

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr James McKenzie
Represented by: Mr McKenzie represented himself

RESPONDENT: Climate Controls Limited
Represented by: Mr Pierre Bisson

Tribunal Members: Mrs Paula Brierley (Chairman)
Mrs Tina Le Poidevin
Mr Roger Brookfield

Hearing date(s): Monday 2 June 2014

Decision of the Tribunal

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 The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed by reason of redundancy and therefore no award is made.

Mrs Paula Brierley
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Signature of the Chairman

30 June 2014
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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 complaint by the Applicant, Mr James McKenzie, was one of alleged unfair dismissal as defined in Section 5(2)(a) of the Employment Protection (Guernsey) Law, 1998, as amended. The Applicant represented himself. It was his contention that the primary issues in bringing the complaint were to challenge:

- (a) that the dismissal was due to redundancy;
- (b) that the Respondent applied a fair process.

1.2 The Respondent, Climate Controls Limited, whilst admitting a dismissal had occurred, resisted this complaint; it was the Respondent's contention that the Applicant had been dismissed fairly by reason of redundancy within the provisions of Section 6(2)(c) of the Law. The Respondent was represented by Mr Pierre Bisson.

1.3 The Applicant gave witness evidence on his own behalf.

1.4 The Respondent called the following witness:

- Mr Andre Bisson

1.5 The Applicant submitted a bundle of documents marked EE1.

1.6 The Respondent submitted a bundle of documents marked ER1 and a further document marked ER2.

2.0 Facts Found

2.1 The Respondent manufactures and supplies commercial ventilation systems for greenhouses and garden centres, occasionally providing full builds of complete systems for garden centres. There is one site in Guernsey and two in the UK, one of which provides a 24 hour service at Kew Gardens. 12 months ago the Company employed five people in the UK and eight locally in Guernsey, currently there are four people in the UK and five people locally.

2.2 The Applicant commenced employment with the Respondent on 30 March 1987 as the Works Manager, having been recruited by Mr Bryan Bisson, the Managing Director of Climate Controls Limited (and father of Messrs Andre and Pierre Bisson). The Applicant's role included the repair of the operating presses and the tools used on them, the creation of specific tools required for the production of the Respondent's products and setting the tools on the presses on a daily basis in order for other workers to operate the machinery. The Applicant was responsible for training every employee within the Company in the manufacturing process. The Applicant also

carried out customer visits in order to resolve any installation problems; these included visits to England, Scotland, Wales, Ireland, France, Hungary and the USA.

- 2.3 Over the last 10 to 12 years Mr Bryan Bisson had taken more of a “back seat” at Climate Controls Limited.
- 2.4 Messrs Pierre and Andre Bisson are joint principals of Climate Controls Limited which is owned by their parents.
- 2.5 The Respondent had moved the office and factory on a number of occasions in the last 14 years. This had resulted in the office and factory being located in different parts of the Island which required the use of fax messaging and hand delivery of administrative paperwork (such as orders) between buildings. In 2008 the business moved to Le Route des Longs Camps, St Sampson and the factory and office were in adjoining buildings.
- 2.6 As the Respondent’s business developed its use of technology for administrative purposes, processes changed. An example of such change related to purchase orders in that each purchase order had traditionally been hand written by the Applicant, whereas computer system advancement and other technological changes which resulted in email being the primary method of customer and supplier communication, meant that purchase orders were created in the office rather than the factory.
- 2.7 The Respondent was required to move from the Longcamps site and the only site available at the time was at Les Reines, Forest. It moved in December 2011.
- 2.8 The move to the Les Reines site meant there was no office so it was, therefore, necessary for Mr Andre Bisson to undertake the office work from home for three months. At that time, and currently, virtually every business communication is undertaken by email.
- 2.9 Following the move, the Applicant no longer had an office in the factory (which he had had at the previous premises) therefore, he did not have facsimile equipment, access to email or telephone which resulted in his inability to communicate with customers.
- 2.10 When the office moved into the factory in Quarter two 2012 this was the first time the office was located under the same roof as the factory, therefore all administration and communication was run by the office which further diminished the role of the Applicant.
- 2.11 Over a period of time the Applicant had raised a number of health and safety concerns and felt that because he had done so he had been selected for redundancy. The Respondent refuted this allegation.
- 2.12 During 2013 three large contracts were cancelled, totalling approximately £2.9 million. The dates of the cancellations were June, May and August. In addition, on 11 September 2013 the Company received a large VAT demand from HMRC relating to 18 months’ worth of deferred VAT.
- 2.13 On 30 September 2013 Messrs Andre and Pierre Bisson met with the Applicant at the Respondent’s premises, after working hours, to let him know that he was at risk of

redundancy. A letter was provided to the Applicant at the meeting. Another two members of staff were also spoken with separately at their homes because they had already left for the day.

- 2.14 Two further consultation meetings took place. File notes dated 2 October and 4 October were put forward in evidence within bundle ER1.
- 2.15 It had been determined by the Respondent that the Applicant was in a pool of one because he was the only person performing the factory manager role.
- 2.16 During the first of these meetings it was explained to the Applicant that his role was deemed to be redundant and that, during the consultation process, they were investigating alternative roles.
- 2.17 In order to assess the possibility of alternative employment, the Respondent put together a 'scoring matrix' which showed the functions each worker could perform. The Applicant had not been shown this document and had, therefore, been unable to comment on the accuracy of this assessment in relation to his skills/capability. Whilst giving evidence the Applicant identified three further functions noted on the list which he considered he could have covered.
- 2.18 The second consultation meeting confirmed that there were no alternatives available.
- 2.19 The Applicant received a letter dated 7 October 2013 giving notice of redundancy.
- 2.20 The letter offered an appeal process.
- 2.21 The Applicant did not appeal the decision.

3.0 The Law

- 3.1 The Employment Protection (Guernsey) Law, 1998, as amended, provides the right not to be unfairly dismissed. Section 6 of the Law governs the fairness of a dismissal. The employer must show the reason for the dismissal and set out the potentially fair reasons for a dismissal, including that of redundancy.
- 3.2 For the purposes of this Law, an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:
 - (a) the fact that his or her employer has ceased, or intends to cease to carry on the business for the purpose of which the employee was so employed; or has ceased, or intends to cease to carry on that business in the place where the employee was so employed; or
 - (b) The fact the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
- 3.3 The Commerce and Employment Department Code of Practice, issued under the Employment Protection (Guernsey) Law, 1998, as amended, provides guidance on

good practice in handling redundancy situations. The Tribunal, in coming to a conclusion, may consider the relevance of this Code including whether a genuine redundancy situation existed in a dismissal, whether or not any redundancy procedure was followed and whether or not in the circumstances an employer acted reasonably and fairly.

3.4 Examples of a redundancy situation set out in the code of practice include:

1. “a complete closure of the business;
2. a closure of a particular workplace or particular section of the workplace;
3. where work of a particular kind has ceased or diminished;
4. where fewer employees are needed to carry out work of a particular kind because of employee reorganisation, technology changes etc.”

3.5 The Tribunal takes account of the influential UK ruling in *Polkey v Dayton Services Ltd* in *Polkey v A.E. Dayton Services Limited* [1988] AC 344, HL Lord Bridge stated that “... in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation.”

The judgment included four basic principles of fairness “which should always be considered” in situations of redundancy:

1. the duty to consult the employee;
2. the duty to warn of redundancy;
3. the duty to establish fair criteria for the selection of employees;
4. the duty to explore alternatives to redundancy.

“Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too”.

3.6 The Commerce and Employment Department Code of Practice also gives guidance for small firms stating that “it may not be practical for a small firm to apply the detailed redundancy procedures employed by larger organisations. However, the principles of a fair procedure should still be applied, albeit on a smaller, simpler scale. These principles are:-

- consulting with employees about redundancy situations well before final decisions are reached;
- ensuring that there is a fair and objective basis for redundancy selection;
- taking all reasonable steps to avoid or minimise redundancy, e.g. offering alternative work if it exists.”

4.0 Conclusion

4.1 The Tribunal heard one day of oral evidence and representations. It considered all the written evidence before it, whether specifically referenced in this judgment or not.

- 4.2 The Tribunal firstly considered whether there had been a genuine redundancy dismissal; the Applicant argued that he had been selected because he had raised some health and safety concerns.
- 4.3 Whilst reference had been made to a number of potential breaches of health and safety raised by the Applicant, these had been rectified and were considered, by the Tribunal, not to be central to the redundancy situation.
- 4.4 The Tribunal gave significant consideration to the Respondent's financial situation following the loss of business and VAT demand which resulted in the need to make some tough decisions quickly.
- 4.5 It was apparent to the Tribunal that the Respondent recognised and valued the Applicant's contribution over his long career and had not taken the decision lightly.
- 4.6 In summary, the Tribunal was persuaded that this was a genuine redundancy within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.
- 4.7 The Tribunal gave consideration to the breaches in process alleged by the Applicant.
- 4.8 The Tribunal gave consideration to the fact that there were no vacancies at the time, no overtime being worked and that the role which the Respondent occupied was a unique role within the Company.
- 4.9 The Tribunal considered the document entitled 'Scoring Matrix' which it considered was actually a task list showing workers who were able to undertake certain tasks and was, therefore, not actually of assistance to the process.
- 4.10 The Tribunal concluded that the process, and in particular the consultation, could have been more comprehensive, however, given the size and administrative resources available to the Respondent, the Tribunal determined that the approach of the Respondent was that of a reasonable employer and within the band of reasonable responses.

5.0 Decision

- 5.1 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 The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed by reason of redundancy and therefore no award is made.

Mrs Paula Brierley
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Signature of the Chairman

30 June 2014
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Date