

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANTS: Mr Martyn Hicks
Mr John Thornes
Mr Christopher Lamb
Mr Paul Kerry
Represented by: Mr Andrew Castle

RESPONDENT: Access Limited
Represented by: Mr Ian Walker

Decision of the Tribunal Hearing held on 8 August 2013

Tribunal Members: Ms Kathy Tracey (Chair)
Ms Paula Brierley
Mr Norson Harris

DECISION

Having reviewed and duly considered all the evidence submitted and the representations of all parties to the hearing, the Tribunal finds that all four of the Applicants were unfairly dismissed under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended.

The Tribunal was offered no evidence of a reason to reduce the amount of the Award under section 23(2) and did not consider that there was any circumstance to do so.

The claim is therefore upheld and the Respondent shall pay to the applicants the amounts as follow: To Mr Christopher Lamb: **£20,930.13**; To Mr John Thornes: **£15,592.50**; To Mr Paul Kerry: **£14,072.00**; To Mr Martyn Hicks: **£12,519.10**. These amounts being in accordance with section 22(1)(a) of The Employment Protection (Guernsey) Law, as amended, being equivalent to six months pay as evidenced in the hearing.

The Tribunal also finds that, in the case of Mr Martyn Hicks, the Respondent is in breach of Section 2(1) of the Law which entitles the employee to be provided by his employer, on request, within seven days of that request, a written statement giving particulars of the reasons for his dismissal. The Tribunal orders an Award of half a month's pay, a sum of **£1,043.26**.

Ms kathy Tracey
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Signature of the Chairman

12 September 2013
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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 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 Prior to the hearing an application had been made by the Respondent to consolidate the complaints. The Respondent claimed that these cases were identical in substance and arose from the same material circumstances and involved the same material witnesses. The Respondent also claimed it would be overly onerous on the resources of a small business to defend all the complaints separately.
- 1.2 It was agreed by all parties, and by the Tribunal Chairman, that these claims would be heard at one consolidated hearing. This agreement was made under the power vested in the Tribunal under Section 5 of The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.
- 1.3 The Applicants were represented by Mr Andrew Castle and gave witness evidence under Oath or Affirmation. They presented the following document bundles: EE1; EE2; EE3. Mr John Hart was called as a witness for the Applicants.
- 1.4 The Respondent was represented by Mr Ian Walker who also gave witness evidence under Oath. He presented the following bundles: ER1; ER2; ER3. Mr Adam Hillaby was called as a witness for the Respondent.
- 1.5 The Applicants, Mr Martyn Hicks, Mr Christopher Lamb, Mr John Thornes and Mr Paul Kerry, in their ET1 forms alleged unfair dismissal, within the meaning of The Employment Protection (Guernsey) Law, 1998, as amended. Namely, that they were laid off in such a way as to lead them to believe the lay-off would be long term or permanent.
- 1.6 The Applicants also claimed that the Respondent, Access Limited, had failed to provide a written statement of the reasons for dismissal within the meaning of Section 2(1)(a) of The Employment Protection (Guernsey) Law, 1998, as amended.
- 1.7 The Respondent, in its Response form ET2, denied that the Applicants had been dismissed and claimed that they had been laid off in line with the terms in their employment contracts.
- 1.8 The Tribunal heard verbal evidence from the Respondent and was provided with documentary evidence including witness statements, employment contracts and pay history printouts (EE2). The Respondent's witness Mr Adam Hillaby also gave verbal evidence and a written statement.
- 1.9 The Tribunal also heard verbal evidence from each of the Applicants and was provided with documentary evidence including witness statements, and correspondence between the parties. The Applicants' witness Mr John Hort also provided verbal evidence and a written statement.

1.10 The circumstances of all cases arise from the alleged termination of employment of each of the four Applicants on the 7 January 2013. The principle issue to be determined was whether those circumstances could reasonably be considered a lay-off under the terms of the Applicants' contracts, or whether the exercising of that contractual term was unreasonable and could therefore be construed to be a fundamental breach of contract and therefore be considered to be unfair dismissal.

2.0 Facts Found

2.1 On the 4 January 2013 a business meeting was called by Mr Walker which took place at the Fleur du Jardin Hotel. In attendance were Mr John Hort and Mr Adam Hillaby. Mr John Hort had been involved in the business for 28 years; he is currently working in the business as a contractor. Mr Adam Hillaby was the manager and had been working for the Company for approximately 10 weeks at this time. He is still employed by the Company.

2.2 At the meeting Mr Walker informed the others in attendance that costs would have to be cut as the business was losing money. Two jobs that the Company had been expecting had not materialised. Mr Walker said the Company would have to reduce staffing levels and it was decided that five men would be laid off.

2.3 During the meeting they discussed various staff and their attendance, punctuality and productivity. These discussions were based on the views of those in attendance and not on documented records. They decided on five names, four of whom were the Applicants in this matter. The question as to whether Access Limited would have to give notice was raised, but Mr Walker stated that as they would be 'laid off' under the terms of their contracts no notice would need to be given.

2.4 Mr Hillaby was instructed to lay the men off on Monday and to get their keys and instruct them to collect their tools and to send them home immediately.

2.5 On Monday 7 January, Mr Hicks, Mr Thornes and Mr Lamb were spoken to by Mr Hillaby. There was some dispute as to the specific words used by Mr Hillaby; however, it was found by the Tribunal that it was reasonable for the three Applicants to assume from the words, tone and actions of Mr Hillaby that they were being dismissed. They were also told that Mr Kerry shared their fate.

2.6 They were told immediately to hand in their keys, to collect their tools and to then to go home, which they did.

2.7 Mr Hillaby offered no information about any future work nor gave them any hope for any future work.

2.8 Mr Kerry was alerted by Mr Hicks of the situation. Mr Kerry then rang Mr Hillaby who confirmed he had no work. Mr Kerry also assumed this meant he was 'sacked' and therefore no longer working for Access Limited.

2.9 A new employee was hired by Access Limited on the 9 January 2013, in a role for which two of the Applicants appeared to be qualified.

- 2.10 A small number of short term or contract workers have also been given work at Access Limited since 7 January 2013, for various roles in the yard, and one person has been employed as an 'improver'.
- 2.11 None of the Applicants were offered any of this work.
- 2.12 Over the period of the Applicants' employment, the usual method employed by the Company to facilitate a reduction in working time was to reduce overtime or weekend working. On no previous occasions were the workers asked for their keys or to collect their tools.
- 2.13 Mr Hicks wrote to Access Limited on January 15 2013 asking for written reasons for his dismissal. He received a response, dated 22 January 2013, stating this was a lay off, not a dismissal, giving no reasons, nor an indication as to any timeframe in which he might be offered work.
- 2.14 There was no further communication from Access Limited regarding the likelihood of further work to any of the Applicants until March 21 2013, when a text was sent to Mr Kerry, offering him work in April 2013.
- 2.15 The other Applicants did not receive any offers of work.

3.0 Conclusions

- 3.1 The Tribunal found that Mr Walker did not act within the bounds of what would be expected of a reasonable employer when he instructed Mr Hillaby to 'lay off' the four Applicants without any notice, consultation or compensation.
- 3.2 The Tribunal found that there was a fundamental breach of contract as the workers were not given any notice of 'lay off', and were immediately sent home with no pay nor any hope of work in the near future. This therefore amounted to a dismissal.
- 3.3 The length of time which had elapsed from January 7 until the first offer of work by text to Mr Kerry is deemed to be unreasonable, particularly in light of the lack of communication from Access Limited in the intervening 11 weeks.
- 3.4 Therefore having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal unanimously finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicants were unfairly dismissed.
- 3.5 In accordance with Section 22(3)(a) of the Employment Protection (Guernsey) Law, 1998, as amended, the Respondent shall pay each Applicant an Award as follows: Mr Christopher Lamb: £20,930.13; Mr John Thornes: £15,592.50; Mr Paul Kerry: £14,072.00; Mr Martyn Hicks: £12,519.10.

3.6 The Tribunal also finds that the Respondent was in breach of Section 2 (1) of the Law in failing to provide written reasons to Mr Hicks when he requested them. There is no evidence to support the claim that Mr Lamb, Mr Thornes or Mr Kerry requested written reasons. The Tribunal therefore makes an Award of £1,043.26 to Mr Hicks in this regard.

Ms Kathy Tracey
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Signature of the Chairman

12 September 2013
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Date