

# Employment and Discrimination Tribunal

Form ET3

Case No ED011/17

## THE EMPLOYMENT & DISCRIMINATION TRIBUNAL

**Applicant:** **Ms Elizabeth Landles**

Represented by: Advocate S Collins

**Respondent:** **Vazon Energy Limited**

Represented by: Not represented and did not attend

**Tribunal Members:** Mr Jason Hill (Chairman)

Ms Georgette Scott

Ms Helen Martin

**Hearing date:** **21 September 2017**

### Decision of the Tribunal

The Applicant made a complaint of unfair (constructive) dismissal.

Having considered all the evidence and submissions presented, whether referred to in this judgment or not, the Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed with an effective date of termination of 31 March 2017. The Tribunal makes an award of USD 157,000.

Mr Jason Hill

6 October 2017

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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, 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 Applicant, Elizabeth Anne Landles, was employed by the Respondent as Chief Administrative Officer and Company Secretary. In an ET1 Application form dated 7 April 2017 she complains that by virtue of her resignation following non-payment of her wages in January, February and March 2017 she was constructively and unfairly dismissed with an effective date of termination of 31 March 2017.
- 1.2 The Respondent, Vazon Energy Limited, was very much the alter ego of Dr David Robson and provided consultancy services to various companies and projects. The Respondent was not legally represented at any stage, has not responded to any correspondence concerning this claim, has not filed an ET2 Response form and did not attend either the case management meeting on 10 August 2017 or the hearing of the complaint on 21 September 2017.
- 1.3 Copies of the ET1 Application form, and notification of the hearing were sent to the Respondent's registered address using 'signed for' post; these documents were returned marked "not called for" or "gone away". The Applicant's Advocate sent a bundle of hearing documents to the same address, these too were returned. Notice of the date, time and place of the hearing was also published in La Gazette Officielle on 7 and 14 September 2017.
- 1.4 The Tribunal, consisting of three members, met at Les Cotils Centre, St Peter Port on Thursday, 21 September 2017 to determine the complaint using the documents in the bundle prepared on behalf of the Applicant (bundle EE1). The Applicant relies upon her witness statement dated 14 September 2017 and gave oral evidence on her own behalf; no other witnesses were called. All of that material has been taken into account by the Tribunal, whether specifically referred to in this judgment or not.

**2.0 Summary**

- 2.1 The Applicant's case is that she began working for the Respondent on 6 October 1997. Her most recent contract of employment is dated 19 February 2015 and appointed her as Chief Administrative Officer from 1 February 2015 to provide

services on a permanent basis to Skyland Petroleum Group Limited ('Skyland') at an annual salary of USD 314,000. She was also the Respondent's Company Secretary and a director of Skyland.

- 2.2 The sole shareholder and sole director of the Respondent was Dr David Robson until his sudden and unexpected death on 24 December 2016. The Applicant, who worked directly for Dr Robson, was extremely shocked when she learnt of his death and was worried about her future employment with the Respondent. On about 27 December 2016 there was a meeting at the Respondent's premises to discuss practicalities and administrative issues, but the Applicant did not think it appropriate to mention anything concerning her employment. The Applicant maintains that at no stage was her contract of employment terminated by the Respondent.
- 2.3 On 16 January 2017 the Applicant realised that she had not been paid her monthly salary instalment; this did not surprise or unduly worry her as she was sympathetic towards Dr Robson's family and she appreciated that the Executors would have to apply for probate. The Applicant was, however, signed off sick from work from 16 January to 10 February 2017.
- 2.4 The Applicant emailed legal counsel to the Respondent on 18 January 2017 and asked about her missing salary payment and for an update about her employment situation with the Respondent. Counsel replied by email on 19 January 2017, *"I am working on this and will be in touch soon"*. There was a further email exchange between the Applicant and counsel starting on 23 January 2017 about correspondence received by the Applicant from the Guernsey Financial Services Commission.
- 2.5 On 16 February 2017 the Applicant discovered that she had not been paid again as required under her contract of employment. This prompted her to instruct her Advocate to write to the executrix of Dr Robson's estate on 17 February 2017 setting out her position in relation to what she perceived as a fundamental breach of her contract of employment. No response to that letter was received.
- 2.6 The Applicant was not paid in March 2017 and she considered this to be the 'final straw'. Consequently, she instructed her Advocate to send a letter of resignation dated 31 March 2017 to the Respondent's registered address.

### **3.0 The Law**

- 3.1 It is for the Applicant to prove, on the balance of probabilities, that: (1) there was a fundamental breach of the contract of employment by the Respondent; (2) the Respondent's breach caused the Applicant to resign from her employment; and (3) the Applicant did not delay too long before resigning thus affirming the contract and losing the right to claim unfair dismissal.

### **4.0 Facts found**

- 4.1 The Respondent did not attend the hearing on 21 September 2017 and was not represented; no submissions were filed on its behalf. The Tribunal directed itself that this was not a case where 'judgment in default' was available to the Applicant and that she was required to prove her case on the balance of probabilities using evidence that she chose to put before the Tribunal. The Tribunal was satisfied that the necessary documents and notification of the time, date and place of the hearing had been served upon the Respondent as required by the Law. In any event, even if service was in some way defective, the appropriate notices had been published in La Gazette Officielle as required by the Law.
- 4.2 The Applicant was employed by the Respondent from 6 October 1997 and was appointed as Chief Administrative Officer with effect from 1 February 2015 at an annual salary of USD 314,000. Payment of salary in monthly instalments was an express term of her contract of employment (clause 3). There was also an express term governing the giving of notice (clause 8).
- 4.3 The Applicant was not paid her monthly salary for January, February and March 2017 at the times when the Respondent was contractually obliged so to do. Such non-payment of salary by the Respondent amounts to a fundamental breach of the contract of employment. The Respondent did not give the Applicant notice of termination of her employment as required by clause 8 of the contract of employment.
- 4.4 The Applicant accepted the Respondent's fundamental breach and gave the Respondent notice of immediate termination of her contract of employment (commonly referred to as a resignation) in the letter dated 31 March 2017 written on her behalf. It was the Respondent's fundamental breach of the contract of employment that caused the Applicant to give notice of termination.

## **5.0 Conclusion**

- 5.1 The Tribunal finds that, given the sudden and unexpected death of Dr Robson, the upset that this caused and the Applicant's desire to show understanding and sympathy at a difficult time, the period of three months before giving notice of termination was not unreasonable. In those circumstances, the Applicant did not affirm the contract following the non-payment of salary.

## **6.0 Decision**

- 6.1 The Tribunal finds that the Applicant was constructively and unfairly dismissed contrary to section 3 of the Law with an effective date of termination of 31 March 2017. The amount of the award of compensation pursuant to section 22 of the Law is six months' pay, namely USD 157,000. The Tribunal has decided not to reduce the award of compensation pursuant to section 23 of the Law.

Mr Jason Hill

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Signature of the Chairman

6 October 2017

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Date