pay for.

3.8 It seemed to the Applicant that Mr Dumont had only asked him to call in to the Client on his way home knowing that he finished at 1.00 pm and thus would be satisfied that he had looked at the problem as requested and dealt with it appropriately in the circumstances.

- 3.9 The Applicant informed the Tribunal that whilst he could possibly have addressed the problem in the short term by pumping additional refrigerant into the fridge, in his professional opinion this was not an acceptable thing to do when the source or extent of the leak was unknown; industry standard guidelines advise against adding refrigerant to a leaking unit. In addition as he understood that the fridge was new he believed that it would have been under guarantee so that adding gas to a faulty system without knowing the full extent of the problem may have had implications for the guarantee for both the Respondent and the Client.
- 3.10 After leaving the Client's premises the Applicant went home and heard no more about the fridge that day or over the weekend; he assumed that the matter would be dealt with the following week in the usual manner.
- 3.11 The Applicant stated that if the Client had spoken to Mr Dumont after he had left the Client's premises then Mr Dumont had had ample opportunity to telephone him to establish why he had left without attempting to assess the problem further and effect a repair. The Applicant informed the Tribunal that had his employer requested him to do so he would have returned to the Client's premises either later that day or perhaps on the Saturday morning to continue investigating the problem. Historically there were no occasions he could recall when he had not agreed to assist outside his normal working hours when asked to do so.
- 3.12 On Monday 30 December 2013 the Applicant arrived at the Respondent's offices as usual in order to be given his job sheets for the day. Mr Dumont gave him two assignments, the first involving a quick visit to a customer near the Client's premises and the other being the repair of the Client's fridge.
- 3.13 Prior to leaving the office he was then questioned by Mr Dumont as to why he had not completed the repair of the fridge the previous Friday. The Applicant explained why he had acted as he did but Mr Dumont accused him of walking out on the Client and telling the Client's Chef that it was not his problem; he denied this version of events. However despite this denial Mr Dumont was unhappy that the Applicant had not stayed to complete the repair the previous Friday.
- 3.14 The Applicant informed the Tribunal that on the Monday morning's job sheet Mr Dumont had allocated four hours for the repair. It seemed to the Applicant that on this basis Mr Dumont obviously knew that it was not a quick job and the implication of this was that Mr Dumont had apparently expected him to stay past 5.00 pm the previous Friday; without following the normal protocol of requesting him and then authorising him to do so.
- 3.15 The Applicant arrived at the Client's premises at about 9.30 am on Monday 30 December. Upon viewing the fridge it was immediately apparent to him that another engineer had attempted some form of repair after his visit on 27 December and in the opinion of the Applicant had incorrectly added refrigerant to the system and fitted a line tap. It was therefore reasonable to conclude that the Client must have contacted the Respondent and that another engineer had been instructed to carry out a temporary repair by adding refrigerant.
- 3.16 At this point the Client's Chef appeared and told the Applicant not to continue as the Client's Manager did not want him to do the repair. The Applicant queried this decision and the Chef responded by questioning him in an aggressive manner as to why he had not repaired the fridge on the previous Friday. The Applicant attempted to explain the reason and the technical details of the investigation required but the Chef was

disinterested in what he said; he repeatedly insisted that the Applicant should have fixed the Fridge on Friday. The Chef was adamant that he did not want him to continue with the repair and that he should leave the Client's premises.

- 3.17 The Applicant then proceeded to telephone Mr Dumont at 9.50 am in order to advise him that the Manager did not want him to remain on the premises; however, Mr Dumont appeared to have no comprehension of the difficult situation the Applicant found himself in and insisted that he remained on the premises to complete the repair.
- 3.18 Given this instruction the Applicant then attempted to start work on the fridge but the Chef forcefully repeated to him that the Manager did not want him working on it and that he wanted him off the job.
- 3.19 The Applicant informed the Tribunal that the Chef was being very abusive and aggressive but he deliberately remained outwardly calm. He was most concerned that he did not want to be accused of leaving the job for a second time and knew that the Respondent valued the Client's business. However he was being placed in a very uncomfortable and difficult situation by the conflict in instructions from the Chef and Mr Dumont.
- 3.20 The Applicant telephoned Mr Dumont again at 9.54 am to advise that the Client was most insistent that he did not want him to carry out the repair of the fridge. In response Mr Dumont asked to speak to the Chef, the Applicant handed the telephone to the Chef and walked away out of earshot.
- 3.21 The Chef returned a short time later and passed the telephone back to the Applicant; Mr Dumont assured him that he had smoothed things over with the Chef and that he was to remain and continue with the repair; The Applicant agreed to do so.
- 3.22 The Applicant stated that at no time during this conversation with Mr Dumont was he asked to refrain from being aggressive with the Chef or to calm down or to leave the premises because of any alleged poor attitude on his part towards the Chef. To the Applicant this seemed consistent with the outwardly calm approach he had adopted towards the Chef's hostile attitude.
- 3.23 The Applicant then started work on the fridge, whereupon he discovered refrigerant leaking from the incorrectly fitted line tap, which had to be rectified before he could start any investigation of the system and the compressor. In order to do this he removed some panels from the fridge and pulled out the drawer containing the condensing unit in order to gain access.
- 3.24 The Applicant stated that a short while later the Client's Manager burst into the kitchen in an angry and agitated state. He was immediately confrontational toward the Applicant and accused him of having verbally abused his staff, which the Applicant denied. The Manager then became even more animated and aggressive, placing his face within a few inches of the Applicant's face, and started shouting and swearing at him in an insulting diatribe ending with an order that he get off the premises immediately.
- 3.25 The Applicant stated that the Manager's sudden entry, his outburst, his uncontrolled manner and aggression made him very concerned for his safety. Due to the confined layout of the kitchen, the fact that there was only one way in or out of it and that the Manager had forced him into a corner, he felt trapped. He could see that the situation was not going to be resolved despite Mr Dumont's assurance to the contrary; he therefore told the Manager that he would leave, hoping that this would immediately diffuse the situation.

- 3.26 However, before he was able to gather his tools and equipment the Manager suddenly grabbed him by the throat and pushed him against a work top in a frenzied rage. His attack was unprovoked and took the Applicant by surprise. The Applicant was backed up against the work top and had nowhere to go, He tried to push the Manager from him in self-defence; the Chef then stepped in, pulled the Manager off the Applicant, and told him to calm down whilst restraining him.
- 3.27 As soon as the Manager had been restrained he accused the Applicant of having assaulted him, and anxiously shouted out for the Police to be called. It was the Applicant's belief that the Manager knew very well that he had not assaulted him at all, and that he was acting to cover himself against responsibility.
- 3.28 The Applicant then packed up his tools and equipment and closed the drawer containing the condenser unit of the fridge back into place using his foot; to leave it extended into the room would have been a safety hazard. As he walked to his van the Chef was following him taking photographs, which he found intimidating.
- 3.29 The Applicant was packing his tools in his van when a Policewoman appeared. She made herself known to him and requested him to enter the Client's premises with her. However, as he was about to enter the premises the Manager was still ranting and was heard to shout abuse at him and refused him entry; the Policewoman instructed him to remain outside while she went in. She returned a few minutes later and meanwhile he tried to telephone Mr Dumont to tell him about what had happened, but there was no reply. The Policewoman then told the Applicant that Mr Dumont had already been called.
- 3.30 Mr Dumont arrived at the Client's premises, and as he made his way in he brushed past the Applicant saying "What's happened here?" The Applicant replied that he had been instructed to wait outside. Mr Dumont did not ask him how he was and showed no concern toward the Applicant; Mr Dumont appeared to be more interested in the Client.
- 3.31 A short time later, Mr Dumont came out of the Client's premises and told the Applicant that he was suspended on full pay until the matter was resolved. In doing so, he made no mention of what the Applicant was alleged to have done and did not ask him for his explanation of events. After Mr Dumont collected the Applicant's glasses from the Client's premises at his request, he ordered the Applicant to leave and go home.
- 3.32 After he arrived back home, the Applicant telephoned Mr Dumont to request that he put his notification of suspension in writing. Mr Dumont told him that a letter would be ready for collection at 12.30 pm the following day. Mr Dumont told the Applicant that he should write a report into the incident and deliver it to Mr Dumont when he collected the suspension letter. (A copy of the suspension letter is at page 59 of ER1).
- 3.33 The Applicant found he needed more time to write up his report and had still not been able to complete it by 5.30 pm on 31 December 2013; The Applicant told the Tribunal that he intended to carry on writing it up on New Year's Day. Mr Dumont chased him for the report by text message on New Year's Day. The Applicant stated that from Mr Dumont's seemingly aggressive pursuit of the report he viewed the Applicant as the perpetrator of the Incident rather than a victim of it.
- 3.34 The report (pages 41 to 42 of the joint bundle) was submitted to the Respondent on 1 January 2014. This was prepared without the Applicant having any knowledge of the allegations made by the Client to Mr Dumont. In the email which accompanied the

report the Applicant requested Mr Dumont to advise him as to what allegations had been made by the Client. In this email the Applicant stated he been prepared to remove himself from the Client's premises but only remained there upon Mr Dumont's instructions.

- 3.35 The Applicant informed the Tribunal that after the incident he realised how upset and disappointed he felt with Mr Dumont for the curt way he had treated him at the Client's premises and his apparent complete lack of concern for his welfare. It was Mr Dumont who had insisted that he remain at the Client's premises to continue the repair of the fridge despite the Client's repeated requests that he leave the premises. In hindsight the Applicant realised that he should have left after his first telephone call to Mr Dumont but had not wanted to act against his instructions.
- 3.36 The Applicant was requested, via an email from Mr Dumont on 3 January 2014, to attend a disciplinary hearing at Mercury's offices at 9.30 am on 7 January 2014 in order to review the incident at the Client's premises. In the request to attend this meeting the Applicant noted that Mr Dumont did not respond to the points that he had raised in his email to him on 1 January 2014.
- 3.37 Prior to the meeting on 7 January 2014 the Applicant had reviewed the Respondent's Staff Handbook ('Handbook') and in particular the disciplinary section, (pages 81 to 86 of the joint bundle). In consequence he sent an email on 5 January 2014 (page 45 of the joint bundle); in this email the Applicant requested that he be advised as to which, if any, of the examples of gross misconduct would be under discussion at the disciplinary hearing, and who would be present at the meeting. The Applicant explained in this email that he needed this information before he took legal advice. The Applicant also requested, in this communication, a copy of the respondent's Health and Safety Policy which did not form part of the Handbook.
- 3.38 In an email dated 6 January 2014 (page 46 of the joint bundle), Mr Dumont informed the Applicant that examples of gross misconduct were:
- Fighting, assault on another person.
 - Deliberate damage to Company property.
 - Failure to conduct oneself in an appropriate manner which may bring the Company into disrepute.

In this email Mr Dumont also informed the Applicant that he would be attending the meeting and that the Applicant was to attend the meeting regardless of whether he had obtained legal advice. Mr Dumont stated that the purpose of the meeting was to investigate the incident and the circumstances involved. Mr Dumont attached a copy of Mercury's Health and Safety Policy to the email (pages 47 to 52 of the joint bundle).

- 3.39 The Applicant informed the Tribunal that he was unclear from Mr Dumont's email as to whether the meeting on 7 January 2014 really was a disciplinary hearing or whether it was actually an investigation meeting or both. The Applicant was also unsure about the allegation that he had caused deliberate damage to Company property. He did not see how anything that had happened during the Incident could possibly be interpreted as damage to Company property; in consequence he emailed Mr Dumont on 6 January 2014 (page 53 of the joint bundle) asking him to state which items of Company property he had allegedly damaged.

- 3.40 Mr Dumont replied in an email the same day (page 54 of the joint bundle) stating that there was an allegation that the Applicant had kicked and damaged the condenser unit on the fridge.
- 3.41 The Applicant attended the meeting at 9.30 am on 7 January 2014 as arranged with Mr Dumont. The Applicant did not take a colleague with him to this meeting and Mr Dumont was the sole member of the Respondent's staff present.
- 3.42 Mr Dumont commenced the meeting by reviewing the Applicant's report. In discussion with Mr Dumont the Applicant confirmed that it was true and accurate other than, he conceded, that Mr Dumont had said "What's happened here?" as he walked past the Applicant on arriving at the Client's premises.
- 3.43 Mr Dumont asked the Applicant if he had kicked the fridge and the Applicant explained that he had not. His only action was to use his foot to slide the condensing unit back into position; he explained to Mr Dumont that it would have been unacceptable and a potential hazard to have left it sticking out of the fridge. The Applicant also explained that using his foot in this way would have caused no damage to the fridge and was common practice as the condensing unit was heavy and reasonable force was required to shift it back into position. The Applicant asked Mr Dumont whether the fridge was the Respondent's property or had it been sold to the Client, he did not respond.
- 3.44 Mr Dumont gave the Applicant no details or evidence of the allegations that had apparently been made against him by the Client which had led to the Respondent holding the disciplinary hearing. Mr Dumont gave the Applicant neither details nor evidence of the Client's version of events. The Respondent gave the Applicant no details or evidence of any conversations or dealings he had had with the Client or the Police about the Incident. There were no photographs of alleged damage to the fridge. The Applicant stated that if there was a case against him he was not made aware of it and was given no opportunity to respond to it or make any representations other than what was already contained in the report.
- 3.45 Mr Dumont concluded the meeting by telling the Applicant that he would be in touch with him in a few days. The Applicant asked Mr Dumont whether he could have a copy of the notes he had made during the meeting. Mr Dumont said no and that if the Applicant had wanted to have notes of the meeting then he should have brought his own paper and pen and made them himself.
- 3.46 After the meeting the Applicant made a file note of it for his own records (page 56 of the joint bundle). The following day Mr Dumont sent the Applicant an email (page 57 of the joint bundle) which asked him to return to work the following morning as he was no longer suspended. Attached to the email was a copy of Mr Dumont's decision letter dated 8 January 2014 (page 58 of the joint bundle). In this letter Mr Dumont said that having investigated the incident and taken into consideration all the evidence and listened to the submissions, it was his belief that on the balance of probabilities the Applicant had failed to conduct himself in a professional manner and had acted in a way that was likely to bring the good name of the Company into disrepute. Mr Dumont acknowledged that there may have been an element of provocation which led to the Applicant's behaviour and he therefore issued the Applicant with a formal written warning of one year's duration.
- 3.47 Upon reading the letter, the Applicant stated he was astonished and felt very let down that Mr Dumont had taken the side of the Client despite providing no evidence whatsoever to support his point of view and despite the fact that he considered himself a faithful Company employee having provided a detailed account of what happened

during the Incident. The Applicant was also hurt that Mr Dumont felt that he had brought the Respondent into disrepute; The Applicant believed he had only ever ensured that his work was of the best standard.

- 3.48 The Applicant immediately questioned whether he could work with Mr Dumont again after these events. It was the Applicant's view that Mr Dumont had put him into a very uncomfortable position of conflict at the Client's premises. In the Applicant's opinion Mr Dumont's actions had put his health, safety and welfare in immediate danger at the Client's premises. Mr Dumont had given the Applicant no support following the Incident. He had been quick to suspend the Applicant and he had done so in the street. The Applicant considered that Mr Dumont had carried out an unfair and unreasonable disciplinary procedure against him. He had taken the side of the Client and reached a poor decision containing no substantiation of his findings; and he had now issued the Applicant with an unmerited written warning and told him to come back to work as though nothing had happened.
- 3.49 The Applicant concluded that he definitely could not continue in a good working relationship with Mr Dumont and was left in no doubt that his actions had caused him to lose all trust and confidence in the Respondent.
- 3.50 It seemed to the Applicant there was little point in appealing the decision as it was his relationship with Mr Dumont, as his immediate line Manager in Guernsey, that was untenable. The Applicant asserted that appealing to a member of the Jersey management team would have done nothing to alleviate the feeling of being completely let down and unsupported by Mr Dumont who had quite clearly taken the version of events as provided to him by the Client over his and was effectively saying that his version of events was untrue.
- 3.51 In consequence the Applicant wrote Mr Dumont a letter dated 9 January 2014 (page 108 of the joint bundle) in which he resigned immediately on the basis that he had been constructively dismissed from his employment with Mercury.
- 3.52 Mr Dumont accepted his resignation in a letter of the same date (page 109 of the joint bundle), although he did not accept that the Applicant had been constructively dismissed.
- 3.53 Concluding his evidence the Applicant stated he was never interviewed or charged over the Manager's allegation of assault; he was not sure whether a formal complaint was ever lodged.

4.0 Mr Lee Dumont

- 4.1 Mr Dumont is the Operations Director for Mercury Distribution (Guernsey) Limited and has held this position since 2006. As Operations Director he has responsibility for the everyday running of the Guernsey operations, dealing with customers, organising staff and dealing with any problems or complaints. He is responsible for the whole Guernsey business including being in charge of the engineering department and employs department Managers to assist with the other sections within the Company.
- 4.2 Mr Dumont was responsible for hiring the Applicant in 2009, who joined the business as a 'refrigeration/catering engineer' and commenced work, on a part time basis with flexible hours, on 6 July 2009. He informed the Tribunal that Mr White was very important to the business because he was the only qualified refrigeration engineer

qualified to repair and service refrigeration equipment. A copy of Mr White's Contract of Employment is included in the joint bundle.

- 4.3 Mr Dumont informed the Tribunal that, as with all of the Respondent's engineers, Mr White was dealing with customers directly on a day to day basis and representing the Company when he did so. Given the importance of a properly working refrigeration unit to any person in the catering industry, the service he provided was extremely important to the customers and thus to the Company. Mr White was contracted to work 'part time 8.00 am to – 1.00 pm / 25 hours a week flexible'. Mr White regularly worked in excess of these hours and was paid an hourly rate or would take time off in lieu for all overtime time worked. It was imperative that if he was called out that, where possible, he completed any repairs before leaving a customer's premises as if not, this could result in the customer being unable to use or store food in the refrigerator and thus directly impact on the profits for the customer's business; this is particularly the case over a weekend and even more so during the busy New Year period.
- 4.4 Mr White's employment was subject to a Staff Handbook that contained a detailed Disciplinary and Grievance Policy. In particular, that Policy stated:
- i. No disciplinary action will be taken against an employee until the circumstances have been fully investigated.*
 - ii. At every stage of the procedure, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case.*
 - iii. At all stages, the employee will have the right to be accompanied by another member of staff during the disciplinary interview.*
 - iv. No employee will be dismissed for a first breach of discipline except in the case of Gross Misconduct when the penalty will be dismissal without notice or payment in lieu of notice.*
 - v. An employee will have the right to appeal against any disciplinary penalty imposed. The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.*

The policy also stated that 'gross misconduct' included: fighting, assault on another person; deliberate damage to Company property; or failure to conduct oneself in a manner consistent both with the position held in the Company or with the general standard of behaviour set out above, whether during the hours of work or not, which may bring the Company into disrepute.

- 4.5 Mr Dumont stated that throughout his employment, prior to the incident which formed the basis of this claim, Mr White had been a good employee. His skills were valued by the business and he generally had a good work ethic. Mr White was known to be argumentative and hot-headed at times and would sometimes tell Mr Dumont that "he wasn't doing that" when Mr Dumont requested him to do something and would even argue with other engineering staff.
- 4.6 Mr Dumont stressed that Mr White relied entirely in his ETI Application form on the incident in December 2013 to justify his claim for constructive dismissal. Mr Dumont was unaware of any other complaint Mr White has against the Company. At no time in relation to the incident of 30 December 2013, or in relation to any other issue, did Mr White lodge a grievance.
- 4.7 Turning to the events of 27 December 2013 Mr Dumont informed the Tribunal that his Company provides a continuing maintenance service for all their products. As part of

that service, he received a call from a long-standing and important customer (the Client) on Friday 27 December 2013 to fix a problem with a new commercial refrigerator that the Respondent's Company had installed a week earlier. At approximately 11.00 am Mr Dumont telephoned Mr White and asked him to attend the premises of the Client to fix a problem with the new counter fridge. At the time when Mr Dumont contacted Mr White he believed he was just finishing up on another job. It was his subsequent understanding that Mr White arrived at the Client's premises at 12.55 pm.

- 4.8 At around 1.30 pm Mr Dumont received a call from the Client's Executive Chef who said words to the effect that he was not happy and that Mr White had come and then left without fixing the problem. Mr White had informed the Chef that it was probably damaged when being delivered and that he didn't have time to fix it because he would be finishing work at 1.00 pm. The Client's Executive Chef was particularly annoyed and expressed his concern to Mr Dumont not only as to the unacceptable level of service provided by Mr White, but by his attitude.
- 4.9 Mr White did not advise Mr Dumont that he had not completed the job before he left or indeed later that afternoon. Mr Dumont was only aware of the issue because of the call from the Client. Mr Dumont does not believe Mr White asked the Client to contact him. In effect Mr White made no effort to ensure that the Client's produce or the good name of Mercury was protected.
- 4.10 Immediately on being advised by the Client that Mr White had not finished the job he tried contacting Mr White but with no success so then Mr Dumont telephoned APEX, a refrigeration company which he had previously used before employing Mr White. Mr Dumont asked APEX to attend the premises of the Client and address the problem; he was subsequently informed by APEX that the issue concerned a refrigerant leak (which they had temporarily fixed) but that it would be necessary to identify the source of the leak in order to fix the problem.
- 4.11 On Monday 30 December 2014 at around 8.00 am Mr Dumont met with Mr White and confronted him about his refusal to service the Client the previous Friday; Mr White responded that it was not his problem. However he then admitted to Mr Dumont that he should have contacted him to advise him that he was leaving site without completing the repair. This was crucial because a refrigerator is a very important part of equipment to a customer as, if it is not working correctly, there is a possibility of loss of produce, particularly over a weekend.
- 4.12 Mr Dumont informed the Tribunal that there were also other remedial works that Mr White could have undertaken to ensure that at least a temporary fix would allow the refrigerator to function. Mr White had carried out 'pumping additional refrigerant' into other fridges in the past where necessary and due to the amount of refrigerant in this type of system it would have been a minimal amount required; alternatively he could have stayed to complete the job as he has done in the past.
- 4.13 Mr Dumont then reminded Mr White that this was an important customer and that he expected him to carry on with the repair as he has done on previous jobs. Mr White responded that he had been "busy that afternoon" and alleged that Mr Dumont did not want him to do flexi hours. Mr Dumont responded by telling him this was not the case as it stated in his contract of employment that his hours were flexible and this had been reflected in his past working practices with the Company. Mr Dumont informed the Tribunal that previously this had not been an issue with Mr White and any additional time worked had been taken as time off in lieu. Mr Dumont then asked the Applicant to return to the site and effect a repair.

- 4.14 At approximately 9.30 am Mr Dumont received a telephone call from Mr White who advised him that the Chef did not want the fridge to be fixed by him and asked what he should do. Mr Dumont asked Mr White why the Chef did not want the fridge fixed by him. Mr White responded that the Chef had been told by the Executive Chef not to allow him to fix it. Mr Dumont then told Mr White to tell the Chef that if he did not fix it that day, then it could not be guaranteed that if it broke down again before the New Year, it could get fixed and directed him to explain that to the Client and continue with the repair.
- 4.15 Approximately five minutes later, Mr White telephoned Mr Dumont again and told him that the Chef was still not allowing him to undertake the repair. Mr Dumont asked Mr White to let him speak with the Chef; Mr Dumont told the Chef that if Mr White didn't fix the fridge there and then, it may not be able to be fixed before the end of the year. The Chef then asked Mr Dumont to telephone the Executive Chef to discuss the issue because he had been told not to allow Mr White to undertake the repair, which Mr Dumont did immediately.
- 4.16 In the telephone discussion with the Executive Chef, he indicated to Mr Dumont that he was not happy that Mr White had not completed the job on Friday and that he had been rude and abusive towards his staff members. Mr Dumont gave his apologies on Mr White's behalf for any offence that he may have caused and offered the Client an extended warranty on the refrigerator. Mr Dumont reiterated that if Mr White did not repair the unit at that time it might not be fixed before the New Year. As the issue had to be resolved, the Executive Chef reluctantly agreed to allow Mr White to fix the refrigerator.
- 4.17 Mr Dumont then telephoned Mr White, who was still at the premises, and advised him that he had spoken with the Executive Chef and he was prepared to allow him to complete the job and he should continue with the repair. A file note by Mr Dumont was made shortly after the incident and as part of the investigation into the incident is included in the joint bundle at attachment C (ii) page 88).
- 4.18 Shortly after the Executive Chef had confirmed that Mr White could remain on the premises to fix the unit Mr Dumont received a further call from him to advise him that the Manager had unexpectedly attended the Client's premises and that there had been an incident involving Mr White and that the Police had been called at the Client's instigation. Mr Dumont immediately left his office and attended the premises of the Client arriving approximately 10 minutes after the phone call. Mr Dumont stated that at no time was he called by Mr White.
- 4.19 When Mr Dumont arrived, Mr White was standing outside the Client's premises. He looked calm and did not appear to be distressed in any way. Mr Dumont asked him what had happened to which he replied, in words to the effect, "I've been asked to wait outside". Before Mr Dumont could engage in any further conversation, a Policewoman invited him to speak with her and Mr Dumont left Mr White outside whilst he went inside. The Police Officer asked Mr Dumont who he was and noted he was Mr White's employer.
- 4.20 Once inside the premises Mr Dumont observed the Manager looking very shaken and said he saw that his glasses were broken on the counter. He asked the Manager what happened and the Manager told him in words to the effect "*I arrived and told Richard to get the fuck out of my kitchen, when he didn't leave I grabbed his tool bag ... which is when the incident occurred*".

- 4.21 To the relief of Mr Dumont the Manager told him because it was Christmas and because Mr White was old he was not going to press any charges. Mr Dumont told the Tribunal he was extremely relieved that the Client did not want to press charges or take further action in respect of the incident, particularly when he could see that there had clearly been some sort of physical struggle which had resulted in damage to the Manager's glasses. Mr Dumont added that at no time did Mr White indicate to him that *he* wished to press charges. The only reference during the incident of possible Police action was against Mr White.
- 4.22 Having heard that there had, at the very least, been an altercation between Mr White and the Manager, including the broken eye glasses on the counter as well as the presence of a Police Officer, Mr Dumont made the decision that he had no choice but to undertake a full investigation. In particular he wanted to hear Mr White's version of events and only then would he make a decision as to what action he should take, in other words, whether or not there should be disciplinary action and if there was to be disciplinary action, what that should be. Mr Dumont stated he was extremely concerned about the incident, particularly as the Police had been called in respect of a physical incident involving one of his staff members and one of his key Clients; it was clearly not a situation that he could take lightly.
- 4.23 In order that he could ascertain exactly what had happened and due to the gravity of the situation Mr Dumont decided to take the neutral act of suspending Mr White on full pay whilst he commenced an investigation. He approached Mr White outside the Client's premises and explained to him that he would have to suspend him on full pay while he looked into an alleged incident where the Police had been called. He told Mr White to go home. Mr White then left the premises.
- 4.24 Later that afternoon, on 30 December 2013, Mr White telephoned Mr Dumont and asked why he had been suspended. He advised Mr White that suspension was necessary because of an alleged incident at the Client's premises where the Police were called. Mr Dumont then requested Mr White to provide him with his account of events in writing so that he could understand what had happened from his side. Mr Dumont asked for the statement to be submitted the next day so that matters could be dealt with as expediently as possible and so that his suspension need be no longer than was absolutely necessary. (Attachment C (iii) page 89 refers).
- 4.25 Mr Dumont, on request by Mr White, confirmed his suspension in writing (Page 92 refers). In this letter Mr Dumont referred to the conduct of Mr White as potentially amounting to 'gross misconduct'. Mr Dumont considered this to be appropriate given that the definition of 'gross misconduct' in the Policy included 'fighting, assault on another person; deliberate damage to Company property; or failure to conduct oneself in a manner consistent both with the position held in the Company or with the general standard of behaviour set out above, whether during the hours of work or not, which may bring the Company into disrepute.'
- 4.26 Notwithstanding Mr White advising Mr Dumont that he would receive a copy of his statement on Tuesday 31 December he did not receive this until 3.40 pm on Wednesday 1 January 2014. A copy of the email sent by Mr White is included at attachment E page 93 and a copy of Mr White's report setting out his version of events is included at attachment F page 94.
- 4.27 The email sent by Mr White said "as you are aware from our telephone conversations that morning, I was quite prepared to remove myself from the premises as requested by

the Chef before the Manager appeared and it was on your instruction that I remained there to continue the repair".

- 4.28 Mr Dumont stated that for the sake of clarity, it was important that he qualify the comments made by Mr White. Firstly, at no time during their telephone calls on 30 December 2013 did he advise him that he was 'prepared to remove himself' ; rather he advised Mr Dumont that he had been 'asked to remove himself' from the premises. Secondly, it was only after Mr Dumont had spoken to the Chef and the Executive Chef and they had agreed to allow Mr White to continue working, that he instructed Mr White to do so.
- 4.29 Mr Dumont informed the Tribunal that he was not aware at that time that Mr White had allegedly been 'slagging people off' and creating a very difficult atmosphere with the Client. He was also not aware (nor could he have been aware) that the Manager would arrive nor that the matter would blow up as it did. It appears that it was the arrival of the Manager that provoked the incident, something which Mr Dumont claimed he could not possibly have foreseen.
- 4.30 As part of his investigation Mr Dumont contacted Guernsey Police to obtain a copy of the 'transcript/statement' of the incident at the Client's premises. (Page 89 refers). The Police responded to this with a letter dated 6 January 2014, received by Mr Dumont on 7 January 2014). This letter confirmed that they had attended the premises of the Client following a report of assault on 30 December 2013, but that the matter was "being resolved between the parties" and there would be "no further Police action". A copy of that letter is attached at attachment H.
- 4.31 Mr Dumont spoke with the Manager on 30 December 2013 immediately after the incident and obtained a verbal statement of his version of events; a copy of the file note of that conversation is at attachment C (v) page 91. Mr Dumont said it was relevant that when the Manager had attended the site the Chef had told him that the Applicant had been verbally abusing/insulting him and slagging everyone off. The Manager mentioned that the Chef was normally a calm person but he could see that he was "upset and annoyed". The Manager told Mr Dumont that he had then approached Mr White and asked him to "get the fuck out of my kitchen"; Mr White had ignored him. The Manager then said again, "get the fuck out of my kitchen" and grabbed Mr White's tools and grabbed Mr White by the arm. Mr White then grabbed the Manager's face with his hand and broke his glasses. The Chef then intervened and pulled Mr White off the Manager. The Manager admitted to Mr Dumont that he could be fiery but said that was his nature and he didn't expect any of his staff to be spoken to in the way Mr White had spoken.
- 4.32 Mr Dumont also spoke with the Chef on Tuesday 31 December and obtained a verbal statement of his version of events. Subsequently Mr Dumont made a file note of a conversation that he had with the Chef. The Chef said that after Mr White had been asked to leave for the first time he then proceeded to start "slagging people off" and called the Executive Chef "that stupid twat/prat" and also told the Chef that the engineer who fixed the fridge on the Friday shouldn't have acted as he did as "it was illegal".
- When the Chef asked Mr White why he had not fixed the fridge on Friday 27 December 2013 Mr White had said "people can't expect everything they want", the Chef had heard Mr White 'slagging off' the business and saw that Mr White had squared up to the Manager and there was then an ensuing scuffle. The Chef also observed Mr White deliberately kicking the condenser assembly back in on the new fridge on his way out. (Attachment C (iv) page 90 refers).

- 4.33 Having obtained the above input Mr Dumont invited Mr White to a disciplinary hearing on 7 January, (Page 98 refers). Mr Dumont stated that consistent with the terms of the Company Disciplinary Policy he advised Mr White of his right to be accompanied during that meeting. In the email exchanges prior to this meeting Mr Dumont repeated the examples of gross misconduct that would be discussed during the disciplinary hearing, that is:
- Fighting, assault on another person.
 - Deliberate damage to Company property; namely that he kicked and damaged a fridge.
 - Failure to conduct oneself in a manner consistent both with the position held in the Company or with the general standard of behaviour set out above, whether during the hours of work or not, which may bring the Company into disrepute.
- 4.34 Mr Dumont met with Mr White on 7 January 2014 and used a prepared list of questions arising from his conversations with relevant witnesses and Mr White's report. Essentially, Mr White's response to these questions was to refer Mr Dumont to his report and Mr White did not appear to be keen to provide much additional detail. As a result, the meeting was relatively short, concluding after around 20 minutes. Mr Dumont made a file note immediately following the meeting (Page 103 refers).
- 4.35 Commenting on the meeting Mr Dumont stressed that Mr White was given the opportunity to bring a colleague to the meeting, but declined to do so. Mr Dumont stated that he went through all the comments that Mr White had made in his written report, sought further detail as necessary and for the sake of clarification he highlighted a copy of Mr White's report (attachment N page 105 refers). Mr Dumont told the Tribunal that during the meeting Mr White said to him a number of times "you are not going to trip me up - it's all in my report", or "that's as far as I'm going with that" or "I'm not saying any more, it's all in my report". Mr Dumont felt, therefore, that it was very difficult to obtain much further clarity on matters because of Mr White's deliberately obstructive behaviour.
- 4.36 During the meeting Mr White admitted to 'pushing the fridge'; however two witnesses of the Client alleged that Mr White had kicked the fridge out of anger and as a result had damaged the unit. Mr Dumont informed Mr White he understood the Client's Manager did not intend to take any further action against Mr White and that he was still waiting for a transcript/report from the Police. Mr Dumont stated it was important that he obtained Mr White's version of events so that he could make an informed decision. Mr Dumont again felt that Mr White seemed unhelpful in not deviating or providing any additional detail from what he had put into his report.
- 4.37 After considering all the evidence available to him, Mr Dumont formed the view that even though there had been an incident with one of his employees to which the Police had been called, there was clearly some provocation and as such formed the view that a written warning was the appropriate disciplinary sanction. In coming to this conclusion, it was evident to Mr Dumont that Mr White had not reacted well to the situation regardless of the actions of the Client. Whilst taking into account Mr White's report, in his view it was reasonable to conclude that Mr White had engaged in conduct that both constituted assault and brought the business into disrepute, particularly with a key client and clearly had got himself into a scuffle with the Manager. Mr Dumont also believed that the Manager was a catalyst to the physicality that resulted. Mr Dumont knew that Mr White could be argumentative and confrontational but could not ignore the fact that Mr White had assaulted the Manager nor that he had engaged in conduct that

unquestionably brought his Company into disrepute. Mr Dumont could not ignore the fact that Mr White deliberately damaged the fridge, which Mr White himself had admitted, to a degree. However, Mr Dumont also weighed up that Mr White was a long-standing employee of the Company and a good engineer. He had skills that were very useful to the Company and was competent at his job. Mr Dumont also recognised the role that the Client's Manager played in the incident. Therefore, rather than imposing a final written warning at stage 3 of the Policy, or, as Mr Dumont felt he was entitled to do, under stage 4 of the Disciplinary Policy, dismiss Mr White for gross misconduct, Mr Dumont determined that he would be issued with a formal written warning, a sanction at stage 2 of the Disciplinary Policy.

- 4.38 Consistent with these considerations Mr Dumont issued a letter to Mr White on 8 January 2014 advising him of the outcome of the disciplinary hearing (Page 107 refers). In this letter Mr Dumont confirmed his view that, on the balance of probabilities, Mr White had failed to conduct himself in a professional manner and had acted in a way likely to bring the good name of the Company into disrepute. Mr Dumont acknowledged that there may have been an element of provocation which led to his behaviour and that he considered this to be a mitigating factor. The letter confirmed the decision not to dismiss Mr White for gross misconduct, but rather to issue him with a written warning. In the letter Mr White was given the opportunity to appeal the decision. He elected not to do so nor did he lodge a grievance.
- 4.39 On 9 January Mr White handed Mr Dumont his letter of resignation (attachment P page 108 refers). Mr White alleged that he had been constructively dismissed as a result of the extremely poor treatment he had endured since the incident. Mr White did not work his notice period.
- 4.40 Mr Dumont disagreed with Mr White's allegation; Mr Dumont claimed that at all times he acted consistently with the terms of the Disciplinary Policy in dealing with such matters. In particular the incident itself was a serious one so it was appropriate it was properly investigated. It was fair to suspend Mr White so that a fair and unbiased investigation could be undertaken. That period of suspension was on full pay incurring no loss of salary or benefits and was for only as long as it took Mr Dumont to complete the investigation and subsequent disciplinary hearing; a period of just over one week including the Bank Holiday. Mr Dumont also reminded the Tribunal that he immediately sought the written input from Mr White as to his version of events concerning the incident, obtained witness statements from all the relevant witnesses, contacted the Police to obtain clarification on whether or not the matter was being pursued formally and attempted to obtain any statement that they may have had on the record. He invited Mr White to a disciplinary hearing as soon as was reasonably practicable after his investigations had completed and gave him the opportunity to bring a colleague in support. Details of the allegations were provided to Mr White prior to the disciplinary hearing and during that hearing he sought further clarification from Mr White as to what had occurred. Mr Dumont believed he had duly considered all the evidence available to him and made a decision in a timely manner. He notified Mr White of that decision in writing and gave him the right to appeal it. He did not believe that his actions constituted any form of 'poor treatment' towards Mr White and considered that he acted entirely reasonably and consistently within the terms of the Company's Disciplinary Policy.
- 4.41 On 9 January 2014 he responded to Mr White, accepting his notice of resignation with some disappointment and refuting his allegation of constructive dismissal. Mr Dumont reminded the Tribunal that he had given evidence that the quality of Mr White's work was not in question. He strongly refuted any allegation that he took the side of the

Client, there was no pressure placed upon him by the Client to act in a certain way. Mr Dumont asserted that if he had taken the side of the Client, then he may have made the decision to dismiss Mr White summarily for gross misconduct. It was his view that his actions and the application of a disciplinary warning were fair and proportionate.

5.0 Conclusion

5.1 The Applicant alleged constructive unfair dismissal due to a loss of confidence and trust in the Respondent. It is now firmly established in previous judgments given under the Employment Protection (Guernsey) Law, 1998, as amended, that in order for an employee to be able to establish Constructive Unfair Dismissal, four conditions must be met:

- The employer must be in breach of a term of the contract of employment.
- That breach must be fundamental, amounting to a repudiatory breach of contract.
- The employee must resign in response to that breach.
- The employee needed to demonstrate that he resigned in response to a breach of contract and for no other reason, and that he did not affirm the contract by delaying his resignation too long.

It was further alleged by the Applicant that not only such a breach of trust and confidence had occurred in the employment relationship but by its actions the Respondent had also breached its fundamental duty in relation to providing a safe working environment. There is a duty implied into every contract of employment for an employer to take reasonable steps to ensure employees' health and safety at work.

5.2 The Respondent, in his ET2, submitted that the Applicant had resigned and was not constructively dismissed. It was asserted by the Respondent that it had dealt appropriately with the Applicant in accordance with its Disciplinary Policy and could not have known that any instructions given to the Applicant on 30 December 2013 could have endangered his health and safety.

5.3 The Tribunal, having considered the evidence from both parties, took each alleged breach in turn, commencing with the complaint made under section 5(2)(c) of the Law, as described in paragraph 1.1 of this judgement.

5.4 The Tribunal was persuaded by the evidence that Mr Dumont knowingly placed the Applicant in a situation of conflict with the Client by making him go against the Client's instructions and remain on the Client's premises. Mr White phoned his employer twice within a five minute period describing the resistance by the Client towards his continuing presence on site. This should have alerted Mr Dumont to a potentially serious conflict between the Applicant and the Client but the evidence supports the assertion that Mr Dumont assured the Applicant that he was willingly allowed by the Client to remain on the premises and repair the fridge when this was apparently not the case.

5.5 A serious altercation then ensued between the Applicant and the Client's Manager. The Police were notified and arrived prior to Mr Dumont. It was incumbent on Mr Dumont not to make any hasty judgements as to what had occurred, however the evidence supports the Applicant's assertion that Mr Dumont seemed to be more concerned with the Client than for the personal wellbeing of his employee. The Tribunal does not

disagree that suspension combined with an instruction to the Applicant to go home might have been an appropriate action, however it was ill judged to do this in a public setting outside the Client's premises. In the circumstances it was not unreasonable for the Applicant to believe that the act of suspension was not the neutral act that it was intended to be.

- 5.6 However the Applicant's reaction to his suspension might have been set aside by the Tribunal if a thorough, fair and balanced investigation had been conducted by Mr Dumont. Unfortunately this was not the case and the Tribunal notes the following deficiencies.
- 5.7 The Respondent did not take any witness statements from the Manager, the Chef or any other staff present at the Client's premises; all he did was have a conversation with Manager and the Chef after the incident about what had happened. In consequence, Mr Dumont had no witness statements to give to the Applicant in advance of the disciplinary hearing or even at the hearing, so that the Applicant was unaware of the detail of the allegations against him and unable challenge those allegations. Nonetheless, Mr Dumont pressured the Applicant to provide a written report into the incident within an unreasonably short period of time, and even chased him for the report on New Year's Day, a public holiday.
- 5.8 Upon receiving the report, Mr Dumont determined that a disciplinary hearing was necessary on 7 January but he then confused the Applicant as to whether a hearing was taking place or an investigatory meeting.
- 5.9 In the end, Mr Dumont advised the Applicant that the hearing or meeting was merely to investigate the incident and the circumstances involved, when the reality was that it also transpired to be a disciplinary hearing to determine whether a disciplinary sanction should be imposed.
- 5.10 In advance of that disciplinary hearing, Mr Dumont did not warn the Applicant what the potential outcomes of the hearing might be and he did not provide any documentation except for the Respondent's Health and Safety Policy.
- 5.11 Mr Dumont also placed the Applicant in the position of having to request material information in advance of the hearing instead of providing that information proactively in the first place.
- 5.12 At the hearing on 7 January 2014 Mr Dumont, as Chairman, undertook multiple roles including those of Chairman, note taker and decision maker. This was ill judged when the Respondent's undertaking was sufficiently large enough that other employees could have undertaken some or all of these roles. The Tribunal also has sympathy with the Applicant's argument that Mr Dumont's direct involvement in the aftermath of the incident could have compromised his independence of judgement.
- 5.13 During the hearing, Mr Dumont's primary intent seemed to be a review of the Applicant's report, asking some supplementary questions about it. Mr Dumont did not proffer any evidence from the Client in relation to the incident, and he therefore did not offer the Applicant an opportunity to challenge that evidence and state his case in response. Based on this behaviour it was not unreasonable that the Applicant would assume that Mr Dumont took the Client's view of events as read. In the Tribunal's opinion this is not the impartial and balanced behaviour required of a senior manager investigating a serious allegation against one of his employees. It was not unreasonable to assume that prior to the hearing of 7 January 2014 Mr White feared the possibility of

criminal proceedings against him, that he might lose his job, his reputation and have greatly reduced prospects of securing future employment. A great deal was at stake and this required of his employer a high standard of impartiality in conducting the disciplinary process.

- 5.14 The Tribunal also considers it unreasonable of Mr Dumont in his refusal to provide the Applicant with notes of the hearing; it was not the action of a reasonable employer to tell the Applicant at the end of the hearing that he should have taken his own notes.
- 5.15 Turning to the decision letter issued by Mr Dumont on 8 January 2014 this communication signally failed to explain why the Client's version of events was favoured over the Applicant's version of events. The Tribunal also shares the Applicant's view that Mr Dumont did not provide a reasoned explanation as to why he concluded that the Applicant failed to conduct himself in a professional manner and acted in a way that was likely to bring the good name of the Respondent into disrepute. Particularly concerning is that Mr Dumont made no mention that he had concluded that the Applicant had assaulted the Manager.
- 5.16 The written warning Mr Dumont then issued was unmerited because not only had he issued it following a flawed disciplinary process but he was not in a position to form a reasonable belief that the misconduct alleged of the Applicant had actually occurred. It was reasonably open to Mr Dumont to conclude that the Applicant had acted in self-defence, given that the evidence showed that the Client's Manager had admitted verbally abusing the Applicant and grabbing him and his tools before he reacted. In essence, Mr Dumont relied on the unchallenged evidence of the Client in reaching an adverse finding against the Applicant.
- 5.17 Given these egregious deficiencies in the investigative process and the subsequent unjustified and apparently unmerited disciplinary sanction imposed on the Applicant the Tribunal has concluded that a very significant breach of the duty of trust and confidence occurred. It is difficult to imagine that any satisfactory working relationship could be maintained between the Applicant and the Respondent after such events. In such circumstance the Tribunal has formed the view that the Applicant was entitled to treat himself as unfairly constructively dismissed. The Tribunal was also persuaded that under the circumstances Mr White would have had little confidence in pursuing an internal appeal against the disciplinary sanction imposed upon him
- 5.18 The Tribunal also gave consideration to the Applicant's claim that the alleged constructive unfair dismissal was an automatically unfair dismissal under section 11 (1)(e) of the Law on the basis that the principal reason for his dismissal was that, in circumstances of danger which he reasonably believed to be serious and imminent, he took appropriate steps to protect himself from the danger by engaging in self-defence on a Client's premises. For this claim to succeed the Applicant would have needed to persuade the Tribunal that Mr Dumont understood from his telephone discussions on the morning of 30 December that a verbal conflict would escalate into a physical one.
- 5.19 Whilst the popular media portrays commercial kitchens as areas of verbal abuse with possibly a higher potential for verbal conflict than in many workplaces the Tribunal has sympathy with the Respondent's view that physical conflict is relatively rare in such environments. The evidence in this particular case supports its view that it could not be aware prior to the event that a physical struggle between the Client's Manager and the Applicant would ensue from his instructions to the Applicant; or, given his past experience, that he might believe that such an event might arise with one of his employees. The Tribunal therefore dismisses this element of the Applicant's complaint.

6.0 Decision

- 6.1 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 that the Applicant was constructively unfairly dismissed. In respect of this decision the Tribunal awards £9,873.60.
- 6.2 The Tribunal considered whether there were any circumstances which might argue for a reduction in the award in accordance with section 23(2) of the Law. The Tribunal has concluded that given the seriously deficient disciplinary process adopted by the Respondent that no such reduction should be ordered.

Mr Peter Woodward
.....
Signature of the Chairman

26 June 2014
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Date