

## States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** **Mr Martyn Le Sauvage**  
Assisted by Mr DC, former employee of the Respondent

**RESPONDENT:** **Doyle Motors Limited**  
Represented by Mr Jeremy Rees, General Manager, Doyle Motors Limited

**Witnesses:**

**Called by the Applicant:**  
The Applicant himself

**Called by the Respondent:**  
Mr Rees  
Mr AN, (After Sales Manager/Sales Manager)

**Decision of the Tribunal Hearing held on 10 April 2013**

**Tribunal Members:** Mrs Paula Brierley  
Mrs Tina Le Poidevin  
Mr Andrew Vernon

**DECISION**

1. The Applicant asserted that he had been unfairly dismissed, by reason of redundancy, within the meaning of the Employment Protection (Guernsey) Law 1998, as amended.
2. Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal concluded that the action followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.
3. The complaint is therefore dismissed and no award is made.

Mrs Paula Brierley  
.....  
Signature of the Chairman

8 May 2013  
.....  
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.

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

## **Extended Reasons**

### **1.0 Introduction**

- 1.1 The Applicant, Mr Martyn Le Sauvage (MLS), claimed that he had been unfairly dismissed within the meaning of Section 5(2) of the Law in that the dismissal fell under the general provisions relating to fairness of dismissal under Section 6(2)(c) of the Law specifically that the Respondent did not have just cause for making him redundant and did not follow a fair procedure of selection.
- 1.2 The Respondent, Doyle Motors Limited, disputed the claim on the grounds that the Applicant was fairly dismissed on the grounds of redundancy and also denied that it failed to follow a fair selection procedure.
- 1.3 The Applicant was represented and assisted by Mr David Coomber (DC), a former employee of the Respondent.
- 1.4 The Applicant gave witness testimony in person under affirmation.
- 1.5 DC also took the affirmation.
- 1.6 The Respondent, Doyle Motors Limited, was represented by Mr Jeremy Rees (JR), General Manager.
- 1.7 JR gave witness testimony in person under affirmation.
- 1.8 Witness testimony in person for the Respondent was provided under affirmation by AN (After Sales Manager/Service Manager).
- 1.9 Form ET1 and document bundles EE1 (an email from JR to DC dated 19 February 2013, letters from AN to MLS dated 17 August 2012 and 22 August 2012, MLS' scoring matrix, MLS' payslip dated 24 September 2012, a payment print out and MLS's written statement) were presented in evidence.
- 1.10 In addition to form ET2 the Respondent submitted, document bundle ER2 (containing overview document/JR statement, contract of employment dated April 2006, witness statement of AN, outline of the process for redundancy used, copies of correspondence from the Respondent to the Applicant dated 17 August 2012 and 22 August 2012, scoring table, five payslips) and ER2 (letter from JR to the Applicant dated 3 September 2012), ER3 (copies of disciplinary documents – one undated headed 'MLS', an email from DC to AS dated 15 December 2009, a memo from AS to MLS dated 25 January 2008, a verbal warning dated 1 September 2008 from PP to MLS, a file note referring to instances occurring on 13 January 2009 and 6 February 2009, a written warning from AS to MLS dated 25 August 2009, an undated note and a final written warning letter dated 18 January 2011), ER4 (Disciplinary and Inadequate Performance Procedure), ER5 and ER6 (absence records for the Applicant and the other pooled member of staff).

### **2.0 Facts Found by the Tribunal**

- 2.1 Doyle Motors Limited is a privately owned car dealership which has been operating for some 40 years. The Company employed approximately 20 staff. The owner employs the General Manager to run the business and therefore does not take an active role within the Company.
- 2.2 The Applicant commenced employment with the Respondent during May 2006 as a service advisor.
- 2.3 Between six and seven technicians have been employed by the company for the last ten years.
- 2.4 The productivity of Apprentices, employed by the Respondent, grew as they progressed through their apprenticeship towards becoming fully qualified technicians.
- 2.5 Doyle Motors Limited employed four technicians, one service advisor, one after sales person, one parts manager, three sales people, one sales administrator, one accountant, one accounts clerk and three valeters.
- 2.6 A widely used ratio in the motor trade was one service advisor to four or five technicians.
- 2.7 Between July and August 2012, three technicians left the Respondent's employ for various reasons; all three technicians were fully skilled.
- 2.8 The Respondent's senior management commenced a recruitment search for technicians after the first technician announced his intention to leave, on 20 June 2012.
- 2.9 The recruitment search took the form of advertising locally in the Press, on a local recruitment website and enlisting the help of John Gibson, a specialist recruitment company covering the South West of the UK. Additionally, a £500 referral fee was offered to anyone on the team who could put forward a successful candidate for a technician role.
- 2.10 One offer was made but was subsequently turned down by the candidate. Other enquiries received were from unskilled people or people who were unable to move to the Island.
- 2.11 The Respondent's senior management considered an application for an essential housing licence would be unsuccessful.
- 2.12 The Respondent's senior management looked at other options such as advertising in France and wider in Europe, whether there was anyone in the business who could become a technician and the possibility of changing their opening hours.
- 2.13 AN, on behalf of the Respondent, consulted with the after sales team at Honda's headquarters in Slough. Along with the company directors, all came to the conclusion that due to the ongoing level of available technicians, a reduction from two service advisors to one was necessary for commercial expediency.
- 2.14 The pool for redundancy was determined as being the service advisors, of which there were two.
- 2.15 The Applicant was in the pool of two. AN on behalf of the Respondent consulted with the two affected. Neither of the affected employees made any suggestions that would enable both to keep their positions.

- 2.16 A scoring process was completed by AN. The two pooled employees were shown their own scores only.
- 2.17 Although the parties could not agree upon the actual dates when the meetings/discussions had been held, they did agree that consultation discussions had taken place. The two discussions were followed up with letters to the Applicant dated 17 August and 22 August 2012 respectively.
- 2.18 The Applicant did not challenge or appeal his scoring.
- 2.19 The Applicant scored lower than the other employee in the pool in the categories of, attendance, disciplinary record and flexibility.
- 2.20 Attendance records showed that the Applicant's sickness absence record, over a five year period in the run up to his termination, totalled 59.5 days as opposed to the other pooled employee's record of 9 days over the same period. In four of those five years the Applicant's sickness had been consistently higher than the other employee.
- 2.21 Disciplinary records showed that the Applicant had been spoken to about incidents in January 2008, September 2008, August 2009, April 2010 and January 2011.
- 2.22 The Respondent has a written Disciplinary and Inadequate Performance Procedure which was referred to and attached to MLS' contract of employment.
- 2.23 The Disciplinary and Inadequate Performance Procedure stated that "all disciplinary and inadequate performance warnings will remain in force for three months".
- 2.24 There were no other vacancies available at the time for the Applicant to move into.
- 2.25 The Applicant was given the opportunity to appeal the final decision to JR within three days of the final meeting with MLS which took place on 22 August 2012. This was also confirmed in a letter of the same date.
- 2.26 The Applicant wrote a letter dated 30 August 2012 to the Respondent asking that the decision be changed and he be reinstated to his previously held position. The Applicant did not appeal or dispute his scoring.
- 2.27 JR responded to the Applicant in a letter dated 3 September 2012, reiterating the background behind the decision and explaining that they did not see a way of coming to a different conclusion. JR also reiterated his willingness to supply a reference and talk to any potential new employers.
- 2.28 The Applicant's effective termination date was 22nd August 2012.

### **3.0 The Law**

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

- 3.1 Section 5(2) of the Law notes that an employee shall be treated as dismissed by his employer if “the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice”.
- 3.2 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 ..... (c) was that the employee was redundant”.
- 3.3 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”.
- 3.4 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 month’s 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”.
- 3.5 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 Summary of Parties main submissions**

##### **4.1 Applicant**

- 4.1.1 The Applicant commenced employment with the Respondent in May 2006, encouraged by the owner he quickly identified and made suggestions to make the service department more profitable.
- 4.1.2 Initially he ran the service department on his own for a number of months until he was joined by another sales advisor.
- 4.1.3 The Applicant believed that the Respondent’s owner had told two Service Managers previous to AN to find a way of “getting rid” of the Applicant.
- 4.1.4 In July 2012, AN was recruited from the UK and appointed as the After Sales Manager.
- 4.1.5 In early August changes were made to the allocation of work within the department.

- 4.1.6 At some point between 17 and 20 August 2012 the Applicant was invited to a meeting where AN explained that the Respondent had to reduce the service advisors by one.
- 4.1.7 On 22 August 2012, the Applicant was invited to a meeting and told that he had not scored as well as the other person in the pool and was therefore being made redundant with immediate effect. The Applicant's scoring was made available to him but he did not see the other person's scoring at that time.
- 4.1.8 The Applicant did not challenge or appeal against the scoring because he saw no point in doing so.
- 4.1.9 On 30 August 2012, the Applicant wrote to JR asking him to reconsider his decision and reinstate the Applicant.
- 4.1.10 The Applicant felt that his disciplinary record should not have been taken into account because any warnings (as referred to within the Respondent's Disciplinary and Inadequate Performance Procedure) expired after a three month period.
- 4.1.11 The Applicant was surprised to be selected for redundancy over a non-local employee, particularly given his dedication to the Company.

## **4.2 Respondent**

- 4.2.1 The Respondent had employed between six and seven technicians for the last ten years.
- 4.2.2 It was a recognised statistic in the motor trade that one service advisor is required to support and take bookings for every five technicians in the workshop.
- 4.2.3 Between July and August 2012, three technicians left the Respondent's employ for various reasons over which the Respondent had no control.
- 4.2.4 A recruitment effort was commenced on 20 June 2012 as one of the technicians had informed the Respondent of his possible departure.
- 4.2.5 Despite best efforts to recruit replacements, through recruitment agencies, advertising and offering rewards for staff referrals, the Respondent was unable to secure suitable technicians.
- 4.2.6 The Respondent considered options for rethinking its business strategy and they consulted with Honda headquarters and the Respondent's directors.
- 4.2.7 The conclusion of those consulted was that the only option was to restructure.
- 4.2.8 Through AN, the Respondent sought suggestions from the two pooled employees in the hope of enabling them to keep their positions.
- 4.2.9 No ideas were put forward.
- 4.2.10 AN conducted a pooling process and scored each of the pooled service advisors against, attendance, disciplinary record, job knowledge, flexibility in work, training and time keeping.

- 4.2.11 The Applicant scored lower in attendance, disciplinary and flexibility whereas all other scores were equal with the other service advisor.
- 4.2.12 The Applicant was informed on 22 August 2012 that he had been selected for redundancy due to the restructure of the service department and that his termination would take immediate effect.
- 4.2.13 The Applicant was given the right to appeal the scoring, which he did not take up.
- 4.2.14 The Applicant wrote a letter to the Respondent on 30 August asking that the decision be changed and he be reinstated to his previously held position.
- 4.2.15 The Respondent wrote back to the Applicant on 3 September 2012 reiterating the reasons for the restructure, confirming that a different conclusion could not be reached.

## **5.0 Conclusion**

- 5.1 It was clear in this case that the Applicant had been dismissed on the grounds of redundancy.
- 5.2 In order to determine whether a redundancy (within the meaning of the Law) is fair or unfair an employer must first demonstrate that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.
- 5.3 There is also a need to establish whether or not the employer made all reasonable attempts to minimise or avoid redundancies, that adequate consultation took place before any final decision was made and that a pool of employees for selection was clearly identified.
- 5.4 A number of documents were produced in evidence, all of which have been read and considered even if they have not been specifically referred to within this document and, based on all the evidence presented, the Tribunal has concluded that:
  - 5.4.1 The Tribunal found that the Respondent acted quickly and had thoroughly explored ways to try to recruit replacement technicians and thus avoid the need to reduce the number of sales advisors. They also sought external assistance to try and identify a solution other than reducing the number of sales advisors.
  - 5.4.2 Whilst the Applicant believed that the owner wanted to remove him the Tribunal concluded that the business had a genuine commercial reason for the restructuring which had resulted in a redundancy situation.
  - 5.4.3 The Tribunal found no fault with the redundancy procedure followed by the Respondent in relation to the consultation with the employees and its desire to find ways to mitigate against redundancy. The process of fair selection, warning of the possibility of redundancy and consultation with employees were all followed in an appropriate way. The Respondent had given full regard to The Commerce and Employment Code of Practice on Handling Redundancy and further, the Applicant made no attempt to appeal against his scoring.
  - 5.4.4 The Tribunal felt that it was fair and reasonable for the Respondent to compare the disciplinary records of the pooled employees within the scoring matrix (albeit that

these would have been disregarded from any subsequent disciplinary action under their HR policy).

5.4.5 For the reasons described above the Tribunal concluded that the overall process and actions followed by the Respondent were those of a reasonable employer.

**6.0 Decision**

6.1 The Applicant asserted that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law 1998, as amended, by reason of redundancy.

6.2 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal concluded that the action followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

6.3 The complaint is therefore dismissed and no award is made.

Mrs Paula Brierley

.....

8 May 2013

.....

**Signature of the Chairman**

**Date**