

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Adrian McManus  
**Represented by:** The litigant in person

**RESPONDENT:** The Chairman and Directors of Elizabeth College  
**Represented by:** Ms Rachael Richardson

**Decision of the Tribunal on 10 October 2014**

**Tribunal Members:** Mr P Woodward (Chairman)  
Ms A Girollet  
Ms C Le Lievre

**The Complaint**

The Applicant submitted a complaint of alleged automatic unfair dismissal as defined in section 12 of the Employment Protection (Guernsey) Law, 1998, as amended (hereafter referred to as "the Law").

**Decision of the Tribunal**

Having considered the written submissions from both parties the Tribunal decided that this complaint lacked sufficient grounds for it to proceed to a hearing. The Tribunal decided this complaint to be vexatious within its understanding of the term and has therefore refused to hear the complaint prior to a hearing as set out in section 19(3)(b) of the Law.

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

29 October 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 (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 Conditions of Employment (Guernsey) Law, 1985 and The Employment Protection (Guernsey) Law, 1998, as amended.**

**Extended Reasons**

**1.0 Introduction**

- 1.1 The Applicant, Mr Adrian McManus, submitted a complaint (ET1) on 2 June 2014 of Automatic Unfair Dismissal against his previous employer, the Chairman and Directors of Elizabeth College. He was employed between 1 September 2013 and 3 March 2014.
- 1.2 The Applicant believed that he was exempted from the requirement of one year's service in bringing this complaint under sections 15(2) and 12(1)b of the Employment Protection (Guernsey) Law, 1998, because the reason, or his principal reason, for resigning from his post was that the Respondent had infringed a relevant statutory right. The Applicant claimed that the relevant statutory right which was infringed was contained in section 4 of the Conditions of Employment (Guernsey) Law, 1985, namely the right to be informed of a change to section 1 "Terms of Employment" within four weeks of an alleged change.
- 1.3 The Respondent denied in its initial response, (ET2) dated 27 June 2014, that there had been any change to the Applicant's written particulars of terms of employment within the meaning of section 1 of the Conditions of Employment (Guernsey) Law, 1985 and further there had been no change to any other terms of the Applicant's employment, express or implied.
- 1.4 The Applicant alleged in his ET1 that he had had a fundamental disagreement with his professional colleagues as to how the practical assessment of students during externally assessed examinations should be conducted and that instructions he was given were contrary to his terms of employment. He stated in this written submission that these instructions breached the implied term of trust and confidence in his employment contract and thus were unlawful. He argued that such instructions were a fundamental and extremely unwelcome change to his terms of employment. The Applicant further argued in his ET1 that a second breach had occurred in February 2014 due to radical personal timetabling changes; however in final written submission to the Tribunal on 26 September 2014 he stated that his complaint was fundamentally based on the events related to the assessment issue which had occurred in January 2014; he stated the issue raised in February 2014 should be disregarded.
- 1.5 The Respondent argued in its initial response that these were groundless allegations the Applicant had not in its opinion understood how coursework assessments should be conducted and that the claim was without merit and vexatious.
- 1.6 The Tribunal notes from attachments to the ET2 that the Applicant tendered his resignation on 20 January 2014 and that he was providing a term's notice from the

start of the Trinity Term 2014. In this letter he stated *"the College will be in a decent position to find a suitable replacement in good time for September 2014"*. The Tribunal notes that the Applicant gave no reason in this letter as to why he was submitting his resignation.

- 1.7 On 3 March 2014 the Applicant tendered his resignation with immediate effect. He stated in this letter that this decision to resign was based on the events of a meeting with the College Principal on 27 February 2014. Specifically he stated in this letter:

*"At the meeting you informed me, with no prior notice or opportunity to respond, of my employer's unilateral decision to strip six periods of Y9 Chemistry and Physics teaching from my timetable, and otherwise restrict how I discharged my professional responsibilities.*

*These changes represent a clear repudiatory breach of my contract of employment, which I have accepted as bringing the contract to an immediate end. In claiming a fundamental breach of the express terms of my contract of employment and its implied terms of trust and confidence, please be aware that I am now taking advice on the following options:*

1. *a claim for damages for breach of contract for the remainder of my notice period;*

*or/&*

2. *a claim for an automatically-unfair constructive dismissal."*

- 1.8 The Applicant subsequently lodged an ET1 on 2 June 2014 claiming "automatic unfair dismissal" and the Respondent submitted their response in ET2 on 27 June 2014.

- 1.9 Whilst both the Applicant's ET1 and the Respondent's ET2 included these and many other allegations and counter allegations as to the nature of the Applicant's experience during his period of employment the Tribunal Chairman was concerned that neither of these documents addressed in sufficient detail, or with sufficient precision, the alleged statutory breach. It was unclear to him as to which particular term or terms were in contention by the Applicant and how they were being specifically refuted by the Respondent.

- 1.10 The Chairman arranged for both parties to attend a Case Management Meeting (CMM) on 8 September 2014. Detailed below is a copy of the orders issuing from this meeting to the parties:

*"12 September 2014*

*THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL*

***Case Number: ED021/14***

***Mr Adrian McManus V Elizabeth College***

## **Case Management Meeting 8 September 2014**

*In attendance:-*

*For the Applicant: Mr Adrian McManus*

*For the Respondent: Ms Rachel Richardson*

*Tribunal Member: Mr Peter Woodward (Chairman)*

- a) Burden of proof: The complaint is one of alleged automatic unfair dismissal as defined in section 12(1) of the Employment Protection (Guernsey) Law, 1998 as amended; the complaint is also made with reference to the Conditions of Employment (Guernsey) Law, 1985 it being alleged that by their actions the Respondent infringed a right pertaining to the Applicant which could be construed as a relevant statutory right.*
- b) Request for further particulars.*

*The Chairman informed both parties that on initial reading of both the ET1 and ET2 there was insufficient clarity in these submissions to determine which "Written particulars of term(s) of employment" as laid down in section 1 of the 1985 Law were in contention. As a consequence the Chairman could not agree to proceed to hearing this complaint without further written particulars being provided.*

*The Chairman proposed, and the parties agreed, to the provision of further written particulars to clarify what specific legal breach is alleged by the Applicant and why the Respondent holds the belief that no such breach of any specific term as laid down in the 1985 Law occurred.*

*Once these written particulars are received the Tribunal will convene to conduct a "Pre Hearing Review" and determine whether or not there was potentially a specific breach of a specific term of the lawfully required written particulars and thus decide if the complaint should proceed to a hearing as defined in the Employment Protection (Guernsey) Law, 1998 as amended.*

*During the CMM it was agreed that:*

- i) The Applicant will provide by 22 September 2014 written reasoned and detailed arguments as to which particular provisions of the Conditions of Employment (Guernsey) Law, 1985 are alleged to be breached and relate this to section 12 of the Employment Protection (Guernsey) Law, 1998 as amended.*
- ii) The Respondent will provide by 22 September 2014 written reasoned and detailed arguments with reference to the 1985 and 1998 Laws as to why they would contend there is no breach of these particular sections.*
- iii) These submissions will be exchanged by email between the parties and a further copy provided by email to the Secretary to the Tribunal.*

- iv) *A further period until end of business on 26 September will be permitted for each party to decide if they wish to make any amendments or additions to their submissions including any rebuttals they may wish to make. These documents to be exchanged by email by end of business on 26 September and a copy provided to the Secretary to the Tribunal.*

### ***The Pre Hearing Review***

*The Chairman advised the parties that upon receipt of these further written particulars the Tribunal will schedule a meeting of the Tribunal, a 'Pre Hearing Review', and the parties will be officially notified of their decision. If the Tribunal finds there is potentially an alleged breach of a statutory requirement a further CMM will be held to decide date of hearing, the required witnesses etc. In the event a potential breach is not identified by the Tribunal then these proceedings will not be continued."*

## **2.0 The Law**

**The following is an extract of the relevant sections of The Conditions of Employment (Guernsey) Law, 1985 ("The 1985 Law")**

### ***" Written particulars of terms of employment***

1. (1) *Not later than four weeks after the beginning of an employee's period of employment with an employer or, where such employment has begun before the coming into force of this Law, then within four weeks after its coming into force, the employer shall give to the employee a written statement in accordance with the succeeding provisions of this section.*
- (2) *An employer shall in a statement under this section -*
  - (a) *identify the parties, and*
  - (b) *specify the date when the employment began.*
- (3) *A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given, that is to say –*
  - (a) *the scale or rate of remuneration, or the method of calculating remuneration (including overtime rates, shift pay and other pecuniary benefits),*
  - (b) *the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),*
  - (c) *any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),*
  - (d) *any terms and conditions relating to -*

- (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
- (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
- (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, and
- (f) the title of the job which the employee is employed to do, and
- (g) any terms and conditions relating to maternity pay, maternity leave and the employee's right to return to her job after confinement.

**Section 4:- Changes in terms of employment**

4. (1) *If after the date to which a statement given under section 1 of this Law relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall not more than four weeks after the change, inform the employee of the nature of the change by a written statement and, if he does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his employment, or that it is made reasonably accessible to him in some other way.*
- (2) *A statement given under subsection (1) of this section may, for all or any of the particulars to be given by the 'statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment, or which is made reasonably accessible to him in some other way.*
- (3) *Where, after an employer has given to an employee a written statement in accordance with section 1 of this Law the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, and the change does not involve any change in the terms (other than the name of the employer) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 1, but, the change shall be treated as a change falling within subsection (1) of this section."*

**The following is an extract of the relevant sections of The Employment Protection (Guernsey) Law, 1998, as amended**

***" Dismissal on grounds of assertion of statutory right***

12. (1) *The dismissal of an employee by an employer shall be regarded for the purpose of this Part of this Law as having been unfair if the reason for it (or if more than one, the principal reason) was that the employee-*

- (a) *brought proceedings against the employer to enforce a right if his, which is a relevant statutory right, or*
- (b) *alleged that the employer had infringed a right of his which is a relevant statutory right.*
- (2) *It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.*
- (3) *It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.*
- (4) *For the purposes of this section a "relevant statutory right" is any right conferred by or under -*
  - (a) *this Law,*
  - (b) *the Conditions of Employment (Guernsey) Law, 1985, or*
  - (c) *the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, or*
  - (d) *the Sex Discrimination (Employment) Ordinance, 2005, or*
  - (e) *the Minimum Wage (Guernsey) Law, 2009 (the "2009 Law").*

**Qualifying period**

- 15. (1) *Subject to subsection (2), section 3 does not apply to the dismissal of an employee from any employment unless the employee was continuously employed for a period of not less than (one year or such other period as the States may by Ordinance specify) ending with the effective date of termination.*
- (2) *Subsection (1) does not apply to the dismissal of an employee if it is shown that -*
  - (a) *the reason or (if more than one) the principal reason for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 8(1), section 9, section 11(1) (read with section 11(2) and (3)), section 12(1) (read with section 12(2) and (3)) section 151(1) read with 151 (2) or: section 151(3).*

**Power to refuse to hear complaints**

- 19(3)(c) *The Tribunal may refuse to hear and determine a complaint under section 16(1)..... if the complaint or application appears to the Tribunal to be frivolous or vexatious,"*

## **Decision handed down by the Royal Court on 28 March 2014**

The Tribunal also takes into consideration an appeal decision in the Royal Court issued by the Deputy Bailiff on 28 March 2014 in relation to a Tribunal decision on 8 January 2014. The appellant Ms Susan Cotterill appealed against a decision to refuse to hear the complaint as it was considered vexatious.

Upholding the decision of the Tribunal the Deputy Bailiff ruled:-

*Para 14 -, "...Because the Tribunal is generally master of its own procedure, subject only to complying what has been prescribed for it, I see no reason why the Tribunal could not choose to determine this question on the papers and without inviting any oral submissions on behalf of the parties....."*

*Para 21 Whilst it is no doubt frustrating to the Appellant that she regards what has happened as her being denied the opportunity to argue her complaint at a Tribunal hearing. It is important for everyone concerned to appreciate that the Tribunal does not exist to give parties the opportunity to ventilate their grievances at how they feel they have been treated, The tribunal exists to determine complaints properly made in accordance with the legislation under which it operates and section 19 of the 1998 Law serves as a means of sifting out those complaints that should not progress any further before a full hearing with witnesses is convened. A full hearing should be reserved for cases where there is a legitimate dispute between the parties requiring resolution. "*

### **3.0 Applicant's and Respondent's Written Submissions to the Tribunal on 22 September 2014 and 26 September 2014**

- 3.1 Both the Applicant and the Respondent provided written submissions in accordance with the requirements of the CMM held on 8 September. It is not the intention of the Tribunal to include in this decision all of the detailed points contained therein; however both parties should understand that all of the arguments and counter arguments in these documents were considered.
- 3.2 The Applicant claimed that he had been given an order which was unlawful and as such represented a de facto change in the express terms of his employment. The Respondent provided a detailed rebuttal in which it was stated that the Applicant had fundamentally failed to understand the correct protocols and that these were being administered correctly.
- 3.3 The Respondent made a detailed and extensive rebuttal to the allegation that a statutory breach had, in any way, occurred. In particular the Respondent asserted that an employee resigning as a result of an employer refusing to inform him/her of a change in their employment terms as defined in the 1985 Law could not be equated to the Applicant's primary submission that an allegedly unacceptable order to conduct assessments in a certain way would have resulted in refusal to sign his employment contract on joining the Respondent's employment. The Applicant held that the alleged orders in relation to how he should mark coursework were so fundamentally wrong from his point of view, even allegedly unlawful, this amounted to a change in his terms of employment in January 2014.

3.4 In the Applicant's written submission of 26 September he stated this complaint was based on the events of January 2014 and not the meeting of 27 February 2014.

#### **4.0 Conclusions**

4.1 The Tribunal notes that the 1985 Law does not have a requirement for a detailed contract of employment to be issued. It would seem this legislation contains a set of minimum legal requirements to be observed by employers, however simple or complex the role to be performed. Evidently many employees in Guernsey have contracts of employment which are far more detailed; all the Law requires is that whatever documentation is provided to the employee it must contain these legally required elements.

4.2 Further the 1985 Law states that any change in these legally required written conditions of employment must be notified within four weeks of any change, by means of a written statement. If these legal requirements are not met then it would seem that there is duty on the employee to indicate this breach to the employer prior to taking any action, particularly where the employee resigns due to the breach and then complains that this was a constructive dismissal. If on the other hand the employee requests such written terms and these are refused by the employer, and indeed the employer terminates their employment due to this request, then there would be every reason to find this as an automatically unfair dismissal as defined in The Employment Protection (Guernsey) Law, 1998, as amended.

4.3 In considering this complaint and whether it should proceed to a full hearing the Tribunal notes the following:

- a) The Applicant does not make any complaint as to the contents of his employment contract not meeting the requirements of the 1985 Law at the time he was hired, the contract of employment was not included in the submitted documentation and was thus not in contention.
- b) The Applicant states that he tendered his resignation on 20 January 2014 due to an alleged breach of his employment terms but his resignation letter gives no reason for his resignation; furthermore he is apparently content to stay in post until the summer of 2014 and presumably continue to carry out the duties contained in his employment contract; there is no indication to the contrary in his letter of resignation.
- c) In terms of this complaint the Applicant sets aside any of the issues arising in February 2014, although it would seem from his letter of resignation of 3 March 2014 that his primary and only formally communicated decision for immediate resignation was to do with timetabling issues and a reduction in his active teaching time. Even if his allusion in this letter to the Respondent's restricting of his professional activities relates to issues arising in January 2014 this is not explicit.
- d) Even if the Applicant had been given an unlawful order in January 2014, and this is vigorously rebutted by the Respondent, there is no indication from the Applicant as to which specific term of the 1985 Law was changed by this alleged action.

4.4 Given consideration of all written submissions concerning this complaint the Tribunal cannot determine any term of the 1985 Law which could have been changed by the Respondent's actions in 2014. Therefore there was no obligation to make any written statement to the Applicant in 2014 in relation to this Law. In consequence the Tribunal finds there are no relevant arguments in these submissions which would allow the Applicant to engage section 12 of the Employment Protection (Guernsey) Law, 1998, as amended.

4.5 It would seem to the Tribunal the Applicant chose to resign after some profound professional disagreements with his employer. The Tribunal can understand that the Applicant considers that he has been subjected to unreasonable actions by his employer and would wish to be heard; although his assertions are robustly rejected by the employer. The fact remains that the Applicant lacks the qualifying period of employment to bring to a complaint and he has no grounds to argue automatic unfair dismissal.

**5.0 Decision**

5.1 Having considered all the written submissions the Tribunal chooses to dismiss this complaint as vexatious within the meaning of section 19 of the Employment Protection (Guernsey) Law, as amended. There are evidently no legal grounds on which this complaint can be pursued and thus it is without merit.

Mr Peter Woodward  
.....

Signature of the Chairman

29 October 2014  
.....

Date