

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Ms Alison Littlejones
Represented by: Advocate Paul Richardson

RESPONDENT: States of Guernsey acting by and through the Policy Council Human Resources Unit
Represented by: Ms Emily Bamber

Decision of the Tribunal Hearing held on 27 & 28 September 2012, 17 October 2012 and 21 January 2013

Tribunal Members: Mrs Tina Le Poidevin (Chair)
Mr Peter Woodward
Mr Roger Brookfield

DECISION

1. Unfair Dismissal Claim

- 1.1 The Applicant claimed that she had been unfairly dismissed by reason of her conduct within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended. Having considered all the written and oral evidence presented by both parties and having due regard to all the circumstances, the Tribunal determined that the Respondent's actions in dismissing the Applicant were those of a reasonable employer.
- 1.2 The Tribunal therefore found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was fairly dismissed and makes no award.
- 1.3 The Respondent's application for costs within the meaning of The Employment Protection (Recoverable Costs) Order, 2006, in the sum of £100, was considered and rejected by the Tribunal.

Mrs Tina Le Poidevin
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Signature of the Chairperson

8 February 2013
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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

FORM: ET3A

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended ("The Law"). The Employment Protection (Recoverable Costs) Order, 2006 ("The Order") is also referenced

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Ms Alison Littlejones (AL), claimed that she had been unfairly dismissed on the grounds of her conduct within the meaning of Section 6(2)(b) of The Employment Protection (Guernsey) Law, 1998, as amended.
- 1.2 The Respondent, the States of Guernsey (acting by and through the Policy Council Human Resources Unit), disputed the claim.
- 1.3 The Applicant was represented by Advocate Paul Richardson and assisted by Miss Rachel Donaldson.
- 1.4 The Applicant gave witness testimony in person under affirmation.
- 1.5 Form ET1, document bundle EE1 (containing copies of forms ET1 and ET2; a summary of the Applicant's claim for unfair dismissal; a fax dated 30 August 2011 from the Applicant to JB attaching an 'on call time sheet'; email correspondence dated 12 and 13 December 2011 between HR and the social worker supporting the Applicant relating to suspension and investigation; a letter dated 4 July 2012 from the General Social Care Council to the Applicant relating to investigation findings; a further letter dated 18 July 2012 from the General Social Care Council to the Applicant relating to investigation findings; a document detailing closing submissions (noted as EE2); and the Applicant's submissions in relation to the Respondent's application for costs (noted as EE3) were presented in evidence by the Applicant.
- 1.6 The Respondent was represented by Ms Emily Bamber and assisted by Mr Timothy Langlois. Mr Langlois was placed under oath in the event that he may have been required to give evidence.
- 1.7 Witness testimony in person for the Respondent was provided by SDC, Social Worker and Service Manager of the Assessment, Intervention and Youth Justice Team; LD, Human Resources Manager, HSSD; BC, Service Manager and Head of the Disability and Accommodation Services, HSSD; JLT, Senior Human Resources Manager, HSSD; JG, Director of Health & Social Care Services; NR, Senior Human Resources Advisor, HSSD; MC and SE (under oath) and JR, Family Placement Service Social Worker (under affirmation).
- 1.8 In addition to form ET2, document bundle ER1 (containing copies of form ET1 and supporting document; a summary of the Applicant's claim for unfair dismissal; form ET2 and supporting document; emails between AL and SDC in October 2011; letter from SDC to BC dated 13 October 2011; letter from SDC to AL dated 13 October 2011; letter from BC to AL dated 17 October 2011; investigation report signed by BC (undated); notes of meeting between AL, BC, NR and LN dated 20 October 2011;

notes of meeting between JW, BC and NR dated 20 October 2011; notes of telephone call between DC JS and NR dated 20 October 2011; notes of meeting between AD, BC and NR dated 14 November 2011; AD notes dated 9 August 2011; AD notes of meeting with SP and SDE dated 18 August 2011; referral form to Occupational Health and supporting statement dated 28 September 2011; notes of meeting between AL, BVC and NR dated 30 November 2011; emails between JB and BC dated 20 December 2011; Guernsey Press Article relating to AL's court appearance; letter from the Care Council for Wales to SDC dated 2 November 2011; letter from Occupational Physician to AD dated 7 November 2011; letter from SDC to Care Council for Wales dated 11 November 2011; letter from Occupational Physician to SDC dated 28 November 2011; letter from the Care Council for Wales to SDC dated 9 February 2012; emails between AD and BC dated 19 December 2011 forwarding email correspondence; email between BC and JW dated 22 December 2011; emails between AL, SDC and NR dated 28 December 2011; letter from JG to AL dated 28 December 2011; letter dated 28 December 2011 confirming disciplinary hearing details; notes of the disciplinary hearing dated 6 January 2012; completed General Social Care Council Complaint Form (Organisations); letter dated 9 February 2012 from the Care Council for Wales to SDC; letter dated 27 February 2012 from the General Social Care Council to SDC; letter dated 3 September 2012 from the Care Council for Wales to SDC; letter dated 3 September 2012 from the Care Council for Wales to AL; witness statements from SDC, LD, BC, NR, JR, JLT, JG, MC and SE; exhibits LD1 (email correspondence between LD, SDC, AL and LN re: AA), NR1 (email correspondence between JR and SP, forwarded to LD and NR re: disciplinary procedure), NR2 (email dated 28 December 2011 from NR to AD and BC re: AL Hearing), JBG1 (file note prepared by Mrs T for use at AL disciplinary hearing) and SECE1 (draft letter of dismissal from SE to AL dated 11 January 2012; email from MC to SE, copied to TL and JLT dated 11 January 2012 attaching draft letter of dismissal; signed letter of dismissal dated 12 January 2012 from SE to AL and Appendix C noting Standards of Conduct taken from the Disciplinary Procedure Guidelines for Managers); letter of appointment dated 8 October 2009 from SLS to AL; States of Guernsey Civil Service – Employee Information - Conditions of Service; States of Guernsey Civil Service – Employee Information – Conduct; Civil Service Code, States of Guernsey – Established Staff Directive – Disciplinary Procedures; Health and Social Services Department Policy – Drugs and Alcohol in the workplace G613; The Care Council for Wales Code of Practice for Social Care Workers; The Code of Practice for Employers of Social Care Workers; The Care Council for Wales (Conduct) Rules 2011; letter dated 25 January 2012 from Advocate Paul Richardson to SE dated 25 January 2012; letter dated 10 February 2012 from Emily Bamber to AFR Advocates; letter dated 17 February from Emily Bamber to AFR Advocates; letter dated 28 February 2012 from Emily Bamber to AFR Advocates; letter dated 11 April 2012 from Emily Bamber to Ms A Richardson at AFR Advocates; letter dated 13 September 2012 from Emily Bamber to AFR Advocates; letter dated 17 September 2012 from Advocate Paul Richardson to Ms E Bamber; letter dated 19 September 2012 from Emily Bamber to Advocate Paul Richardson; relevant extracts from The Employment Protection (Guernsey) Law, 1998; The Employment & Discrimination Tribunal (Guernsey) Ordinance, 2005; Part I of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 as amended; and a document detailing closing submissions (noted as ER7) were presented in evidence by the Respondent.

1.9 The following declarations were made by the Tribunal:

Mrs Tina Le Poidevin declared that she had worked for the Guernsey Police quite some time ago and had come into contact with SDC who had been employed as a Police Officer at that time. She had not had contact with SDC for many years.

Mr Peter Woodward, in his capacity as Chairman of the local MS Society, declared that he had been a speaker at a charitable event attended by one of the witnesses, MC.

Mr Roger Brookfield declared that he had previously undertaken fire safety work for the Health and Social Services Department some three or four years ago and had certainly come into contact with some of the witnesses as a result of his work.

No objections were raised by either party in relation to the above declarations.

1.10 During the Hearing, the Respondent was ordered by the Tribunal to provide copies of a Policy document G614 (submitted as ER2), the disciplinary hearing index cross-referenced to the relevant page numbers contained within ER1 (submitted as ER3), appropriately redacted notes of supervision meetings with AL (one dated 7 July 2011 was submitted as ER4) and the relevant paragraph from an almost illegible document dated 3 June 2011 was reproduced in handwritten form (submitted as ER5).

1.11 The Respondent presented an application for costs (noted as ER6) on the basis of the considerable expense and resources involved in its defence of the claim.

2.0 Facts Found by the Tribunal

2.1 The Applicant was employed by the States of Guernsey as a Social Worker within the Assessment and Intervention Team, Services for Children and Young People, Health and Social Services Department from 15 September 2009 to 12 January 2012.

2.2 The Applicant became an established member of staff on 8 October 2009.

2.3 The Applicant resided in staff premises.

2.4 On 26 July 2011 the Applicant admitted to AD (Acting Team Manager) that she had an alcohol problem which resulted in the Respondent's offer of support, including an Occupational Health referral.

2.5 An Employee Referral to Occupational Health form was completed, signed and dated 28 September 2011 by AD and countersigned by the Applicant on 30 September 2011.

2.6 On 12 October 2011, the Applicant drove her car, whilst under the influence of alcohol, to the Police Station in order to attend a course on the premises and was subsequently arrested and charged.

2.7 Whilst the Applicant was detained in custody at the Police Station, SDC and LD visited her and advised her that she was being suspended from work.

- 2.8 The following day, 13 October 2011, the Applicant appeared in court and was convicted of driving under the influence of alcohol, fined £700 and her driving licence was suspended for two and a half years.
- 2.9 A letter dated 13 October 2011 from SDC to the Applicant confirmed the decision to suspend her whilst a thorough investigation took place in accordance with the Established Staff Directive, Disciplinary Procedures.
- 2.10 This letter stipulated that:
- 2.10.1 the Applicant was not to visit any of the Department's locations except when instructed to do so by SDC or the investigating officer, although she could attend as a valid patient or visitor with prior notification being requested if she was to attend the Princess Elizabeth Hospital;
- 2.10.2 The Applicant could not use the internet facilities at the Princess Elizabeth Hospital;
- 2.10.3 The Applicant should have no work related contact with HSSD staff other than SDC;
- 2.10.4 The Applicant could leave the island during her booked holiday periods of 31 October to 1 November 2011 and 14 to 25 November 2011, but must not leave the island without prior permission from SDC.
- 2.10.5 The Applicant could put forward the name of a workplace colleague (in addition to support provided from JB) to provide her with support and guidance and utilise an independent counselling service in addition to support from Occupational Health.
- 2.10.6 SDC would seek to ensure that the investigation was completed as soon as possible.
- 2.11 An investigation into the circumstances surrounding the incident involving the Applicant on 12 October 2011 was subsequently carried out by BC and NR and, as part of this investigation, the Applicant was invited by letter dated 17 October 2011, to attend an investigatory meeting at 10.30 am on Thursday 20 October 2011 and advised of her right to be accompanied.
- 2.12 The investigation timeline was as follows:
- 13 October 2011 – investigation brief received
10 to 24 October 2011 – AD on holiday and sick leave
20 October 2011 – interviews held with the Applicant (accompanied by workplace colleague, LN), JW and DC JS
31 October to 1 November 2011 – Applicant out of island on holiday
14 November 2011 – interview held with AD
30 November 2011 – second interview with the Applicant
- 2.13 Following completion of the investigation, the Applicant was invited by letter dated 28 December 2011 to attend a disciplinary hearing on Friday 6 January 2012 at 9.30 am. This letter reminded the Applicant of her right to be accompanied and noted the enclosure of the Established Staff Directive for Disciplinary Procedures which noted the process to be followed.

- 2.14 The Applicant attended the disciplinary hearing accompanied by JR. She did not provide any documentation and did not call any witnesses.
- 2.15 Following the disciplinary hearing, it was conveyed to AL by JG that her act of attending work under the influence of alcohol and being convicted of driving whilst under the influence of alcohol during contracted working hours constituted gross misconduct and she would be recommending that AL be dismissed without notice or payment in lieu of notice.
- 2.16 JG's recommendation was conveyed to MC who confirmed her recommendation before forwarding the file to SE for final consideration.
- 2.17 SE upheld the decision and confirmed the Applicant's dismissal without notice or payment in lieu of notice on the grounds of gross misconduct in a letter to her dated 12 January 2012.
- 2.18 The Applicant was advised of her right to appeal to MC within five working days of the date of receiving the dismissal letter. She did not exercise this right.

3.0 The Law

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

- 3.1 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law notes that "it shall be for the employer to show (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and (b) that it was a reason falling within subsection (2)" and Section 6(2) notes "For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which (b) related to the conduct of the employee".
- 3.2 Section 6(3) of the Law notes "Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 and (15I), the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case."
- 3.3 Section 22(1) of the Law notes "Subject to the provisions of section 23, the amount of an award of compensation for unfair dismissal is a sum equal to – (a) six months' pay, ..." and Section 23(2) of the Law notes "Where in relation to such a complaint the Tribunal considers that, by reason of any circumstances other than those mentioned in subsection (1), it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal to any extent, the Tribunal shall, subject to subsection (3) and subsection (4), reduce that amount accordingly."

- 3.4 Section 31(9) of the Law notes “A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Law before the Tribunal any code of practice issued under this section shall be admissible in evidence, and if any provision of the code appears to the Tribunal to be relevant to any question arising in the proceedings (including, without limitation, any question as to whether an employer has acted reasonably or unreasonably for the purposes of section 6(3)) that provision shall be taken into account in determining that question.”

4.0 Conclusion

- 4.1 In any claim of unfair dismissal where a dismissal is proven to have taken place, the burden of proof lies with the Respondent to prove the reason for the dismissal and also that the dismissal was fair.
- 4.2 The Respondent noted in its letter of dismissal to the Applicant dated 12 January 2012, that she was being dismissed on the grounds of gross misconduct as a result of the Applicant's actions on 12 October 2011 whereby she was under the influence of alcohol at the workplace and driving her vehicle whilst under the influence of alcohol during working hours.
- 4.3 Whilst witness testimony referred to a number of factors, including references to the Applicant's poor judgment, the potential perception of inadequate support to service users, the impact of her inability to drive, the reputational damage to the service and the likelihood of her having to appear, in her professional role, in front of the magistrate who had convicted her of the drink driving offence, the Tribunal deems these considerations to be related to the Applicant's conduct on 12 October 2011 rather than her capability and, therefore, concludes that the Respondent's reason for dismissal was correctly applied.
- 4.4 Moving on to the reasonableness or otherwise of the dismissal, the Tribunal has considered all the evidence, whether or not this is explicitly noted within its conclusion.
- 4.5 In making specific reference to the Respondent's policy G613 relating to Drugs and Alcohol in the Workplace, it is clearly noted that "Staff must not consume alcohol, or any illegal substances, when undertaking duties on behalf of the Department", "It is a contractual requirement of the Department that employees present themselves for work in a reasonable state of health and free from the effects of alcohol, or any other substance. This means that employees have a responsibility to ensure they are fit for work at all times" and "Any contravention of this policy may result in disciplinary action".
- 4.6 The Respondent's Established Staff Directive on Disciplinary Procedures clearly notes dismissal without notice or payment in lieu of notice as a potential outcome in the case of an act of gross misconduct.
- 4.7 The Applicant stated that she could not recall any reference to the Established Staff Directive on Disciplinary Procedures or Policy G613 being covered at her initial employment induction or at any other time during her employment prior to the disciplinary hearing and also that she had not received a copy of the Established

Staff Directive on Disciplinary Procedures when it had been specifically referred to in the notice of disciplinary hearing letter. The Tribunal, however, prefers the evidence of the Respondent in this regard.

- 4.8 The Applicant contended that she had not, at any time prior to the disciplinary hearing or within the notice of disciplinary hearing letter, been explicitly advised that her actions on 12 October 2011 could potentially be categorised as gross misconduct and lead to her dismissal. Whilst the Respondent erred in not explicitly stating the disciplinary actions that may be taken within the notice of disciplinary letter, the Tribunal has concluded that the Applicant, as an intelligent, professional person, would have reasonably understood the seriousness of her actions and the potential consequences in relation to her employment as a social worker.
- 4.9 The Applicant stated that she had not had access to a document entitled 'Appendix C, Standards of Conduct' in view of her inability to access the intranet during her suspension. The Tribunal has again concluded that the Applicant, as an intelligent, professional person, would have reasonably understood the required standards of conduct expected of her in relation to her employment as a social worker.
- 4.10 The Applicant referred to the lack of support promised by the Respondent following her initial disclosure of her issues with alcohol and particularly the delayed referral to Occupational Health. The Applicant's health issue is indeed unfortunate, as is the Respondent's delayed assistance. However, the Tribunal notes that there is a joint responsibility of care within any employment relationship and the Applicant had ample opportunity to personally pursue the Respondent's offer of support or seek alternative support to assist her situation. Whether or not the Applicant would have committed the act of gross misconduct had she received the promised support is a matter of conjecture.
- 4.11 The Applicant was suspended from work pending investigation, an act that is separate from and does not form part of the disciplinary procedure.
- 4.12 The authority to suspend an employee lay with the Chief Officer or, in his absence, with the most senior employee. The fact that MC was on island and available at certain periods that day did not preclude an alternative senior employee from performing this duty.
- 4.13 The Tribunal believed that the Respondent acted with the best intentions of the department and service users by suspending the Applicant whilst still in Police custody although it may have been more appropriate to have waited until immediately after her release. In any event, the Tribunal does not consider this to be material in this case.
- 4.14 As the Applicant resided in the Respondent's staff accommodation, the Respondent erred by including in its suspension conditions that the Applicant would be precluded from attending its premises during the period of suspension. It was, however, clear that the Applicant continued to reside in this accommodation, making it apparent that this was an administrative oversight.
- 4.15 There were unfortunate delays in this case, with the disciplinary hearing taking place on 6 January 2012, almost three months following the incident of 12 October 2011.

Whilst holidays and sickness absence were noted as reasons for the delay, the Respondent should have endeavoured to progress matters more quickly.

- 4.16 The Applicant exercised her right to be accompanied during the investigation process and disciplinary hearing.
- 4.17 The Applicant was given the opportunity to state her case which is evidenced within the notes of the disciplinary hearing in that the Applicant had the opportunity to table documents or call any witnesses (and declined to do so), is recorded as actively participating in the discussion and in summing up the employee case, the Applicant was noted as having 'nothing further to add'.
- 4.18 If the Applicant considered AD to be crucial to her defence at the disciplinary hearing, she could have insisted upon an adjournment until AD was available to attend. Similarly, the Applicant could have asked the Tribunal to issue a summons for AD to attend the Tribunal as a witness.
- 4.19 The Applicant contended that her appeal would have been unfair and biased as her letter of appeal had to be sent to MC who was the person who recommended her dismissal. However, the flow chart entitled 'Outline of Formal Disciplinary Procedures' within the Established Staff Directive on Disciplinary Procedures clearly notes that any appeal would be to a panel of three Chief Officers consisting of one nominated by the Chief Executive, States of Guernsey and one by the employee, with the two nominees nominating the third panel member who would act as Chair of the panel. The documented procedure does not indicate unfairness or bias and the fact is that the Applicant chose not to exercise her right of appeal.
- 4.20 Whilst not a substantial factor in view of the amount of evidence presented, the Respondent erred in not providing a full set of written notes including all internal discussions.
- 4.21 Overall, the Tribunal concluded that the Respondent's procedural failings in this particular case were sufficiently minor in nature and concludes that its decision to dismiss the Applicant on the grounds of gross misconduct without notice or payment in lieu of notice was, having given careful consideration to all the circumstances surrounding this case, the decision of a reasonable employer.
- 4.22 The Respondent's application for costs in accordance with The Order on the basis of the considerable expense and resources involved in defending the claim has been considered by the Tribunal and rejected.

5.0 Decision

- 5.1 The Applicant claimed that she had been unfairly dismissed by reason of her conduct within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended. Having considered all the written and oral evidence presented by both parties and having due regard to all the circumstances, the Tribunal determined that the Respondent's actions in dismissing the Applicant were those of a reasonable employer.

- 5.2 The Tribunal therefore found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was fairly dismissed and makes no award.
- 5.3 The Respondent's application for costs within the meaning of The Employment Protection (Recoverable Costs) Order, 2006, in the sum of £100, was considered and rejected by the Tribunal.

Mrs Tina Le Poidevin
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8 February 2013
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Signature of the Chairman

Date