

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mrs Debbie Langmead
Represented by: Mr Bob Lanning, Regional Officer Unite Union

RESPONDENT: The Scout Association Bailiwick of Guernsey
Represented by: Mr Wayne Bulpitt

Tribunal Members: Mr P Woodward (Chairman)
Mr Andrew Vernon
Mrs Christine Le Lievre

Hearing date 31 March 2016

Decision of the Tribunal

The complaint by the Applicant was one of alleged unfair dismissal as defined in Section 5(2)(a) of the Employment Protection (Guernsey) Law 1998, as amended. The Respondent resisted the complaint and considered that the Applicant, by her actions, had resigned from her employment.

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 finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed. In respect of this decision the Tribunal awards the Applicant £7,800.

Mr Peter Woodward
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Signature of Chairman

15 April 2016
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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 Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended (the Law)

Extended Reasons

1.0 Introduction

- 1.1 The complaint by the Applicant Mrs Debbie Langmead was one of alleged unfair dismissal as defined in section 5(2)(a) of the Employment Protection (Guernsey) Law, 1998, as amended. The Applicant was represented by Mr Bob Lanning, Regional Officer of Unite the Union.
- 1.2 The Respondent, The Scout Association, Bailiwick of Guernsey was represented by Mr Wayne Bulpitt. It was the Respondent's contention that Mrs Langmead was not dismissed and that, by her actions in October 2015, she had resigned from her post.
- 1.3 The Applicant submitted a bundle of documents marked EE1.
- 1.4 The Applicant gave evidence under Oath on her own behalf.
- 1.5 The Respondent submitted a bundle of documents marked ER1, including a written statement by Ms Julie Bulpitt and a further document, ER2.
- 1.6 Mr Wayne Bulpitt gave evidence under Oath on behalf of the Respondent.
- 1.7 The parties agreed that the contract of employment had ended on 31 October 2015 and in the six months immediately preceding this date actual pay by the Respondent to the Applicant was £7,800.

2.0 Facts Found

- 2.1 The Respondent is an unincorporated legal entity and is a charity with a local constitution, president, patron and an executive committee. There are three sub-committees that run day-to-day activities.
- 2.2 Mr Bulpitt is a chairman of the HQ sub-committee at the scouting centre, Les Rue Maingys Activity Centre ('Les Maingys').
- 2.3 The Applicant was employed as a part-time administrator, based at Les Maingys, between 8 September 2014 and 31 October 2015.
- 2.4 For the period 8 September 2014 to June 2015 the Applicant was the sole administrator employed by the Respondent. In June 2015 a supervisor ('X') was hired and her role was to supervise the Applicant and a part-time maintenance operative.
- 2.5 Thus, in October 2015 the Respondent had three employees, including the Applicant. The Tribunal notes that in addition to these employees there are some 110 adult volunteers in Guernsey to assist in a wide range of scouting activities.

- 2.6 On 30 September 2015 the Applicant was asked by Mr Bulpitt to attend a meeting with him on the following morning, 1 October 2015.
- 2.7 The meeting took place, as scheduled, at 9.00 am in the lounge of the Les Maingys hostel and lasted approximately 20 to 30 minutes; no other person attended this meeting and the nature of the discussion that took place between Mrs Langmead and Mr Bulpitt is disputed.
- 2.8 Subsequent to the meeting Mrs Langmead immediately left her place of work, at Mr Bulpitt's suggestion, and returned home. Thereafter she did not return to her place of work.
- 2.9 The Applicant sent an email to Mr Bulpitt at 10.04 am on 1 October 2015 stating that she would need a reference and would be in touch with him after taking advice. (ER1 Tab B refers).
- 2.10 At 10.38 am 1 October 2015 Mr Bulpitt sent an email headed "Our Discussion" and attached a document headed as "without prejudice". This document proposed a salary payment of one month to the end of October 2015 and a week's pay amounting to £300, as a redundancy payment. It was stated that this offer would be withdrawn if Mrs Langmead disclosed the details to any person other than her spouse and immediate family. (ER1 Tab C refers).
- 2.11 At 10.43 am on 1 October 2015 Mr Bulpitt sent an email to the Applicant with a reference attached. (ER1 Tab D refers). The Tribunal notes the reference stated as follows "I can confirm that Mrs Debbie Langmead was employed by the Bailiwick of Guernsey Scout Association".
- 2.12 On 8 October 2015 Mr Bulpitt stated he sent an email to the Applicant asking her to contact him; the Applicant did not reply.
- 2.13 On 12 October 2015 Mr Bulpitt sent a letter to Mrs Langmead's home address referring to his emails of the 1 October and 8 October. In this letter he requested that she attend a meeting on either 15 or 16 October to "finalise this matter". Mrs Langmead did not reply to this communication nor did she attend a meeting with Mr Bulpitt.
- 2.14 On 23 October 2015 Mr Lanning, the Applicant's union representative, sent a letter to Mr Bulpitt stating that he understood the Applicant's role still existed and was being performed by another employee who had been recently appointed. Mr Lanning requested clarification as to how the decision to make Mrs Langmead redundant had been arrived at. (EE1 Tab 2 refers).
- 2.15 Mrs Langmead was paid her contracted salary to 31 October 2015.
- 2.16 On 6 November 2015 Mr Bulpitt sent a letter to Mr Lanning denying that the Applicant had been dismissed. (EE1 Tab 3 refers).

3.0 Mr Wayne Bulpitt

- 3.1 Mr Bulpitt read from a prepared 'opening statement' (ER2 refers), outlining the background to the reason for him calling the meeting on 1 October at which he stated "all of the concerns and issues were discussed (with Mrs Langmead) and several options outlined."
- 3.2 Mr Bulpitt read from a witness statement. (ER1 Tab A refers).
- 3.3 Mr Bulpitt said Mrs Langmead made him aware in early 2015 that there was too much work for her to undertake in her scheduled hours and, as a result, a Centre Supervisor, (X), was hired in June 2015. The decision to hire was driven by a desire of the Respondent to support Mrs Langmead in her role.
- 3.4 At this time Mr Bulpitt advised the Applicant that despite the provision of training by a chartered accountant it had become apparent that she lacked basic bookkeeping abilities. In addition Mr Bulpitt also discussed some errors with her as they had resulted in complaints from external clients and raised concerns as to her capabilities. Mr Bulpitt also referred to a witness statement (ER1 Tab I) from Ms Julie Bulpitt, that detailed both the face-to-face and telephone support provided to the Applicant. Mr Bulpitt believed that all reasonable efforts had been made to bring the Applicant up to a level of competence.
- 3.5 On each occasion that Mr Bulpitt gave critique the Applicant always had an excuse, she was either too busy, an email system was at fault or she had not been instructed properly as to how to undertake a duty. In Mr Bulpitt's opinion these were excuses without merit. His belief being confirmed, as the newly appointed supervisor found the electronic systems to be reliable and duties performed by her were both efficient and met client requirements.
- 3.6 On 1 October 2015 Mr Bulpitt met the Applicant and carefully explained that the nature of the meeting would be "without prejudice" and Mrs Langmead acknowledged that she understood what this meant. Mr Bulpitt stated that rather than undertake capability procedures that could lead to a disciplinary hearing and dismissal she could consider voluntary redundancy terms. The meeting concluded with Mr Bulpitt inviting Mrs Langmead to go home and advising her that he would send the terms of the voluntary redundancy to her by email.
- 3.7 Mr Bulpitt referred to their email exchanges on 1 October 2015 and noted that at no time did Mrs Langmead refer to herself as being dismissed.
- 3.8 Further attempts were made by Mr Bulpitt to contact the Applicant to bring the matter to a conclusion, however, on receipt of the letter from Mr Bob Lanning dated 23 October 2015 (ER1 Tab F and EE1 Tab 3 refer), that stated Mrs Langmead had been dismissed; it became apparent to Mr Bulpitt that Mrs Langmead had misunderstood their meeting and subsequent communications.
- 3.9 On 6 November Mr Bulpitt sent a letter to Mr Lanning stating that Mrs Langmead had left her employment voluntarily and had not been dismissed. (EE1 Tab 3 refers).

- 3.10 Having completed his witness statement Mr Bulpitt was asked to explain the use of the word “investigations” in the fourth paragraph of the statement and he confirmed that this referred to more informal enquiries rather than any formal investigations held in advance of a disciplinary process. No records were kept of these enquiries.
- 3.11 When asked as to why he did not document the discussion of 1 October 2015 Mr Bulpitt stated that he wished to explore the issue of the Applicant’s continuing employment on an “informal”, non-recorded and “without prejudice” basis.
- 3.12 Mr Bulpitt was asked how he had become knowledgeable of the ‘without prejudice’ protocol and responded by stating he had become aware of it in the conduct of his own business. In this case he did not assume a prior dispute with the Applicant; rather he sensed unhappiness and discontent and thought this was the best way to proceed.
- 3.13 When asked as to why he offered the Applicant possible redundancy terms Mr Bulpitt stated that he considered this a fairer option rather than pursuing the route of “capability”. He told the Tribunal that if he had had the firm intention to make her redundant he would have had a Scout Association colleague with him.

4.0 Mrs Debbie Langmead

- 4.1 Mrs Langmead read from a witness statement. (EE1 Tab 5 refers).
- 4.2 On the first day of her employment, 8 September 2014, Mrs Langmead was given four hours training on invoices, quotes and the basic system ‘XERO’. In her opinion this training was too intense for her first day of employment.
- 4.3 Mrs Langmead was then left mostly to her own devices with Mr Bulpitt being occasionally available to give some advice during her first week of employment.
- 4.4 Mrs Langmead found the office to be extremely disorganised, with many unanswered emails and the books were incorrect. She informed the Tribunal she worked extremely hard to clear up the backlog, often working beyond her contracted hours.
- 4.5 Mrs Langmead discussed the workload issues with Mr Bulpitt and after a period of reflection he advised the Applicant that he would be appointing an additional administrator.
- 4.6 The new administrator (X) was appointed as the Applicant’s supervisor and from the outset the working relationship was troubled. The supervisor made it very plain to the Applicant that she was not appointed to the role to be liked. She was unfairly critical of the Applicant’s work and accused her of errors that had not occurred. The criticisms mounted and the Applicant felt she was being victimised.
- 4.7 The Applicant spoke to Mr Bulpitt in early August and he asked if he should intervene; Mrs Langmead thought it would worsen the situation if he did speak with X and stated she would prefer he took no action.

- 4.8 On returning from her holiday on 9 September 2015 she found her workplace had been reorganised and not to the best effect. Her computer settings had been changed and she struggled to locate important files. X informed her that in her absence many errors had been found and they needed correcting. In fact there were only two errors and they were quickly corrected.
- 4.9 Increasingly Mrs Langmead found that her workload had reduced significantly and X told her that she had personally performed all that was necessary and there were no administrative tasks for the Applicant.
- 4.10 In the absence of administrative tasks Mrs Langmead decided she should start cleaning and continued to do so for a number of days; whenever she asked X for administrative tasks X refused to share any of these tasks.
- 4.11 Given the worsening situation the Applicant spoke to a committee member for advice; she was advised to speak to Mr Bulpitt directly.
- 4.12 Following the Applicant's discussion with a committee member Mr Bulpitt contacted her by email on 30 September and requested they meet the following day, 1 October 2015.
- 4.13 In this meeting Mrs Langmead was advised her position was no longer available and Mr Bulpitt told her he was making her role redundant with immediate effect.
- 4.14 Mr Bulpitt had suggested in subsequent communications and during the hearing, that redundancy was only one of a number of options. In the opinion of the Applicant this was not true; she was given no choice.

5.0 **Conclusion**

- 5.1 The Respondent has a very extensive and detailed employee handbook (ER1 Tab H refers) and on pages 10 to 13 it sets out the policy for dealing with 'Performance and Conduct' issues. This policy indicates the procedure to follow and the safeguards in place to ensure a fair and balanced process in the event of alleged misconduct or alleged capability issues. In the opinion of the Tribunal the Respondent failed to observe some of the most fundamental requirements set out in this section.
- 5.2 The Respondent did not provide the minimum of 48 hours' notice for the crucial meeting between Mr Bulpitt and the Applicant on 1 October 2015 as required in the handbook, in effect less than 24 hours' notice was provided.
- 5.3 The Applicant was not advised of the reason for holding the meeting, she believed it was going to be a discussion as to cleaning duties which she did not think she should be performing, rather than a meeting to determine the end of her employment.
- 5.4 Mr Bulpitt was not accompanied by a colleague during this meeting as provided for in the handbook, neither was the Applicant afforded the opportunity to have a colleague or companion; again a breach of the handbook provisions. No file notes of the meeting were taken.

- 5.5 Mr Bulpitt claimed that this meeting was conducted on a 'without prejudice' basis and in no way did it amount to a dismissal. The Tribunal has formed the opinion that the claim that this meeting was conducted on this basis cannot be upheld. The Tribunal is aware that the protocols for 'without prejudice' discussions have been given extensive consideration by the English Employment Appeals Tribunal (EAT) over many years. Guidance from that jurisdiction leads the Tribunal to believe that to enter into a 'without prejudice' discussion both the employer and the employee should have understood prior to meeting that there was a 'dispute' in place. Mr Bulpitt could not persuade the Tribunal that such a dispute, relating to the potential ending of the Applicant's employment, existed, prior to the meeting on 1 October 2015. Thus this conversation cannot be set aside as Mr Bulpitt would have wished.
- 5.6 The Tribunal also notes that the 'without prejudice' document stated that if the Applicant disclosed the terms of this document to anybody other than her spouse and immediate family then the offer would be withdrawn and invalid; this would seem to be a very restrictive term seeking to prevent the Applicant taking advice from her union, the Employment Relations Advisory Service or any other similar body qualified to advise her. This would not seem to be the action of an employer seeking to be equitable in its dealings with the Applicant.
- 5.7 Given the evidence from both parties relating to the meeting of 1 October 2015 it is seemingly evident that Mr Bulpitt wished to dispense with Mrs Langmead's services by gaining her agreement to take a redundancy payment.
- 5.8 If a redundancy had been necessary there was certainly no evidence produced by the Respondent that it followed any of the steps set out in the Commerce and Employment Code of Practice 'Handling Redundancy'. There was no evidence of prior consultation advising of potential redundancy or of any steps being taken to avoid a redundancy.
- 5.9 If it was a dismissal for capability there was no evidence of the use of a relevant process to address this. In particular there was no provision for such information to be put to the Applicant in a timely fashion with a period for reflection. The right for the Applicant to be accompanied by a colleague, as provided for in the Respondent's employee handbook, was disregarded. As to any possible capability issues the Applicant may have had there was no evidence of any balanced and fair investigation by the Respondent into such concerns.
- 5.10 During the hearing Mr Bulpitt alleged that there had been some maladministration issues and mistakes made by the Applicant. Mrs Langmead offered in evidence that she had erred on two occasions but had rectified the errors with no negative impact on clients. Mr Bulpitt told the Tribunal that he had spoken to Mrs Langmead as to these issues and their impact. There are no file notes or records as to these discussions held before 1 October 2015; neither is there any evidence of any formal disciplinary process. The Tribunal can well understand that Mrs Langmead would have felt most surprised and distressed to be told, without warning, that Mr Bulpitt wished to end her employment.
- 5.11 It would also seem from his evidence that Mr Bulpitt thought that by making Mrs Langmead redundant it was, in his words, "a potential solution for her and fairer". This seems to indicate that Mr Bulpitt had a fundamental misunderstanding as to fair

reasons for conducting a dismissal; in the opinion of the Tribunal it was not acceptable to cloak a dismissal, for what he seemed to believe were issues of capability, by calling it a redundancy.

- 5.12 The rapidity of the emails from Mr Bulpitt to the Applicant on the morning of 1 October 2015, detailing potential settlement terms and a reference, indicate the Respondent was in a hurry to finalise the immediate departure of the Applicant from her employment. Mr Bulpitt insists that this was not the case; he argued that Mrs Langmead, by her subsequent actions, had resigned from her employment and was not dismissed. The Tribunal prefers the evidence of Mrs Langmead in that the meeting was conducted in such a way she could only construe it as a meeting held to communicate a dismissal, and the subsequent email communications could only confirm her view.
- 5.13 On the balance of probabilities the Tribunal finds that a dismissal did occur. This dismissal was conducted without the Respondent following its own 'Performance and Conduct' policy and breached the guidelines set out in the 'Codes of Practice'. The Respondent failed to follow a fair and reasonable process and did not act as a reasonable employer; the Tribunal therefore finds the dismissal to be unfair.

6.0 Decision

- 6.1 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 finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed. In respect of this decision the Tribunal awards the Applicant £7,800.

Mr Peter Woodward
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Signature of the Chairman

15 April 2016
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Date