Case No: ED002/13

FORM: ET3

States of Guernsey

EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT:	**Mr Brian Allen**
Represented by:	Mr Allen represented himself
RESPONDENT:	**Carpetright PLC**
Represented by:	Ms A Chakravarty, Barrister, Eversheds LLP

WITNESSES:

Called by the Tribunal: CP, Sales Assistant

Called by the Respondent: TLP, Store Manager

RS, Regional Sales Manager

Decision of the Tribunal Hearing held on 13 and 14 June, 2013

Tribunal Members: Ms Helen Martin (Chairman)
Mr Roger Brookfield
Ms Alison Girollet

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 under the provisions of Section 5(2)(a) of The Employment Protection (Guernsey) Law, 1998 as amended the Applicant was unfairly dismissed.

When calculating the Award under Section 22(1)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, the Tribunal determined that the Applicant's pay during the six months prior to the termination of his employment was £12,600.00

Amount of Award: **£12,600.00**

Ms Helen Martin	29 July 2013
……..	.....
Signature of the Chairman	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.

FORM: ET3A

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 Brian Allen represented himself and gave oral evidence in addition to his submission on form ET1 and document bundles EE1 through to EE10.

1.2 The Respondent, Carpetright PLC was represented by Ms A Chakravarty, a Barrister from Eversheds LLP in the United Kingdom. TLP, the store's local manager and RS, the regional manager were called as witnesses for the Respondent, in addition to form ET2 and document bundles ER1, ER2, ER3, ER4 and ER5.

1.3 The Tribunal called CP as a witness and current employee of Carpetright PLC. CP gave witness testimony under Affirmation.

1.4 The Applicant declared on his ET1 Application form that he earned £12,600.00 in the last twenty six weeks of his employment. The Applicant's salary was undisputed by the Respondent on the ET2, Response form.

1.5 The Applicant, Mr Brian Allen claimed that he had been unfairly dismissed by reason of constructive unfair dismissal on 22 December, 2012.

2.0 Facts Found

2.1 The Applicant was employed by Carpetright PLC as Assistant Manager at its Guernsey store from 15 January, 2008 until the Claimant resigned claiming that he had been constructively dismissed on 22 December, 2012.

2.2 There were three employees based at the Guernsey store, consisting of a Store Manager, Assistant Store Manager and a Sales Assistant.

2.3 During the week ending 28 January, 2012 the Respondent introduced a new computerised overtime system whereby overtime hours accrued by store staff would be input by the Store Manager.

2.4 The Applicant telephoned JC, HR Business Partner, on 4 July, 2012, on the advice of the Store Manager, to advise that he had been undergoing some medical tests and was suffering from a medical condition.

2.5 On 7 September, 2012 the Applicant injured his back moving laminate flooring. The Applicant worked on his own in the store on the 8 September, 2012. Subsequently, the Applicant commenced a period of sick leave due to back pain arising from the accident at work from 9 September, 2012.

2.6 The Respondent wrote to the Applicant on 13 September, 2012 to inform him that he would not receive Company sick pay for his absence. The Applicant telephoned

JC, HR Business Partner, to state that he believed that the decision not to pay him Company sick pay was unfair. The Applicant also stated that there was not enough support in the Guernsey office and that he had worked without a break on occasions and been on his own in the store during numerous periods of absence on the part of his colleagues.

2.7 RS and JC held a meeting with the Applicant upon his return to work on 20 September, 2012.

2.8 The Applicant commenced three weeks annual leave on 27 September, 2012. JC wrote to the Applicant on 17 October, 2012 stating that the Respondent required a medical report and enclosing a standard medical questions sheet and consent form.

2.9 During a health and safety inspection on 24 September, 2012, the Respondent was advised of requirements in reporting accidents at work. The Respondent completed an accident report on 25 September in relation to the Applicant's accident at work on 7 September, 2012.

2.10 The Applicant did not respond to the letter from JC on 17 October, 2012 and the Respondent wrote to the Applicant again on 5 November, 2012 and reiterated the request for a medical report to be obtained.

2.11 On 6 December, 2012, the Respondent received a letter sent on behalf of the Applicant by his legal representative, Advocate Tom Crawfourd. The letter set out numerous allegations regarding bullying and harassment, breaches of health and safety and personal injury. The letter also confirmed that the Applicant may exercise his right to resign if no proposals to deal with the Applicant's complaints were received by the close of business on 17 December, 2012.

2.12 The Respondent wrote to the Applicant on 17 December, 2012 inviting him to attend a grievance meeting on 2 January, 2013. Multiple copies of the letter (EE5, EE6, EE7 and EE8 refer) were sent to the Applicant by post and recorded delivery with a copy to the Applicant's legal representative by email.

2.13 The Applicant's legal representative sent a letter dated 21 December, 2012 stating that the Applicant did not wish the complaints that he had raised in the letter of 6 December, 2012 to be investigated as a grievance and confirmed that the Applicant would exercise his right to resign.

2.14 The Applicant resigned from his employment by way of an email to the Respondent on 21 December, 2012 and letter dated 21 December, 2012.

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 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 also took into account paragraph 23(2) of the Employment Protection (Guernsey) Law, 1998, as amended which allows the provision for the Tribunal to consider a possible reduction of an Award.

4.0 The Applicant's submission

4.1 The Applicant's submission was by ET1 form dated 8 January 2013, document bundle EE1 through to EE10 and by oral testimony under Affirmation.

4.2 In his opening statement, Mr Allen told the Tribunal that he had resigned because he had lost all trust and confidence in his employer. In addition, Mr Allen alleged that he had been expected to work long hours without a break and that the store was understaffed. He alleged that the Company paid scant attention to health and safety issues and that he had been bullied and harassed by RS, the regional manager and that his time in lieu hours had been taken away without recompense. He alleged that he had been refused sick pay following an accident at work and that he had reached a point where he had no option but to resign.

4.3 The Applicant claimed that short staffing problems led to the Respondent adopting very poor health and safety and employment practices at the store. He claimed that he was made, on a regular basis, to lift heavy stock in an inappropriate way and without adequate assistance and work very long hours up to 6pm, 8pm or even 10pm. He claimed that he had to work multiple days without a lunch break or a break of any description and work at the store either alone or with one other colleague at times of staff absence on account of, for example, holidays or sickness. The Applicant alleged working practices placed him under huge physical and mental strain and caused him to suffer from back problems, sleep problems and other effects of psychological stress.

4.4 The Applicant alleged that his concerns were swept aside on the basis that the Respondent expected its employees to work in such conditions and that other Carpetright stores in the United Kingdom operated in the same way.

4.5 The new regional manager, RS replaced the former regional manager, GP, in January 2012 and requested that the Applicant provide him with his personal mobile phone number so that he could call and text him in relation to work at any time. The Applicant did not wish to pay for the cost of work calls and extend the use of his personal mobile into work use and declined to do this. The Applicant alleged that RS communicated his displeasure by adopting a menacing tone and cited this matter as the context and background to his subsequent allegations of bullying and harassment against RS.

4.6 The Applicant alleged that the Respondent unilaterally wrote off all of his accrued overtime in January 2012 amounting to 288 hours, when the change was made to a computerised overtime system.

4.7 The Applicant alleged that he injured his back in manoeuvring a consignment of laminate tiles onto display and that the Respondent failed to document it and report it to the Health and safety Executive in Guernsey, in accordance with its health and safety obligations.

4.8 The Applicant told the Tribunal that on Saturday 8 September, 2012 he had had to work alone in the store, in contravention of health and safety rules, despite being unwell and suffering from his back injury the previous day and requiring bed rest.

4.9 The Applicant was medically certified as unfit to work by his Doctor between 10 and 19 September, 2012 inclusively as a result of the back injury he suffered at work on 7 September, 2012. The Applicant received a letter dated 13 September, 2012 from RS advising the Applicant that he would not receive sick pay for this period of sickness, citing the Respondent's discretionary policy on sick pay.

4.10 During the Applicant's absence from 10 to 19 September, 2012, the two other Guernsey employees were required to produce written statements about the Applicant citing as many issues concerning the Applicant's work and conduct that they could think of. Both TLP and CP warned the Applicant in advance of his return to the office and apologised to him.

4.11 A meeting was held on 20 September 2012, following the Applicant's return to work, with RS and JC. The Applicant did not receive any warning of the meeting in advance and the meeting was convened in the middle of the store around an office desk.

4.12 RS read the written statements of TLP and CP out to the Applicant and interrogated him on the contents. The Applicant believed that both RS and JC were deliberately seeking to discredit, embarrass and humiliate him in front of his colleagues and the store's customers. The Applicant raised his concerns about working practices and the 288 overtime hours or time in lieu that he had accrued and that he had been told were written off. The Applicant alleged that during the meeting he was questioned closely about his medical condition in a prying fashion and that this was a gross breach of privacy and data protection rights.

4.13 During the first weeks of October, the store was subject to an unexpected inspection by an Officer from the Health and Safety Executive in Guernsey and a report was subsequently submitted (ER1 page 79-82 refers) in which the conclusion was that the Respondent's working practices did not meet health and safety requirements and that they must be changed to comply with the Law. The report stated that carpets of up to 30 tonnes were being manually lifted with scaffolding poles.

4.14 The Applicant refused to consent to a medical report because he noted from the consent form that the purpose was to assess his fitness for his employment in order to make a decision regarding his long term employment.

4.15 On 23 October, 2012, the Applicant described a revamp of the store and how he had had to participate in an extensive clear up afterwards with TLP. The Applicant, having worked through his lunch break took a call on his personal mobile lasting an estimated 15 seconds and RS had become angry and shouted at the Applicant in front of the store's customers and his colleagues. The Applicant told RS that he

would submit a formal complaint about his bullying and victimising behaviour towards him.

4.16 On 30 October, 2012 the Applicant discovered that his pay had been reduced due to his sickness related absence caused by the accident at work in September, 2012 and at the end of November, 2012 two further days were deducted erroneously. He was advised that this would be corrected in his December salary, if his manager, TLP, clarified the matter.

4.17 The Applicant told the Tribunal that he had had to alter his holiday in May and September after it had been booked at short notice due to the store running a promotion day and that this had resulted in him flying out later and losing two days of his holiday in Spain.

4.18 After the Applicant sought legal advice about his predicament, a letter was sent by Advocate Tom Crawfourd to the Respondent on 6 December, 2012 advising that the Applicant had grounds to resign and treat himself as constructively dismissed.

4.19 The Applicant received multiple copies of a letter, some by recorded delivery (EE5, EE6, EE7 and EE8 refer) in response from the Respondent, inviting him to attend a grievance hearing and requiring him to attend the post office to collect the recorded delivery items on more than one day. The Applicant believed that the Respondent had deliberately put him to the inconvenience and anguish of attending the post office on a daily basis when he could have been handed the letter at work.

4.20 On or around 20 December, 2012 the Applicant looked into the matter of his alleged excess holiday and time in lieu further and discovered that the office calendar had been tampered with to record falsely that he had taken 28 days holiday in the holiday year to date rather than the 26 days holiday he had actually taken. Evidence was presented to the Tribunal (EE3 and EE4 refer) of a photograph that he had taken of the holiday calendar to verify that the calendar had been manipulated. Importantly, under cross examination the Applicant clearly had a genuine belief that this action was deliberate and had not occurred as a result of an error. In addition, he discovered that the office overtime system had been manipulated to reduce his new 23.5 hours' time off in lieu total down to 8.5 hours.

4.21 The Applicant immediately tendered his resignation by letter dated 22 December, 2012 on the basis that he had been constructively dismissed.

5.0 Witness Testimony: CP

5.1 CP had declined to be a witness in the Tribunal when first asked by the Applicant and therefore was summonsed as a witness of the Tribunal. It was confirmed by Ms Chakravarty, Barrister and legal representative of the Respondent, that CP would not suffer any detriment to his employment in giving evidence at the hearing.

5.2 CP told the Tribunal that he had been employed by the Respondent since July 2008.

5.3 CP told the Tribunal that the working conditions were not the best and that the health and safety requirements had not been implemented in the way he would

have expected. CP stated that prior to 2013 they had manually lifted carpet rolls off the truck with scaffolding poles and that he had been engaged in very heavy lifting since his first day of employment. CP said that he had undergone training on lifting on the intranet two months after joining the Company.

5.4 CP stated that it was envisaged there would be seven employees at the Guernsey store but this never materialised and there had always been three. With holidays this meant that for roughly seven weeks of the year the store was run without one person. In response to cross examination by the Applicant, CP confirmed specifically that the Applicant told the truth, stuck up for others, looked after him in the workplace and had helped him with personal matters. CP said that TLP frequently forgot or denied what he had said and that his catch phrase was "never said that."

5.5 CP stated that he had recorded TLP on his mobile phone telling him to put together a written statement about the Applicant to "get rid of him" but that when he had admitted the recording to TLP he had been told to delete the recording in front of TLP, otherwise he would be dismissed.

5.6 CP stated that RS had not liked the Applicant. CP was asked to write up a statement by RS, over the phone, of mainly negative bullet points about the Applicant. CP said that RS disliked the Applicant because he stood up and refused to be bullied.

5.7 CP told the Tribunal that the Applicant had not been afraid to be outspoken about health and safety issues; he repeatedly told everyone about the issues and that he was evidently unhappy about the lack of support from Carpetright PLC.

5.8 CP stated that TLP was due to leave the Company the day after the Tribunal Hearing and that he had told him that he would be paid a large claim for petrol money owed since the start of his employment, within a few days' time.

5.9 Under cross examination, CP said that he had not raised the issue of understaffing as much as he should have with TLP, the store manager.

5.10 Referring to the alleged accident at work, CP said that he had helped move the laminate tiles on 7 September, 2012 and that the Applicant had complained of hurting his back at the time and that the Applicant could not bend down for the rest of the day.

5.11 CP said that he was left to do the work in the store on occasions but that he did not have any concerns with regard to the distribution of work. He told the Tribunal that he may have mentioned in his written statement that he felt that he was doing more work than he should be doing.

5.12 CP confirmed that he had heard "fairly loud" shouting by RS directed at the Applicant in relation to him answering his mobile phone.

5.13 Referring to the preparation of the statements, CP said that both he and TLP had sat at different desks in the store and prepared bullet points of any issues that they had with the Applicant and that he had "felt bad" about being made to prepare such a statement.

6.0 Witness Testimony: TLP

6.1 TLP (ER2 refers) stated that he had been employed for five years as the store manager and that he was directly responsible for all the staff rotas and day to day management of the store.

6.2 TLP stated that the Applicant did not raise any serious concerns about working practices at the store.

6.3 TLP stated that the 288 hours of overtime worked by the Applicant had been written off by the regional manager RS but that this had not been raised with him as a specific concern by the Applicant.

6.4 TLP told the Tribunal that he had not been made aware of the Applicant's alleged accident at work.

6.5 TLP denied requiring CP to prepare written statements criticising the Applicant and denied that the Applicant had played any part in clearing up the alleged mess caused in the store by the revamp on 23 October, 2012

6.6 TLP confirmed to the Tribunal that two days had been incorrectly deducted from the Applicant's pay in November but that under his instruction, this had been corrected in the December payroll.

6.7 Under cross examination, TLP told the Tribunal that he had been paid for any absence due to sickness that he had taken.

6.8 Under cross examination, TLP confirmed that he expected to receive £8750.00 as a backdated claim for petrol money by the following weekend and that his last day of employment was the day following the Tribunal hearing.

7.0 Witness Testimony: RS

7.1 RS told the Tribunal that he had been employed by the Respondent for 15 years and that he was responsible for 21 stores within his region and that he acted as a line manager to each of the store managers in his region.

7.2 RS said that when he took over the Regional Sales Manager role he was not aware that the Applicant had raised any concerns regarding working practices at the store or health and safety issues.

7.3 RS denied adopting a menacing tone in relation to the denial by the Applicant to his request to contact the Applicant on his personal mobile phone.

7.4 In relation to the loss of overtime hours accrued, RS said that he had understood that most of the 288 hours had been taken as time in lieu by the Applicant at the point the new computerised system was introduced.

7.5 In relation to the alleged accident at work, RS said that the accident had not been reported to him or TLP at the time and the Company was not aware of it until 10 or 11 September, 2012.

7.6 RS said that he could not recall a conversation with the Applicant on Saturday 8 September about his back injury and confirmed that the Applicant worked in the store on his own on that day due to other staff absences.

7.7 RS stated that he decided not to pay the Applicant sick pay for his absence due to the alleged injury at work because of the Applicant's alleged high sickness record.

7.8 RS stated that during the meeting with the Applicant on 19 September, 2012 the Applicant had raised an allegation that sales records had been manipulated to show that sales had been made by a different member of staff. RS asserted that he raised issues regarding the behaviour of the Applicant at the same meeting directly arising from the written statements prepared by CP and TLP.

7.9 A health and safety report was provided to the Company by a States of Guernsey Health and safety Inspector (ER1, Pge 79-82 refer) on 8 October, 2012 and RS said that the Company took steps to address the issues raised in the report and subsequent letter dated 2 November, 2012 (ER1, pge 88-89 refer). The concerns included unsafe manual handling and lifting practices, including lifting carpet rolls with a scaffold pole, being carried out by Carpetright staff.

7.10 RS denied shouting at the Applicant about the use of his mobile phone in the store on 23 October, 2012.

7.11 In relation to the letter from the Applicant's legal representative dated 6 December, 2012, RS confirmed that the Company had decided to treat the letter as a grievance and had invited the Applicant to a grievance hearing on 2 January, 2013 but that the Applicant had resigned on 21 December, 2012.

7.12 Under cross examination, RS claimed that he was not aware of the sickness records relating to the Applicant but that he had relied on the feedback from TLP in this regard and that he did not have any proof that any of the 288 hours of overtime owed to the Applicant had been taken as time in lieu by the Applicant.

7.13 The Tribunal ordered that the sickness and holiday records for all Guernsey employees in 2012 should be supplied to the hearing. Document ER4 was admitted as evidence by the Respondent. ER4 documented the absences of the Applicant; however, the records for TLP and CP were missing in contravention of the order.

7.14 RS confirmed to the Tribunal that TLP had made a claim for petrol money of £8750.00 and that this would be investigated and, if accepted, would be paid after the end of his employment which he confirmed was the day after the Tribunal.

7.15 Under cross examination, RS confirmed to the Tribunal, that the Company paid accrued overtime or time in lieu hours when an employee left the Company, if they were deemed to be genuine. He confirmed that in the case of the Applicant he did not know if the 288 hours that had been recorded in the manual records prior to the introduction of the computerised overtime system, were genuine or not.

7.16 Under cross examination and in relation to the new lifting machinery that was purchased late in 2012, RS stated that he had not known that it remained unwrapped and unused and that he had anticipated that it would be put to immediate use.

8.0 Closing submission: Mr Brian Allen

8.1 In his closing submission (EE10 refers) the Applicant told the Tribunal that although he was not a lawyer he knew that there were implied terms in any contract of employment that meant that an employer must act responsibly and that he had resigned because he had lost trust and confidence in Carpetright PLC.

8.2 In summing up, the Applicant stated that he had demonstrated that the Respondent had not treated him reasonably in relation to:

- Inadequate staffing
- Health and safety issues including manual lifting
- Working long hours (without a break)
- Working solo (eg 8 September, 2012)
- Excessive overtime and lost accrued overtime hours
- Injury at work
- Refusing to pay sick pay relating to the latter injury
- Invasion of privacy relating to medical tests
- Prising negative comments from colleagues
- Harassment to the Applicant and intimidation and victimisation by shouting at the Applicant
- Unauthorised deductions from wages
- Short notice of changes to booked holidays
- Manipulation of the holiday calendar
- Falsification of computer records for time off in lieu

9.0 Closing submission: Ms A Chakravarty

9.1 In summing up (ER5 refers), Ms Chakravarty told the Tribunal that the Respondent denied the dismissal and asserted that the Applicant resigned voluntarily. The Respondent denied that it breached any fundamental terms of the Applicant's contract of employment and, in any event, asserted that any breaches were waived through the Applicant's conduct.

9.2 Ms Chakravarty denied that the Guernsey store was understaffed and compared the staffing to other Carpetright stores in the UK to demonstrate this.

9.3 Ms Chakravarty accepted on behalf of the Respondent that there had been a breach of an express term of the Applicant's contract with regard to the removal of the accrued overtime hours from the Applicant's records but denied that it constituted a fundamental breach of contract.

9.4 On behalf of the Respondent Ms Chakravarty denied that the failure to report the accident at work on 7 September, 2012 was an issue of dispute during the Applicant's employment.

9.5 In relation to the meeting on 19 September, 2012, Ms Chakravarty claimed that whilst the venue may not have been ideal it was not unreasonable in all the circumstances and that the methodology was not intended to undermine the Applicant's trust and confidence in the Respondent and that if the Tribunal disagreed, in any event, it did not amount to a repudiatory breach of contract.

9.6 In relation to the request for a medical report, Ms Chakravarty asserted that this was not a breach of privacy but a genuine wish for the Respondent to find out medical information in order to support the Applicant.

9.7 In relation to the gathering of statements about the Applicant, Ms Chakravarty denied that these were gathered improperly and stated that this was not a conspiracy or act of victimisation.

9.8 Ms Chakravarty asserted that the Applicant did not put the Respondent in a position to redress problems properly, having never issued a formal grievance about the alleged understaffing and overtime in writing, with anyone at Carpetright PLC, at any point.

9.9 In relation to the refusal to pay sick pay to the Applicant following the alleged accident at work, the Respondent asserted that it was entirely within the discretion of the Company to determine this and that it was not sufficiently unreasonable to go to the heart of the contract making it untenable for the contract to continue.

9.10 Ms Chakravarty submitted that the deduction of holiday pay in November 2012 was an administrative error that this was corrected in the December payroll. In addition, the Respondent claimed that the sending of four of the same letters to the Applicant by ordinary mail and recorded delivery (EE5, EE6, EE7, EE8 refer) was a mistake by the HR department and not designed to cause any upset.

9.11 Ms Chakravarty asserted in the summary that there was no single repudiatory breach by the Respondent and that cumulatively there was no 'last straw' event that was sufficiently unreasonable to entitle the Applicant to terminate his contract and that the Applicant delayed in terminating his employment in any event and thereby waived any repudiatory breach(es) that may have been found to have occurred.

9.12 Ms Chakravarty concluded by stating that if the Tribunal found that there had been a dismissal, that it was fair and for some other substantial reason. Finally, Ms Chakravarty invited the Tribunal to reduce any Award for constructive dismissal on grounds that it was just and equitable to do so under section 23(2) of The Employment Protection (Guernsey) Law, 1998, on account of the Applicant's conduct.

10.0 Conclusions

10.1 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.

10.2 One of the Tribunal's functions was to look at the employer's conduct as a whole and determine whether it is such that the employee cannot be expected to put up with it. Whether an alleged breach is fundamental or not is a matter for the Tribunal to decide upon when considering the evidence put before it. Importantly, it is only behaviour that is wholly inappropriate to the situation and the employee's position within the Company that can form the basis of a fundamental breach of contract.

10.3 In assessing the evidence put to the Tribunal, consideration was given to the conflicting evidence from witnesses and, as a result, the corresponding weight that would be placed on such evidence in determining the decision of the Tribunal.

10.4 The Tribunal took the view that the Respondent was understaffed at times due to staff absences and was persuaded by witness testimony and the holiday chart (EE3 and EE4 refer) that the Applicant had appeared to suffer the greatest detriment compared to the other employees in this regard. The Tribunal was persuaded that the Applicant had raised his serious concerns about this repeatedly to the Respondent, albeit not in a formal written complaint.

10.5 With regard to the alleged accident at work, the Tribunal placed weight on the Respondent's submission that the failure to report the accident was not a dispute during the Applicant's employment and therefore not relevant to the alleged unfair constructive dismissal.

10.6 The Tribunal was persuaded that the meeting that was held on 19 September, 2012, with the Applicant, was unreasonable in terms of the venue and lack of advance notice provided to the Applicant. In addition, the Tribunal regarded the method of the collection of written statements by the Respondent from the two other Carpetright PLC employees in Guernsey as wholly unreasonable and unethical. The Tribunal placed considerable weight on the credible evidence given by CP that he had been required under pressure to produce negative statements about the Applicant and that the store manager, TLP had told him that this was to "get rid" of the Applicant. The Tribunal was persuaded that he had recorded this on his mobile phone and had subsequently had to delete the recording in front of TLP for fear of dismissal himself. The Tribunal took the view that any statements made about the Applicant should have been given to the Applicant in advance of the meeting and that according to the principles of natural justice the Applicant should have been given the opportunity to read the statements and respond without being ambushed by the Respondent in the middle of the store, when any customers or colleagues could have overheard his response. Bearing in mind that the Applicant had been informed about the method of collecting written statements by CP and the express purpose of doing so, as recorded on his mobile phone, the Tribunal took the view that the actions of the Respondent in this regard significantly undermined the implied contractual duty of trust and confidence.

10.7 With regard to the request for the medical report, the Tribunal was persuaded that the Applicant had a genuine belief that this was not to support him but to give consideration to his fitness to perform the role in relation to potentially ending his employment.

10.8 In relation to the issue of not paying the Applicant's sick pay after he injured his back at work; the Tribunal was persuaded that whilst this was discretionary and not contractual, it was unreasonable in the circumstances. Whereas it appeared that the Applicant and TLP had always received sick pay before, RS decided not to pay on this occasion despite the Applicant's injury subsequently being treated by the Respondent as a work related injury and that the reasoning behind RS's decision was based on facts which were found through testimony and cross examination at the Tribunal, to be incorrect. The decision therefore was considered by the Tribunal to have been made arbitrarily and operated in this particular set of circumstances as a "penalty" against Mr Allen. The Tribunal noted that there was opportunity and time for RS to have reconsidered and reversed his decision but he chose not to do so in spite of the Company filing a late accident report relating to the injury at work. The Tribunal regarded the consideration by the Respondent of TLP's large claim for petrol money as further evidence of unfavourable treatment of the Applicant. In particular, the Tribunal noted that the Company's consideration of the petrol claim, that TLP stated would be paid to him after the Tribunal and after his last day of employment, was in stark contrast to the refusal to pay the Applicant sick pay for a medically certified work related injury.

10.9 The health and safety issues raised repeatedly by the Applicant were confirmed in the report by the Health and Safety Executive on 8 October, 2012 and the Tribunal was persuaded by witness testimony under cross examination that the recommended actions remained outstanding and were not sufficiently remedied by the time the Applicant resigned on 21 December, 2012.

10.10 Regarding the deduction of two day's pay in the November payroll the Tribunal regarded this as an error but nevertheless a technical breach of an express term of the Applicant's contract and noted that this breach remained unresolved at the time of the Applicant's resignation. The Tribunal accepted that this was corrected on 27 December, 2012 as part of the leaver's process and remedied during the December payroll after the end of the Applicant's employment. The Tribunal was persuaded at the time of his resignation that the Applicant had a genuine belief that this was further evidence of victimisation by the Respondent and a further manifestation of the earlier breach of contract relating to the removal of 288 accrued hours of overtime.

10.11 The Tribunal was persuaded that the act of sending multiple duplicate letters to the Respondent by recorded delivery and ordinary mail (EE5, EE6, EE7 and EE8 refer) causing him to attend the post office on more than one day, was a sequence of unfortunate errors by the Respondent but regarded the impact on the Applicant as unreasonable and that the individual acts in themselves caused the Applicant further psychological distress that could only serve to widen the breach in trust and confidence between the Applicant and his employer. The fact that the Applicant was still working for the Respondent at the time and that the letter could have been handed to the Applicant personally in the store was noted by the Tribunal.

10.12 In determining the decision the Tribunal took into account that a contract of employment may only terminate without notice if the other party has committed a fundamental breach of contract and that any breach (or breaches) must go to the heart of the contract. Importantly, the Applicant must resign in response to the

breach and must not have delayed too long in terminating the contract, otherwise it can be found that the breach was waived and the contract affirmed.

10.13 The Tribunal regarded the Applicant as a credible witness and took into account that he was unrepresented at the hearing when assessing the weight that was placed on various elements of his evidence. In particular, the Tribunal regarded the failure by the Respondent to provide the appropriate health and safety practices as reported extensively by the Health and Safety Executive in the report of 8 October, 2012 constituted a breach of the implied term of the Applicant's contract of employment of the duty to provide a safe system of work and a safe workplace and in contravention of The Health and Safety at Work (General) (Guernsey) Ordinance, 1987, as amended.

10.14 The Tribunal regarded the unilateral removal of 288 overtime hours worked or time in lieu by the Respondent as a breach of an express term of the Applicant's contract of employment (ER1, Pge 37, A.7 Staff Handbook refers) that went to the heart of the contract. As such the Tribunal regarded this as a repudiatory breach of the Applicant's contract of employment. The Tribunal took the view that the Applicant had not accepted the removal or deletion of the 288 overtime hours that he had worked in excess of his contractual hours as evidenced by his continued attempts shown in his witness testimony, to challenge this matter and to propose alternative solutions. The working practices at the store and the recording of working hours was well established and indeed the hours of overtime accrued logged and certified as such by the store manager (TLP). The Tribunal determined that whilst the employer kept good records of time being accrued, there was no evidence as to how employees reduced those accrued hours, such testimony from TLP being particularly vague on this point. The Tribunal was persuaded the Applicant had suffered a considerable detriment in the removal of the 288 accrued working hours that the Company owed to him. Similarly the Tribunal found a lack of evidence regarding any meaningful dialogue or consultation before the accrued overtime hours were "removed".

10.15 The Tribunal gave careful consideration as to whether the Applicant delayed too long in terminating his contract and in doing so losing his right to claim constructive dismissal by affirming the contract and, determined that in the view of the Tribunal, the Applicant had continued to perform his contract of employment *under protest*, without affirming the contract. The preservation of the Applicant's rights and expressly that he had not affirmed his contract were documented in the letter from Advocate Crawfourd on 6 December, 2012. The Tribunal gave weight to the evidence from the Applicant that demonstrated that he continued to raise the matters of great concern relating to working practices and harassment and victimisation of himself right up until his resignation and that his resignation letter cited that he had resigned on the basis that he had been constructively dismissed. The Tribunal took into account that the issues relating to the Applicant's holiday pay, a technical breach of an express term of his contract, were not resolved at the time of his resignation and that neither were the very significant health and safety measures that were recommended by the Health and Safety Inspector in his report from early October, implemented and in full operation. Therefore the Tribunal concluded that it was only at the time of his resignation that it had become clear to the Applicant that his attempts to solve the problems relating to his employment had failed.

10.16 The Tribunal regarded the actions of the employer viewed as a whole as evidence of a repudiatory breach of the implied contractual duty of trust and confidence. In determining the decision, the Tribunal examined the evidence and significance of the incidents carefully and concluded that the breaches of implied and express terms were cumulatively the effective cause of the Applicant's resignation.

10.17 The Tribunal concluded the actions of the Respondent cumulatively had resulted in a fundamental breach in the contract of employment that went to the heart of the contract, sufficient to entitle the Applicant to terminate his contract without notice. In the light of the fundamental breach of contract, the Tribunal did not consider it to be appropriate to reduce any Award made to the Applicant.

11.0 Decision

11.1 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 unfairly dismissed.

11.2 In accordance with Section 22(2)(b) of The Employment Protection (Guernsey) Law, 1998, as amended, and Section 23(2) of the Law, the Tribunal orders that the Respondent shall pay the Applicant an award of £12,600.00 The Tribunal does not regard there to be sufficient reason to reduce the Award.

Ms Helen Martin	29 July 2013
……..	……..
Signature of the Chairman	Date