

**States of Guernsey****EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Miss Claire Dent  
Represented by: (Miss Dent represented herself)

**RESPONDENT:** Harlequin Hire Cars Limited t/a Europcar Guernsey  
Represented by: Advocate Nick Barnes

**Tribunal Members:** Ms Kathy Tracey (Chairman)  
Mr Peter Woodward,  
Mr Andrew Vernon

**Hearing date(s):** 30 October 2014

**Decision of the Tribunal**

Having reviewed and duly considered all the evidence submitted, including the evidence and contemporaneous notes of the first Employment and Discrimination Tribunal hearing of this case, (convened 6 February 2014), the Appeal Judgment of the Deputy Bailiff Richard James McMahon (heard 5 June 2014), all the representations of all parties to the hearing, whether specifically recorded in this Judgment or not and, having considered Section 23(1) of the Employment Protection (Guernsey) Law, 1998, as amended and section 47 of The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the Tribunal finds that:

- 1) The employment offer made to Miss Dent on 12 August 2013 did not constitute a reinstatement.
- 2) Miss Dent did not unreasonably refuse that offer.
- 3) There is no scope to reduce the Award.
- 4) The total amount of the Awards was miscalculated in this Tribunal's decision of 5 March 2014 and the adjustment of 23 pence is made (as below).

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 20(1)(a) of the Employment Protection (Guernsey) Law, as amended, being equivalent to 26 weeks' pay as evidenced in the hearing.

The claim of sex discrimination is also upheld, the Respondent must pay the applicant the amount of £4,031.23. This is in accordance with section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This is equivalent to 13 weeks' pay.

**Total Amount of Awards: £12,093.69**

Ms Kathy Tracey  
.....  
Signature of the Chairman

21 November 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 (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 Employment Protection (Guernsey) Law, 1998, as amended and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

**Extended Reasons**

**1.0 Introduction**

- 1.1 This Tribunal hearing was reconvened as a result of the Appeal Judgment of 13 June 2014 handed down by Richard James McMahon, Esq., Deputy Bailiff.
- 1.2 The Deputy Bailiff was extremely helpful in providing guidance to the Tribunal in how to address the particular questions that were remitted. Section 20 of the extended reasons from the appeal states:

“The Tribunal concluded, as it was obliged to do, that there was no scope to reduce the award for unfair dismissal because of some reason other than an offer of reinstatement but it should so as to comply with section 23(1) of the 1998 Law (and section 47 of the 2005 Ordinance), have approached the Appellant’s letter of 12 August 2013 by asking itself a series of questions and setting out for the benefit of the parties its conclusions on them. The first question is whether or not the offer made by the employer *“would have the effect of reinstating (the employee) in his employment in all respects as if he had not been dismissed”* (or, under the 2005 Ordinance, *“in which he would have been had the act which founded the complaint (of sex discrimination) not occurred”*). If the offer does not satisfy that condition, the Tribunal does not need to consider the further questions raised. However, if it does, there must be a finding as to whether the employee’s refusal of that offer was unreasonable. If it was not unreasonable, there is no scope on this basis to reduce the award from the level of six months’ or 26 weeks’ pay (or half that amount under the 2005 Ordinance). However, if the refusal of the employer’s offer was found to be unreasonable, the Tribunal is obliged to consider whether it is just and reasonable to make some reduction in the award. There will inevitably be many matters for the Tribunal to consider in such a case, including having regard to whether any compensatory element of the award otherwise fixed would be unduly generous if no reductions were to be made.”

The Applicant represented herself and did not submit any additional written evidence.

The Respondent was represented by Advocate Nick Barnes and submitted a bundle of documents marked RHER1. The Respondent called the following witnesses:

- Mr Mike West
- Miss Sarah Griffin

- 1.3 Advocate Barnes argued early in the proceedings that, notwithstanding the clear direction from the Deputy Bailiff in section 20 of his Judgment, as previously quoted, the Tribunal should hear evidence past that of the first question it had been asked to consider.
- 1.4 In light of the direction given to the Tribunal by the Deputy Bailiff, the Tribunal was surprised that Advocate Barnes should run this argument, however it was persuaded that in the interests of justice and for the purposes of completeness, evidence would be heard to ascertain not only whether the offer made by the Respondent was an offer of reinstatement, but also whether that offer if considered to be an offer of reinstatement within the meaning of the Law, was unreasonably refused.

## **2.0 Findings on Reinstatement**

- 2.1 The first question the Tribunal needed to consider was whether the offer of employment made to Miss Dent was an offer of reinstatement that would have rendered her in the same circumstances as if she had not been dismissed. On the 11 July Miss Dent informed Mr West, in writing, of her availability for work post her maternity leave. Mr West gave evidence under oath that he believed this letter had been sent in good faith.
- 2.2 The letter of 17 July 2013 from the Respondent signed by Mr West states:  
“...we were unable to keep a job available for you, as we needed to employ staff to replace your position at the airport. I am afraid that this has not changed and at present we do not have any vacancies at the moment.  
Should this change in the future I will be in contact with you.”
- 2.3 Miss Dent then considered herself dismissed and approached Commerce and Employment to register her claim for Unfair Dismissal and Sex Discrimination on 22 July 2013.
- 2.4 On Tuesday 23 July 2013 Mr West received the notification of the claim, however, did not inform the Managing Director, Mr Guy Plante, until 7 August 2013 when Mr Plante returned from leave.
- 2.5 On Monday 12 August Mr West attempted to contact Miss Dent by phone. Miss Dent refused to speak to him. She gave evidence that she did not want to talk to him because of the claim. The Tribunal notes that 20 days had elapsed between the receipt of the ET1 at the Respondent’s office and their attempt to speak to Miss Dent. Mr West then wrote a letter to Miss Dent offering her re-employment. The letter is silent on whether the re-employment would include her being treated as if she had worked continuously since commencement of her initial employment in June 2012.
- 2.6 Under Oath Mr West told the Tribunal that he offered Miss Dent the job because another member of staff was leaving. He informed the Tribunal at the initial hearing and reconfirmed at this hearing that, if this had not been the case, the offer would not have been made.
- 2.7 Mr West also told the Tribunal that if Miss Dent had taken the job offered to her that she would have been asked to sign a contract of employment during her first seven

days of work. Mr West was unsure whether this would have been a new contract or not, although did tell the Tribunal that “it probably would have been a new one because we’ve had to learn because of these tribunals”.

- 2.8 The Tribunal does, however, on review of notes from 6 February 2014, note that in evidence given that day Mr Plante said new contracts were in the process of being “looked at” but had not yet been implemented.
- 2.9 On reviewing the evidence offered, the Tribunal finds that Harlequin Hire Cars trading as Europcar Guernsey did not clearly seek to reinstate Miss Dent and that the letter of 12 August 2013 was an offer of a new job arising out of the departure of another employee. It seems reasonable to conclude that the offer was opportunist in light of the pending tribunal. If the offer was to reinstate, it is reasonable to expect that an employer would make this explicit in the offer letter. Again this was not the case.
- 2.10 Although not required to also consider whether the offer of employment was unreasonably declined, Advocate Barnes convinced the Tribunal that to avoid further costs and appeals we should hear his arguments. As this case has already taken a great deal of time, the Tribunal decided, for purposes of completeness, to hear the arguments in this regard.
- 2.11 Advocate Barnes submitted that Miss Dent never intended returning to work. The Tribunal heard from witness Miss Sarah Griffin that Miss Dent had asked her whether she knew of any second hand cars for sale. Miss Griffin believed that this meant Miss Dent was leaving Harlequin and not intending to return. Miss Griffin said that “if you were going on maternity leave you would usually have the use of one of the hire cars”. However, when asked whether she was aware of this ever happening at Harlequin or at her own place of employment, Avis Rent A Car, she said “No, but it has happened to a friend who works for another company”.
- 2.12 Advocate Barnes entered evidence that had not been presented by the Respondent at the original hearing. This comprised of print-outs from Miss Dent’s Facebook page showing photos of her at her leaving party. Miss Dent was holding a leaving card and a Facebook friend had commented “Bye Bye” to which Miss Dent responded “I don’t know what I’m going to do with my time”. Miss Griffin gave the Tribunal her opinion that this meant Miss Dent was leaving her job with no intention to return.
- 2.13 Miss Dent gave evidence that when she had written “I don’t know what I’m going to do with my time”; she was referring to the time before the baby was due, and that the leaving card and party were centred on her leaving to have her baby, not leaving forever.
- 2.14 The Tribunal found the evidence offered by Miss Griffin to be somewhat speculative and was persuaded by evidence from Miss Dent that it was her intention at the time of this party to return to work after the birth of her baby.
- 2.15 Miss Dent gave evidence that she was intending to return to work full-time and that she wanted the shift work offered by Harlequin as this would mean she would still have a significant amount of time with her baby. Miss Dent’s mother was due to help with childcare, and this had already been arranged and agreed. Miss Dent also

gave evidence that if the letter she had received on 17 July had offered her re-employment she would have taken it. However, by 12 August 2013 she felt badly treated by Harlequin and she was concerned that if she took the job offered she would be at risk of being dismissed again if she got pregnant. She was not aware of any change in maternity policy, nor was she given the impression in any way that she was being reinstated. She believed the job was offered because someone was leaving, and because the Respondent wanted to avoid tribunal proceedings.

- 2.16 The Tribunal preferred Miss Dent's evidence in regard to this point and finds that Miss Dent did not unreasonably decline the offer or re-employment.

### **3.0 Findings regarding Reduction of the Award**

- 3.1 Advocate Barnes also submitted that if the Tribunal were of a mind to reduce the Award, that it should be reduced by 100%.
- 3.2 The Tribunal reminds the Respondent that the Deputy Bailiff upheld the Judgment of the Tribunal and that the Respondent had committed unlawful breaches of both the Employment Protection (Guernsey) Law, as amended, and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.
- 3.3 The sections of the Law being remitted for further consideration were section 23(1) of the 1998 Law and section 47 of the 2005 Ordinance.
- 3.4 For the Tribunal to consider extinguishing the Award completely it would need to be fully satisfied that an employer, knowledgeable of the relevant laws, would have made clear and unequivocal commitments to reinstatement both prior and after the Applicant's confinement and that in turn the Applicant had unreasonably declined such an offer.
- 3.5 In hearing the evidence of this complaint the situation is not as described above.
- 3.6 The Respondent should have been alerted by the letter of 19 February 2013 that a lawful request to continue employment had been made and should have made itself knowledgeable of the requirements of the Law. It failed to do so. This ignorance of the Law was still evident at the original hearing in 2014 and the latest evidence offered on 30 October 2014 does not satisfy the Tribunal that the Respondent's current contract of employment is compliant with the Law.
- 3.7 On 11 July 2013 Miss Dent informed her employer of her wish to return to her employment. In response the Respondent stated in unequivocal terms that it had no employment for her. In its evidence the Respondent confirmed it believed the letter of 11 July 2013 was sent by the Applicant in good faith.
- 3.8 Miss Dent made a formal complaint on the 22 July 2013 and the Respondent received notification on the 23 July.
- 3.9 If the Respondent had made an immediate attempt to offer reinstatement, having recognised their previous error, Miss Dent might still have returned to her role. She informed the Tribunal she enjoyed the job, the hours suited her and her relationship with her employer had seemed to be amicable prior to her leaving her role for her

period of confinement; but this is only hypothesis. The fact is that no attempt was made to contact Miss Dent until 12 August 2014, this being 20 days after the Respondent had received a copy of the complaint.

- 3.10 It is not surprising that by 12 August the Applicant had formed the view that this delay eliminated any residual trust and confidence that she would be fully reinstated in her role and, that if she became pregnant again in that employment, she would be subject to the same detriments and potential breaches of both the Employment Protection (Guernsey) Law, 1998 and The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.
- 3.11 In such circumstances the Tribunal can find no just and equitable basis upon which to reduce the Award.
- 3.12 Furthermore the Tribunal does not consider the amount of the Award to be unduly generous due to the significant nature of these breaches of the two aforementioned Laws and the distress this caused to a mother with a newborn child. The Respondent showed a disregard for its responsibilities under the employment legislation and should be aware of, and abide by, the laws in the jurisdictions in which it operates.

#### **4.0 Decision**

- 4.1 Having reviewed and duly considered all the evidence submitted, including the evidence and contemporaneous notes of the first Employment and Discrimination Tribunal hearing of this case, (convened 6 February 2014), the appeal decision of the Deputy Bailiff Richard James McMahon (heard 5 June 2014), all the representations of all parties to the hearing, whether specifically recorded in this Judgment or not and, having considered Section 23(1) of The Employment Protection (Guernsey) Law, 1998, as amended and section 47 of The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the Tribunal finds that:
- 5) The employment offer made to Miss Dent on 12 August 2013 did not constitute a reinstatement.
  - 6) Miss Dent did not unreasonably refuse that offer.
  - 7) There is no scope to reduce the Award.
  - 8) The total amount of the Awards was miscalculated in this Tribunal's decision of 5 March 2014 and the adjustment of 23 pence is made (as below).
- 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 20(1)(a) of The Employment Protection (Guernsey) Law, as amended, being equivalent to 26 weeks' pay as evidenced in the hearing.

4.3 The claim of sex discrimination is also upheld, the Respondent must pay the applicant the amount of £4,031.23. This is in accordance with section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This is equivalent to 13 weeks' pay.

**Total Amount of Awards: £12,093.69**

Ms Kathy Tracey  
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Signature of the Chairman

21 November 2014  
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Date