

States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL****APPLICANT:** Ms Claire Dent**RESPONDENT:** Harlequin Hire Cars Limited trading as Europcar Guernsey
Represented by: Mr Guy Plante**Witnesses:** Mr Michael West
Mr Stuart Poole**Decision of the Tribunal Hearing held on 6 February 2014****Tribunal Members:** Ms Kathy Tracey (Chair)
Mr Andrew Vernon
Mr Peter Woodward**DECISION**

Having reviewed and duly considered all the evidence submitted, and the representations of all parties to the hearing, whether specifically recorded in this judgment or not, the Tribunal finds that the Applicant was unfairly dismissed under the provisions of Section 9 of The Employment Protection (Guernsey) Law, 1998, as amended. The Applicant was dismissed by reason of her pregnancy.

The unfair dismissal claim is upheld and the Respondent shall pay to the Applicant the amount of £8,062.46. This amount being in accordance with Section 22(1)(a) of The Employment Protection (Guernsey) Law, 1998 (as amended), being equivalent to six months' pay as evidenced in the hearing. Given the nature of the reason for this dismissal, and in accordance with Section 23 of the same Law, no consideration could be given to any reduction of this award. This award is separate from any other remedy in accordance with Section 30 of the same Law.

The claim of sex discrimination is also upheld, and the Respondent shall pay to the Applicant the amount of £4031.23. This is in accordance with Section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This award is separate from any other remedy in accordance with Section 53 of the same Ordinance.

Total Amount of Awards: £12,093.92

Ms Kathy Tracey

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Signature of the Chairman

5 March 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 (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.

FORM: ET3A

The Laws referred to in this document are The Employment Protection (Guernsey) Law, 1998, as amended and The Sex Discrimination Ordinance (Employment) (Guernsey) 2005

Extended Reasons

1.0 Introduction

- 1.1 The Tribunal received an ET1 from the Applicant alleging unfair dismissal and sex discrimination and an ET2 from the Respondent, in addition to a bundle of documents from each party including correspondence relating to this matter that was exchanged between the parties over the period 1 February 2013 until 12 August 2013.
- 1.2 Given into evidence for purposes of determining the Applicant's pay was a print out of the Applicant's pay details on a week-by-week basis from June 2012 until 10 April 2013.
- 1.3 Also included in the documentation was a copy of the Applicant's contract of employment signed and dated on 20 September 2012.
- 1.4 The Tribunal also heard verbal evidence from the Respondent and the Applicant, as well as two witnesses brought by the Respondent, who held management positions within the Harlequin Hire Cars Company. Mr Michael West (Guernsey Branch Manager) and Mr Stuart Poole (Assistant Manager).
- 1.5 The Tribunal notes there is both the claim of unfair dismissal and sexual discrimination and in accordance with section 30 (b) of The Employment Protection (Guernsey) Law, 1998, as amended the Tribunal decided that it should hear both complaints at the same time. A similar provision is made in the Sex Discrimination Ordinance (Employment) (Guernsey) 2005, to join the complaints in a single hearing.
- 1.6 The key issues to be determined are therefore whether this was a dismissal; if this was the case then when did the dismissal occur and; were the circumstances of that dismissal fair or unfair. Secondly was there evidence of discrimination within the meaning of The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

2.0 Facts Found

- 2.1 Harlequin Hire Cars Limited trades as Europcar in Guernsey. The business has a desk at Guernsey Airport where the Applicant was based during her employment.
- 2.2 Mr Guy Plante is the owner of the Company and is also the Jersey Europcar licensee.
- 2.3 Mr Mike West is the Guernsey Manager; he was not based at the Airport, but at the main office. Both Mr West and Mr Plante describe themselves as having over 30 years of experience of car hire in Guernsey and Jersey along with the associated employment needs and challenges.
- 2.4 Mr Stuart Poole is the Assistant Manager and had regular contact with the Applicant.

- 2.5 The Hire car business is seasonal in nature and therefore the workforce fluctuates to meet the changing demands. Staffing levels can range from approximately ten employees in the summer to six employees in the winter.
- 2.6 Mr Plante described the Applicant as an exemplary employee, and noted that there had never been any disagreements or issues over the whole period of her employment right up until the time she made a complaint to the Tribunal Service.
- 2.7 Harlequin Hire Cars has never had any provision for maternity leave or pay, and up until these proceedings had believed that there was no reason to make any provision.
- 2.8 The Applicant's Contract of Employment as provided by Harlequin Hire Cars includes a heading of 'Maternity Leave' under which the entry reads 'Not Applicable', there was no clear indication of what this meant from the Respondent.
- 2.9 Both Mr Plante and Mr West said they had no knowledge, before these proceedings, of 'The Employment Protection Law' in Guernsey. Mr Plante indicated that he had assumed that Guernsey's employment laws were similar to Jersey, but did not appear to have an up to date knowledge of either Islands' laws.
- 2.10 The Tribunal was encouraged to hear that all contracts of employment within the Company were now under review in the knowledge of the Law.
- 2.11 Ms Claire Dent worked at Harlequin Hire Cars at Guernsey Airport from 12 June 2012.
- 2.12 She did not sign her contract of employment until September 2012 when she was judged to have passed her three month trial period.
- 2.13 She told her immediate supervisor Mr Poole that she was pregnant in September of 2012 a few days after signing her contract, and asked him not to tell the other staff, but that he could inform his manager Mr West.
- 2.14 She formally advised the Company of her pregnancy in January 2013.
- 2.15 Ms Dent was verbally informed by her supervisor, that under the terms of her contract, there was no maternity provision and that her job could not be kept open for her.
- 2.16 The Applicant asked for confirmation of this in writing as she was concerned that Social Security would think she had voluntarily left her job, which may have made her ineligible for claiming benefit if she needed to.
- 2.17 She received a letter dated 1 February 2013 from Mr West addressed 'To whom it may concern' in response to her request. This letter states "I cannot keep a position available for Claire" and that she would be leaving the Respondent's employment at the end of April 2013.
- 2.18 After the Applicant sought advice on her situation, she wrote to Mr West on 19 February stating that she wanted to return to work after her confinement and asking for confirmation, in writing, that she could do so.

- 2.19 She did not receive any further written correspondence, but was again verbally reminded that the Company had no maternity provision, and that she had signed the contract which laid out that condition of employment.
- 2.20 She was also informed that they would need to replace her for the upcoming busy season. Ms Dent believed that this replacement would be temporary, and asked for confirmation of this in her letter. She did not receive confirmation, nor did she pursue this question further.
- 2.21 Ms Dent attended work on 9 April 2013 for the final time.
- 2.22 On this day she returned her Company car, and received her outstanding holiday pay. She did not view this as evidence she would not be returning to work.
- 2.23 Mr West believed that these things should have been taken as confirmation that the Company believed she was leaving and would not be returning to work.
- 2.24 Two months after the birth of her child, on 11 July 2013, Ms Dent wrote to the Company saying she would like to return to work, and suggesting that early August would be an appropriate time.
- 2.25 In response, Ms Dent received a letter from Mr West dated 17 July 2013, saying that the Company had no vacancies, and that they had been unable to keep her job open for her.
- 2.26 Ms Dent considered this to be a confirmation of termination of employment and proceeded to make a claim under the provisions of 'The Employment Protection Law'.
- 2.27 In a letter dated 12 August 2013 Ms Dent was offered re employment by Harlequin Hire Cars on a full time basis, and was asked to confirm that she would accept this offer by the end of that week.
- 2.28 Ms Dent declined to respond as she had already started proceedings against the Company.
- 2.29 In her closing statement the Applicant again reiterated that her complaint was one of both unfair dismissal and sex discrimination.
- 2.30 The Tribunal enquired of the Respondent whether they had referred to available guidance on the Commerce and Employment website in regard to these matters prior to the dismissal. They replied that they had not.

3.0 Conclusions

- 3.1 The Tribunal found that there was a dismissal in this case.
- 3.2 Section 5 of The Employment Protection (Guernsey) Law, 1998, as amended, states:
"An employee shall be treated as dismissed by his employer if, but only if, (a) the contract under which he is employed by the employer is terminated by the employer, whether it is terminated by notice or without notice"

- 3.3 The Applicant informed the Tribunal that in late January 2013 she had a concern that if she were to leave the Respondent's employment that it would be seen as voluntary and she would be greatly disadvantaged in obtaining any potential social security benefits. She requested a letter which she believed would avoid this potential risk. In a letter dated 1 February 2013 the employer stated she would be leaving Europcar but does not state that it was a dismissal. The Applicant then took external advice and on the 19 February wrote a letter to her employer, with whom she apparently had very rare face to face contact, stating that her intention was to take maternity leave from the end of April and in reference to the letter of 1 February states her assumption that any replacement referenced in this letter would be on a temporary basis.
- 3.4 The Applicant's letter received no response; neither was the Applicant told verbally or in writing that she was dismissed and she began her presumed maternity leave on 9 April 2013, handing in her car and uniform at that time. On 11 July 2013 Ms Dent then wrote to her employer referencing her letter of 19 February 2013 stating her readiness to return to work. The Employer responded in writing on 17 July 2013 stating that the Applicant no longer had a job and her position had been replaced. Only on this date did the Applicant know with certainty she had been dismissed and thus the 17 July 2013 should be taken as the Effective Date of Termination.
- 3.5 The Tribunal further found that dismissal was unfair under the Law.
- 3.6 Section 9 of The Employment Protection (Guernsey) Law, 1998, as amended states:
"The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been unfair if the reason for it (or, if more than one, the principal reason) (a) was that the employee was pregnant"
- 3.7 The evidence given by both parties was that the Applicant would still have been working for the Respondent had she not been pregnant.
- 3.8 Turning to the separate complaint of sex discrimination, the tribunal finds that in dismissing the Applicant on the grounds that she was pregnant that there was a direct and clear contravention of Section 1(1) (a) of The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. The Respondent on the grounds of the Applicant's sex treated her less favourably than he would have treated a man.
- 3.9 It was plainly evident to the Tribunal that but for her sex and her pregnancy the Applicant would still be employed, and this was supported by evidence from both sides.
- 4.0 Decision**
- 4.1 Having reviewed and duly considered all the evidence submitted and the representations of all parties to the hearing, whether specifically recorded in this judgment or not, the Tribunal finds that the Applicant was unfairly dismissed under the provisions of Section 9 of The Employment Protection (Guernsey) Law, 1998, as amended. The Applicant was dismissed by reason of her pregnancy.
- 4.2 The unfair dismissal claim is upheld and the Respondent shall pay to the Applicant the amount of £8,062.46. This amount being in accordance with Section 22(1)(a) of

The Employment Protection (Guernsey) Law, 1998, as amended, being equivalent to six months' pay as evidenced in the hearing. Given the nature of the reason for this dismissal, and in accordance with Section 23 of the same Law, no consideration could be given to any reduction of this award. This award is separate from any other remedy in accordance with Section 30 of the same Law.

- 4.3 The claim of sex discrimination is also upheld, and the Respondent shall pay to the Applicant the amount of: £4031.23. This is in accordance with Section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This award is separate from any other remedy in accordance with Section 53 of the same Ordinance.

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