

FORM: ET3

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Conrad Maurice Ceillam
Represented by: Mr Ceillam represented himself

RESPONDENT: Aqua-Star Limited
Represented by: Mr Geoffrey Peter John Willson, Managing Director

Witnesses: Called by the Tribunal:

Mr Carl Rive
Ms Sue Le Cras
Mr Lee Le Poidevin

Decision of the Tribunal Hearing held on Wednesday 13 November, 2013

Tribunal Members: Ms Helen Martin (Chairman)
Ms Christine Le Lievre
Mr Andrew Vernon

DECISION

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that the dismissal was not due to an assertion of a statutory right relating to an infringement of health and safety in accordance with Section 11(1) and therefore, in accordance with Section 22(1)(b) of The Employment Protection (Guernsey) Law, 1998, as amended, the Tribunal makes no award.

Ms Helen Martin
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Signature of the Chairman

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 (“the Law”)

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Mr Conrad Ceillam represented himself and gave oral evidence in addition to his submission on form ET1 and document bundle EE1. Mr Ceillam gave evidence under oath.
- 1.2 The Respondent, Aqua-Star Limited, was represented by Mr Geoff Willson, the Managing Director of Aqua-Star Limited, in addition to his submission on form ET2 and document bundles ER1, ER2 and ER3. Mr Willson gave evidence under oath.
- 1.3 Mr Carl Rive, Mr Lee Le Poidevin and Ms Sue Le Cras were called as witnesses by the Tribunal.
- 1.4 The Applicant declared on his ET1 form that he earned £14,475.02 in the last 26 weeks of his employment. The Applicant’s salary was undisputed by the Respondent on the ET2, Response form.
- 1.5 The Applicant, Mr Conrad Ceillam, claimed that he had been unfairly dismissed by reason of the assertion of a statutory right relating to health and safety on 18 April, 2013.

2.0 Facts Found

- 2.1 The Applicant was employed by Aqua-Star Limited as a boat builder from 15 May, 2012 until his dismissal, communicated by a letter dated 18 April, 2013 and verbally by Mr Geoff Willson on 22 April, 2013.
- 2.2 On 18 April, 2013 the Applicant injured his leg in a fall whilst working at Aqua-Star Limited. The Applicant continued working following the accident for the remainder of the working day and did not request medical assistance.
- 2.3 Aqua-Star Limited had two qualified first aiders and the normal process in circumstances of dealing with an accident at work was for employees to report the accident to their supervisor and the office in order to formally record the accident in the accident book and for the supervisor and/or office staff to seek medical assistance depending on the severity of any injuries that had been sustained.
- 2.4 At the close of business, the Applicant left Aqua-Star Limited on his motor bike and travelled to a retail outlet ‘Blockbuster’ to commence his evening part time job.
- 2.5 The Applicant telephoned Mr Carl Rive on Friday 19 April to advise him about the extent of his leg injury and informed him that he could not come in to work as a direct result of his injury. The Applicant informed Mr Carl Rive that he had attended

the Accident and Emergency Department at the Princess Elizabeth Hospital, the previous evening shortly after commencing work at 'Blockbuster.'

- 2.6 The Applicant received a medical certificate dated 22 April, 2013 for a ruptured tendon and certification for five weeks absence.
- 2.7 The Respondent dismissed the Applicant in a letter dated 18 April by stated reason of redundancy due to a downturn in the business. The letter of dismissal was posted to the Applicant's address. The Applicant was informed that his employment had ended by reason of redundancy by Mr Geoff Willson on Monday 22 April when the Applicant visited the office to hand deliver his medical certificate.

3.0 The Law

- 3.1 The Applicant claimed he had been unfairly dismissed within the meaning of paragraph 5(2)(a) of the Employment Protection (Guernsey) Law, 1998 as amended; "the contract under which he/she is employed is terminated by the employer, whether it is so terminated by notice or without notice".
- 3.2 The Tribunal took into account paragraph 6(3) which states "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 size and administrative resources of an 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 The Tribunal referred to Section 15 paragraph 15(1) and 15(2) of the Law relating to the qualifying period for claiming unfair dismissal and specifically the reference to section 11(1) and 11(2): dismissal in health and safety cases, and Section 12 dismissal on grounds of assertion of a statutory right 12(1), 12(2), 12(3).

4.0 Conclusions

- 4.1 The Tribunal heard considerable oral evidence during the Hearing and considered all the written evidence before it, whether specifically referenced in this judgement or not.
- 4.2 With regard to the alleged accident at work, the Tribunal placed weight on the witness testimony of both the Applicant and his line manager Mr Carl Rive that the Applicant had continued to work after his fall on 18 April, 2013 until the end of the working day. The Tribunal noted the evidence of Advocate David Domaille in a letter attached to form ET1, that Mr Ceillam had attended the Princess Elizabeth Hospital "directly" after completing further work at the behest of his line manager at Aqua-Star Limited and the Applicant's evidence (A3, Pge 5, EE1 refers) that "Later that afternoon" he attended the Accident and Emergency Department at the Princess Elizabeth Hospital. The Applicant told the Tribunal at the hearing that he travelled on his motor bike, albeit with some difficulty, after leaving Aqua-Star Limited at the end of the day to work at the retail outlet 'Blockbuster' in the evening. The Applicant expressly stated in the hearing that this had occurred before he sought medical

attention and the Tribunal noted that this directly conflicted with the submission on his ET1 form and attachments.

- 4.3 The Tribunal preferred the witness testimony of Mr Carl Rive and Mr Geoff Willson relating to the circumstances that occurred after the Applicant's fall at work on 18 April, 2013 and determined that the Applicant had not complained to the Respondent about health and safety issues leading up to his accident at work, with the noted exception of the "Cherry Picker" machine, which was not relevant to the fall at work. He had not complained about health and safety issues after the accident on his last day of employment either. Neither had the Applicant refused to work in the alleged unsafe conditions at Aqua-Star Limited prior to his dismissal. In fact the Tribunal placed considerable weight on the evidence that the Applicant had continued to work on the other side of the boat after his fall and the witness testimony that he operated the clutch on the tractor with his injured left leg before the end of the working day. The burden of proof was on the Applicant to show that there was an automatically unfair reason for dismissal on the grounds of health and safety. The Tribunal did not find that the evidence presented as witness testimony and within EE1, supported the Applicant's assertion. In the view of the Tribunal, the Applicant did not bring to the employer's attention, by reasonable means, the circumstances that he latterly sought to rely on and that he subsequently stated were harmful to health and safety, prior to his dismissal. As a result, the Tribunal concluded that the dismissal was not due to the Applicant's assertion of a statutory right in relation to a health and safety infringement prior to his dismissal.
- 4.4 Had the requirement for the qualifying period to claim unfair dismissal been met, the Tribunal may have looked further into evidence surrounding the process for carrying out a redundancy dismissal but this was not a matter for the Tribunal to consider on this occasion.

5.0 Decision

- 5.1 Having considered all the evidence presented and the representations of both parties (and ET1 and ET2 forms) and having due regard to all the circumstances, the Tribunal found that, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed.
- 5.2 In accordance with Section 22(2)(b) of The Employment Protection (Guernsey) Law, 1998, as amended, the Tribunal makes no award.

Ms Helen Martin
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Signature of the Chairman

16 December 2013
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Date