

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

Applicant: Ms Susan Cotterill
Represented by: Ms Cotterill represented herself

Respondent: Caring Companions Nursing Agency
Represented by: Mrs Sadie Rosamond

Decision of the Tribunal on 8 January 2014

Tribunal Members: Mr Peter Woodward (Chairman)
Mrs Paula Brierley
Mr Roger Brookfield

The Complaint

The Applicant submitted a complaint of alleged unfair dismissal as defined in section 5(2) a of the Employment Protection (Guernsey) Law, 1998 as amended, (hereafter referred to as 'the Law').

Decision

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

Mr Peter Woodward
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Signature of the Chairman

20 January 2014
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Date

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

The complaint is of alleged unfair dismissal as defined in section 5(2) a of the Employment Protection (Guernsey) Law, 1998 as amended, (hereafter referred to as 'the Law').

The Parties

Applicant: Ms Susan Cotterill

Represented by: Mrs Cotterill represented herself

Respondent: Caring Companions Nursing Agency

Represented by: Mrs Sadie Rosamond

Preliminary Issue

An initial claim of unfair dismissal was made on 8 October 2013 (reference ED056/13) and had been rejected by the Secretary to the Tribunal due to the Applicant's lack of one year's continuous employment prior to the date of her dismissal as required by the Law.

The claim was resubmitted on 13 November 2013 (reference ED064/13) indicating that the complaint was one of "Asserting a statutory right and Health and Safety matters". The Law states that such complaints may be heard without the requirement for one year's continuous employment; however as with all claims made to the Tribunal, they are still subject to the requirement that they should be neither frivolous nor vexatious.

Having conducted a Case Management Meeting with the Applicant and representative of the Respondent on 12 December 2013 the Chairman concluded that, in accordance with Section 19 of the Law, a Tribunal should be constituted to consider if the complaint could be heard. The parties were advised of this decision in a letter dated 18 December.

A Tribunal was convened and met on 8 January 2014 to consider if there were grounds for the complaint to be heard or, in the alternative; the claim should be dismissed as being frivolous or vexatious.

Documents

ET1 and ET2 forms were available to the Tribunal for ED056/13 and ED064 / 13. These submissions were supported by letters and communications from both parties.

Facts found

Initial claim ED056/13

An ET1 claim was made on 8 October 2013 and was allocated case number ED056/13. In this claim the Applicant stated she had been employed by the Respondent since August 2005 and had been dismissed in September 2013.

The Respondent submitted an ET2 on 15 October 2013 stating that the Applicant had been in its employment from September 2007 until August 2008, when she resigned. A letter of resignation was included in the documents which confirmed this.

The Respondent further stated that the Applicant started a fresh period of employment with it in December 2012.

The Secretary to the Tribunal had reviewed the ET1 and ET2 and concluded that the Applicant had not met the requirements of section 15 Employment Protection (Guernsey) Law, 1998 as amended. In a letter dated 21 October 2013 the Secretary to the Tribunal rejected the claim on the basis that the Applicant could not provide evidence of a period of one year's continuous employment prior to the Effective Date of Termination (EDT) in September 2013.

The Chairman requested that the Tribunal be provided with documentary evidence which would definitively illustrate the Applicant's periods of employment with the Respondent. The Applicant provided a record of her social security contributions during the period November 2007 to September 2013. This data confirms that the period of employment prior to the EDT was less than one year of continuous employment. The Tribunal is therefore in agreement with the Secretary to the Tribunal that this claim was correctly rejected.

Second claim ED064/13

In this claim the Applicant asserted that her complaint should be heard, despite the lack of a qualifying period, as it was her belief that her dismissal was due to her "Asserting a statutory right and Health and Safety matters".

During the Case Management Meeting on 12 December 2013 the Applicant conceded that whilst she had some issues as to deficiencies in her written terms of employment these were not complained of during her employment; she withdrew this allegation. The Applicant understood that she might still make a complaint to Commerce and Employment alleging that the requirements of the 'Conditions of Employment (Guernsey) Law 1985 (as amended)' had not been complied with. The Chairman explained that such a complaint, not related to dismissal, did not come under his jurisdiction.

The Tribunal noted that the Applicant conceded this part of her complaint in the presence of the Chairman, the Respondent and the Secretary to the Tribunal. In consideration of this the Tribunal was unanimous that no further consideration could be given to this issue

The Tribunal then turned to what the Applicant had referred to as “Health and Safety Matters”. This complaint was considered in the context of section 11 of the Law; this section of the Law is set out below in full and the Tribunal gave consideration to every clause of this section to establish if there were at least minimal grounds in the complaint for it to be heard within the meaning of the Law.

Dismissal in health and safety cases.

11. (1) *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) was that the employee-*

(a) *having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,*

(b) *being a representative of workers on matters of health and safety at work, or a member of a safety committee –*

(i) *in accordance with arrangements established under or by virtue of any enactment or other statutory provision, or*

(ii) *by reason of being acknowledged as such by the employer,*

performed, or proposed to perform, any functions as such a representative or a member of such a committee,

(c) *being an employee at a place where –*

(i) *there was no such representative or safety committee, or*

(ii) *there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,*

brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) *in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted)*

refused to return to, his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e), the question of whether any steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.

Conclusions

The Tribunal noted that both the Applicant and the Respondent were litigants in person and thus it was not necessarily the case that a complaint would be expressed in clear legal terms. Nor did the Tribunal necessarily expect that in the ET1 and ET2 (together with other submitted documents) there would be an extensive description of the Applicant asserting a detailed course of action in relation to health and safety matters leading to her dismissal, or being the principal reason for her dismissal. Thus the threshold for this complaint to be heard was relatively low. However there would need to be within the meaning of the Law, at the minimum, sufficient grounds in the written submissions which merited the complaint to proceed to a hearing.

It is evident from the Respondent's ET2 and its associated documentation that the Respondent chose to dismiss the employee on a number of grounds including the following allegations

- 1) Leaving a vulnerable client on their own
- 2) Constantly contacting the doctor's surgery requesting medication etc., stating she was a senior carer with the Respondent, a position she did not hold
- 3) Donating medical equipment to a local nursing home that belonged to another company
- 4) Contacting local builders asking for quotes to be made at the client's home without permission
- 5) Constantly leaving notes around the home with incorrect information for staff members
- 6) Being rude to staff members and the Respondent
- 7) Refusing to wear the provided uniform
- 8) Being intimidating and bossy to her work colleagues

- 9) Not informing the Respondent when calling out the Fire Service to a client's home

The Tribunal has no view on these allegations save that they find it very difficult to relate any of them to section 11 of the Law. Particular consideration however was given by the Tribunal to item 9 in the paragraph above i.e. the calling of the Fire Service to a client's home. On consideration even with this issue the Respondent's view is clearly stated in their documentation that they "applauded" the action and their only concern expressed in the ET2 is the Respondent would have wished to have been informed.

The Applicant's ET1 was devoid of any example of a course of action taken by her in relation to her proper observance of the health and safety requirements of her role leading to her dismissal save that of the contact with the Fire Service not notified to the Respondent. The Tribunal would take that view that a reasonable employer would expect any employee to inform them of such a contact with an emergency service at the earliest possible moment. Thus this issue is not considered by the Tribunal to merit consideration as a breach of section 11 of the Law.

The Tribunal's power to refuse to hear a complaint prior to hearing is set out in section 19 of the Law

'19(3)b The Tribunal may refuse to hear and determine a complaintif the complaint or application appears to the Tribunal to be frivolous or vexatious'

The Oxford Dictionary expresses "frivolous" as not serious, shallow, silly and "vexatious" as lacking sufficient grounds for action and seeking only to annoy the defendant.

It does not seem to the Tribunal that this complaint was silly or that the Applicant was not serious in bringing her complaint, however it seems, on the balance of probabilities, that this application lacks sufficient grounds for it to proceed to a Hearing. The Tribunal finds this complaint vexatious within its understanding of this term and therefore has refused to hear the complaint.

Mr Peter Woodward

20 January 2014

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Signature of the Chairman

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Date