

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mrs Amie Gillott  
Represented by: (Mrs Gillott represented herself)

**RESPONDENT:** Lambourne Taxis Limited  
Represented by: Mr Bruce Lambourne

**Hearing date(s):** 6 March 2014

**Tribunal Members:** Mr Peter Woodward (Chairman)  
Ms Paula Brierley  
Ms Joanne de Garis

**DECISION OF THE TRIBUNAL**

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

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

In accordance with Section 22 (1) (a) of the Law, pay in the six months leading up to the 'Effective Date of Termination' was **£6,036.20** and in accordance with Section 23 (2) the Tribunal has concluded that it would be just and equitable to reduce this amount by 80%. This reduction is made in consideration of the Applicant's serious misconduct issues and her unilateral decision to reduce her working hours towards the end of her employment; in consequence an award of **£1,207.24** is made.

Mr Peter Woodward  
.....  
Chairman

26 March 2014  
.....  
Date

NOTE: Any award made by a Tribunal may be liable to Income Tax  
Any costs relating to the recovery of this award are to be borne by the Employer

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 An ET1 Application form was submitted on 26 September 2013 by the Applicant, Mrs Amie Gillott, alleging unfair dismissal and an ET2 Response form was submitted on 9 October 2013 by the Respondent, Lambourne Taxis Limited, resisting this complaint.
- 1.2 The Applicant represented herself and the Respondent was represented by Mr Bruce Lambourne.
- 1.3 Further documentation was supplied to the hearing; from the Respondent ER1 and from the Applicant EE1, EE2, and EE3.

**2.0 Facts Found**

- 2.1 Lambourne Taxis Limited is a family-run Guernsey company and was founded in 1999; typically the Company employs between eight to twelve drivers.
- 2.2 The Applicant commenced employment as a driver on 13 February 2012 and was contracted to work a minimum of 20 hours per week. Remuneration was set at 50% of fares taken.
- 2.3 The Applicant's partner, Mr Ryan Simmons, also commenced employment as a driver with the Respondent on 13 February 2012 and from March 2012 until his resignation in August 2013 he worked on a full time basis.
- 2.4 The Respondent provided weekly pay data for the entire period of the Applicant's employment. Quarterly summaries between April 2012 and June 2013 confirmed that the Applicant's quarterly earnings were at a minimum of £3,176.05 and a maximum of £4,043.50. For period ending 23 September, that is one week short of a full quarter earnings, were £2,142.74 including one week's paid notice.
- 2.5 During 2012 the Respondent was satisfied with the Applicant's performance however from early 2013 onwards a number of concerns arose which are noted in evidence given by the Respondent.
- 2.6 The Applicant was dismissed on 23 September 2013 without any prior warning of this action.
- 2.7 The Applicant was not given any disciplinary warnings, either oral or in writing, whilst in the Respondent's employment.

### **3.0 Mr Bruce Lambourne**

- 3.1 Mr Lambourne provided a witness statement (Pages 1 to 4 ER1 refer).
- 3.2 Mr Lambourne stated to the Tribunal that he had hired both Mrs Gillott and her partner, Mr Ryan Simmons. In response to questions put to him he stated that he saw the Applicant's employment as being closely linked to that of her partner, he said he had taken them on as a couple. He was short of drivers and it seemed that they were prepared to take turns in working somewhat unsocial hours.
- 3.3 The Applicant undertook a three month probationary period and her job performance was satisfactory; during the rest of 2012 she continued to meet job requirements.
- 3.4 In January 2013 the Applicant and Mr Simmons approached Mr Lambourne and told him that they would have to reduce their hours of work, otherwise they would lose their States Housing as they would exceed the earnings cap defined by the States of Guernsey for continuing occupancy. Mr Lambourne was not sure what precise reduction in earnings was required as it seemed to change from month to month.
- 3.5 From early 2013 Mr Lambourne began to find it more difficult to contact the Applicant whilst she was on duty; the Applicant would often not respond to VHF radio calls and it became necessary to phone her more often to accept jobs. On some occasions it seemed that although she had accepted a job she did not then carry it out, passing it on to other drivers. She seemed happy to sit at the airport taxi rank for long periods of time. Mr Lambourne viewed the Airport CCTV and could observe the stationary taxi.
- 3.6 The Applicant also seemed reluctant to work after midnight on weekend shifts and her working hours fell as low as 12 in some weeks. The witness also spoke of the personal support he gave to the Applicant during her period of employment when confronted with family issues.
- 3.7 Mr Lambourne also had a concern that the Applicant was offering individuals free rides in Company vehicles. On one occasion Mr Lambourne's wife had observed one of the Company's taxis arriving at the A&E Department at the Hospital, driven by the Applicant. Mrs Lambourne had told her husband that, given the behaviour of the Applicant towards her passengers, they were not fare paying customers and she did not observe any money being paid for the fare; neither did she see the Applicant reset the taxi meter, which was prominently visible as she left, which would have indicated a payment had been made.
- 3.8 It was also Mr Lambourne's belief that the Applicant had begun to use Company vehicles to pick up her children from school.
- 3.9 In August 2013 the Applicant's partner resigned and told Mr Lambourne that he was going to work for another Guernsey taxi firm. Mr Lambourne feared that the Applicant would be tempted to give away customers to her partner and thus he would lose business.
- 3.10 In early September Mr Lambourne went on holiday with his wife, a co-director of the Respondent, and they discussed their concerns as to the Applicant's behaviour, her

reduction in hours worked and the potential impact of her partner working with a competitor. It was decided that her employment should be terminated.

- 3.11 On his return from his holiday on 23 September 2013 he received a telephone call from the Applicant asking if a car was available for her to drive. Mr Lambourne responded by informing her that a car was available however it was in his words “so filthy” that he could not allow it to go out without being cleaned. The Applicant then became very irate and refused to clean the vehicle; Mr Lambourne responded by telling her that this attitude was unacceptable and her employment would be terminated.
- 3.12 In response to a question from the Tribunal Mr Lambourne stated that his reasons for the dismissal were that:
- The Applicant had been dishonest.
  - The Applicant was no longer working her contracted hours and on occasion actual hours worked had fallen to 12 in a week.
  - She had a combative attitude towards him.
  - She had made personal use of Company cars without authorisation.
  - Her partner had recently moved to work for a competitor.
- 3.13 Mr Lambourne was asked why he had not chosen to undertake disciplinary proceedings with the Applicant and responded that he had a major concern that if he had taken such an action the Applicant would have resigned. Mid high season and with the employment of reliable, appropriate drivers proving very difficult, he had been trying to operate until the end of the summer when he intended to address matters. Evidence of attempts to recruit was presented to the Tribunal. No applications had been received.
- 3.14 In Mr Lambourne’s opinion the Applicant had a very strong character and would have been difficult to confront.
- 3.15 Mr Lambourne described in some detail the economics of running a taxi service in Guernsey, the officially issued licence plate costs between £30,000 and £35,000 and there are significant running costs. He argued there was a very strong rationale for each vehicle to be used for as many hours as possible each week for it to be financially viable.
- 3.16 Mr Lambourne admitted both in his witness statement and in his oral testimony that he had not followed a correct procedure in dismissing the Applicant and stated that he had held the belief that he could deal with part time staff differently than those who held full time roles; he now knew that this was incorrect. In response to a question put by the Tribunal Mr Lambourne confirmed he had not consulted the Disciplinary Code of Practice on the Commerce and Employment website. He also stated that he believed the Applicant would readily find an alternative role as a driver.

#### **4.0 Mrs Judith Lambourne**

- 4.1 Mrs Lambourne is a non-executive director of Lambourne Taxis Limited. Evidence was given in a witness statement (Pages 5 to 7 ER1 refer).
- 4.2 Mrs Lambourne informed the Tribunal that she did not hold an operational role with the Respondent and thus much of what she understood of the Applicant's behaviour was through conversation with Mr Lambourne, however, she could give evidence on three specific occurrences.
- 4.3 Mrs Lambourne told the Tribunal that the Applicant posted a statement on her Facebook account that she was not taking payment for taxi services from a friend of hers in return for the provision of gardening services.
- 4.4 On another occasion Mrs Lambourne was in the waiting room at the A&E Department of the Hospital and observed the Applicant arrive with what seemed to be close friends and did not appear to take any money for the fare.
- 4.5 On one occasion during summer 2013 Mrs Lambourne was at the Company office and observed the Applicant arrive for work. Mrs Lambourne stated that Mrs Gillott was wearing in her words "a completely see-through, off the shoulder, dress, one you could see her bra and thong through". Mrs Lambourne suggested to the Applicant that this was not appropriate attire for a taxi driver; however this critique was ignored and the Applicant stated "well all the boys like it" and started her work shift.
- 4.6 Mrs Lambourne agreed that she had discussed the potential dismissal of the Applicant whilst on her family holiday with Mr Lambourne during September 2013 and agreed as a director of the Respondent that there was no alternative other than to take this action.

#### **5.0 Ms Ann Batiste**

- 5.1 Ms Batiste is the personal assistant to Mr Lambourne and the Office Controller at Lambourne Taxis Limited. Evidence was given in a witness statement (Pages 8 to 10 ER1 refer)
- 5.2 Ms Batiste has worked for the Respondent since 2001.
- 5.3 Ms Batiste observed that when the Applicant commenced her employment in 2012 she seemed to be both diligent and hard working. However in early summer 2013 there seemed to be a change in her work ethic. The Applicant reduced her working hours and would announce, for example, with very little notice, that she did not want to work on a following day, leaving the Company with booked jobs and a requirement to find alternative drivers at very short notice.
- 5.4 Ms Batiste also stated that the Applicant would increasingly head for the Airport on her working days and was then observed on CCTV to remain parked at the Airport despite being informed of prospective clients; when challenged as to this behaviour the Applicant told Ms Batiste that she had passed these assignments to her partner Ryan Simmons.

- 5.5 Ms Batiste also observed deterioration in the Applicant's dress code, wearing scruffy un-ironed clothes or on occasions "see-through" dresses revealing her underwear.
- 5.6 She understood that Mr Lambourne had difficulties in confronting the Applicant on these issues as drivers were in very short supply and given the very strong personality of the Applicant it was feared that any confrontation would result in her resignation.
- 5.7 On 23 September the Applicant contacted the office by phone and spoke with Mr Lambourne asking if a car was available for her that morning. Mr Lambourne responded that a car was available but the Applicant would have to clean it first. This led to a very loud altercation over the phone with the Applicant refusing to do this. The Applicant thought other Company drivers should have done this even though such an action would have been impracticable for drivers finishing their shifts at 2.00 am. The Applicant's refusal led Mr Lambourne to dismiss her during this phone conversation.

## **6.0 Mrs Amie Gillott**

- 6.1 The Applicant read from a witness statement (Pages 7 to 9 EE1 refer).
- 6.2 Mrs Gillott commenced employment as a driver with the Respondent on 13 February 2012.
- 6.3 The initial intention was that the Applicant would work a contracted 20 hours a week, these hours to be worked on Wednesday and Thursday evenings as well as weekend hours. This pattern of work changed with a shift to providing daytime cover; more hours being worked in term time and less in the school holiday periods. In term time the Applicant informed the Tribunal she could sometimes work more than 30 hours a week.
- 6.4 Mrs Gillott stated that she never had any intention to work less than her 20 contracted hours of work per week unless she arrived at work and there was no car available. She informed the Tribunal that her employer understood her family commitments and had never indicated he had a problem with her only working weekends during school holiday periods.
- 6.5 In reviewing her pay records Mrs Gillott agreed that the third quarter 2013 indicated a reduced level of hours worked when compared with the same period in 2012; however it was her opinion that a significant amount of this variation was due to her approved holiday periods; any reduction was not due to her desire to work fewer hours. Mrs Gillott refuted the Respondent's claim that she was deliberately reducing her hours to meet some income cap imposed by the States of Guernsey Housing Department.
- 6.6 Mrs Gillott also denied that she had refused jobs, unless they had been requested for a period before 9.00 am, after 2.30 pm, or before 5.00 pm on weekdays or before 6.00 pm on a Saturday. During her total period of employment she claimed she had only taken one weekend off for a family holiday and two Saturday nights; one for her Grandparents' diamond wedding and the other for a charity event. Mr Lambourne had never criticised her for refusing jobs whilst she was in employment.

- 6.7 On a few occasions she had not worked into the early morning hours of the weekend due to tiredness and concern for her own safety as well as that of her clients. She would never drive if she sensed she was over-tired.
- 6.8 Responding to the allegation by Mrs Lambourne that she had not taken a fare from some clients at the Hospital A&E Department, Mrs Gillott thought it would have been impossible for anybody sat in A&E to see whether money had changed hands or not.
- 6.9 Mrs Gillott denied that she had used Company vehicles to take or collect her children from school.
- 6.10 Mrs Gillott agreed the issue of her personal dress code had been raised on one occasion by Mrs Lambourne and Ms Batiste but she had never been instructed by her employer to change her mode of dress.
- 6.11 On 23 September 2013 Mrs Gillott spoke on the telephone with Mr Lambourne at approximately 9.30 am and Mrs Gillott agreed there had been a discussion as to the cleaning of a vehicle, however, the sum result of the telephone discussion was that Mr Lambourne told her that she was not wanted for work that week. It was only later in the day that, after a discussion with Mr Ryan Simmons, she understood her employment had been terminated.
- 6.12 Mrs Gillott rang Mr Lambourne again at 4.26 pm on 23 September 2013 and during this phone call she was told that her employment was terminated. She was told the Company was losing money and as she was the last part time driver he had hired she would have to be the one to go. Mr Lambourne also told Mrs Gillott that with her partner, Mr Ryan Simmons, now working with a competitor taxi firm, he could no longer retain her.
- 6.13 Mrs Gillott told the Tribunal that she had never received a notice of her termination of employment and had been totally unaware of allegations of personal misconduct until she received a copy of the ET2 response prepared by the Respondent. Mrs Gillott also believed that the Respondent's assertion that the Company was losing business was totally undermined by the appearance of an advert in the Guernsey Press on 27 September 2013 inviting applications for new drivers. (EE1 Page 12 Refers).
- 6.14 Mrs Gillott stated she had never received any conduct warning, either orally or in writing, during her period of employment with the Respondent.

## **7.0 Mr Ryan Simmons**

- 7.1 The witness read from a witness statement (Page 14 EE1 refers).
- 7.2 Mr Simmons entered employment with the Respondent on the same date as the Applicant and worked full time hours from March 2012 until his resignation in August 2013, when he had obtained alternative employment with a competitor taxi company.
- 7.3 Mr Simmons corroborated the evidence given by Mrs Gillott in that their children got to school by school bus and not by taxi. She did not own a "see through" dress nor had she reduced her working hours.

- 7.4 The witness did not believe that anybody sat in the A&E waiting area would have been able to see if a fare was collected by a taxi driver dropping off a client at that Department. Nor did he believe that the Airport CCTV system was of such a resolution that one could observe who was sat in any individual vehicle in the taxi rank.
- 7.5 To his knowledge Mrs Gillott always answered client calls and did not refuse them as alleged by Mr Lambourne.
- 7.6 To his knowledge Mr Simmons believed that Mrs Gillott was working both the required shifts and the required hours. He also confirmed that Mrs Gillott had cleaned Company vehicles from time to time.
- 7.7 Mr Simmons was with Mrs Gillott the afternoon of 23 September when she called Mr Lambourne and he overheard Mrs Gillott's responses; he confirmed that Mrs Gillott's employment was terminated during that telephone discussion.

#### **8.0 Mr Malcolm Simmons**

- 8.1 The witness read from a witness statement (Page 15 EE1 Refers)
- 8.2 Mr Malcolm Simmons is the father of Ryan Simmons and had been employed as a driver by the Respondent since May 2013.
- 8.3 On 23 September 2013 Mr Malcolm Simmons arrived at the Respondent's office and was advised by Mr Lambourne that he had decided to get rid of Mrs Gillott as she lived with Mr Simmons' son Ryan, who had left for a competitor firm. On that basis Mr Lambourne informed Mr Malcolm Simmons he had no choice but to dismiss.
- 8.4 Mr Malcolm Simmons enquired if his own employment was at risk and was reassured by Mr Lambourne that as he was not living in the same household as his son that his continuing employment was assured.

#### **9.0 Mr John Walters**

- 9.1 The witness read from a witness statement (Page 16 ER1 Refers)
- 9.2 Mr Walters confirmed that he runs a taxi firm and was currently employing Mr Ryan Simmons, who had joined his Company in September 2013.
- 9.3 He had understood that, at the time of her dismissal in September 2013, Mrs Gillott had been dismissed by the Respondent due to her being the partner of Ryan Simmons.

#### **10.0 Conclusions**

- 10.1 It is not disputed that the Respondent dismissed the Applicant and did this by phone. Mr Lambourne admitted during the hearing that he had been ignorant of employment

law and its requirement for the considered and fair process which a reasonable employer should adopt when dismissing an employee.

- 10.2 Moving beyond this relatively simple conclusion however there are some more complex issues. The Respondent claimed there were multiple acts of poor conduct by the Applicant, such as the personal use of Company vehicles; the issues with personal dress code and the failure, on occasion, to accept clients. The Tribunal formed the view that the Applicant lacked credibility in giving her evidence and thus strongly preferred the evidence on these issues given by the Respondent.
- 10.3 The Respondent did not choose to confront these issues; this reluctance to act seemed to be based on two fundamental points. Mr Lambourne found it difficult to confront an individual with apparently such a strong and determined personality as Mrs Gillott and at the same time was acutely aware of an Island wide shortage of drivers prepared to work the necessary hours. He believed that if he had chosen to commence a disciplinary process Mrs Gillott would have resigned. In addition the Tribunal notes that the Respondent gave the Applicant support during her period of employment when she was confronted by difficult family issues and may have felt constrained from entering a disciplinary process.
- 10.4 The Respondent informed the Tribunal of the high level of cost in running each of his vehicles and the need to maximise their use. Thus it was not unreasonable as the third quarter of 2013 progressed that his concerns grew, with Mrs Gillott working reduced hours. Mrs Gillott argued that there was very little reduction of working hours in that period, and that this was mostly accounted for in extra holiday taken in the summer of 2013. However an inspection of the comparative pay data between 2012 and 2013 lends credibility to the Respondent's concerns.
- 10.5 It is the opinion of the Tribunal that any reasonable employer faced with the Applicant's alleged serious conduct issues and her reducing hours of work would have had reasonable justification to act. In the event the Respondent did act but with a total lack of prior warning and with no reference to the relevant code posted on the internet by the Commerce and Employment Department; "Disciplinary Practice and Procedures in Employment".
- 10.6 Whilst a failure on the part of any person to observe any provision of the Code of Practice does not of itself render that person liable to any proceedings, any provision in this code which might be relevant to these proceedings may be taken into account in determining the fairness and equity of the actions taken. The code explicitly states that the principles contained therein can be applied to smaller establishments, although possibly with more limited use of its provisions.
- 10.7 Contrary to this Code, the Respondent made no prior attempt to inform the Applicant of the complaints against her. It gave her no opportunity to state her case before the decision to dismiss was reached and gave no opportunity for her to appeal against the decision. It would seem to the Tribunal that no reasonable employer would act this way and neither would a reasonable employer deem it reasonable to dismiss an employee over the phone.

10.8 In summary, a dismissal occurred within the meaning of Section 5 (2) (a) of the Law and this dismissal has been found to be unfair within the meaning of section 6 of the Law.

**11.0 Decision & Award**

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

11.2 In accordance with Section 22 (1) (a) of the Law, pay in the six months leading up to the Effective Date of Termination was **£6,036.20** and, in accordance with Section 23 (2,) the Tribunal concluded that it would be just and equitable to reduce this amount by 80%. This reduction is made in consideration of the Applicant's serious misconduct issues and her unilateral decision to reduce her working hours towards the end of her employment; in consequence an award of **£1,207.24** is made.

Mr Peter Woodward  
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Signature of the Chairman

25 March 2014  
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Date