

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** **Mr Niall Rhys Evans**  
Represented by: Advocate Thomas Crawford

**Respondent:** **Safehaven International Limited**  
Represented by: Mr Richard Sheldon

**Tribunal Members:** Ms Helen Martin (Chairperson)  
Mr Andrew Vernon  
Mr George Jennings

**Hearing date(s):** **22 and 23 August 2017**  
**25 and 26 September 2017**

**Decision of the Tribunal**

The Applicant claimed that he had been unfairly dismissed by reason of his conduct within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended. The Respondent resisted the Complaint

Having considered all the written and oral evidence presented, whether recorded in this judgment or not, the representations of both parties and having due regard to all the circumstances, the Tribunal determined that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

The Tribunal therefore makes an award of £33,429.37.

Ms Helen Martin  
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Signature of the Chairman

6 November 2017  
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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 (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, Mr Niall Rhys Evans, was represented by Advocate Thomas Crawford and gave both oral and documentary evidence under Affirmation. In addition to the ET1 application form the Applicant submitted documents marked EE1, EE2, EE3, EE4, EE5.

1.2 The Applicant did not call any witnesses.

1.3 The Respondent, Safehaven International Limited, was represented by Mr Richard Sheldon and gave both oral and documentary evidence. In addition to the ET2 response form the Respondent submitted documents marked ER1, ER2, ER3, ER4.

1.4 The Respondent called the following witnesses:

- Ms Tracey Ozanne, Office Manager
- Mr David Whitworth, Non-Executive Director

Both witnesses for the Respondent gave evidence under Affirmation.

1.5 The Applicant claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.

1.6 The Respondent resisted the complaint, asserting that the Applicant had been dismissed fairly on the grounds of gross misconduct following his suspension, an investigation and disciplinary process.

**2.0 Preliminary Matters**

The Tribunal noted a difference in the figures stated on the ET1 and ET2 forms relating to six months' pay and at the start of the hearing the parties agreed that the lower figure of £33,429.37, taken from the ET2, would apply.

**3.0 Summary of Evidence**

3.1 The Respondent is a small specialist aviation and marine administration business which is regulated by the Guernsey Financial Services Commission. At the time of the dismissal of the Applicant the Company employed 12 staff.

3.2 All the office staff reported to the Office Manager, Ms Tracey Ozanne. The management structure included the Managing Director and the Finance Director. There were two Non-Executive Directors, one of whom was Mr David Whitworth.

- 3.3 The Applicant commenced employment with the Respondent on 5 November 2007 in the role of Yacht Compliance Officer. The Applicant was responsible for managing the relationships of several of the Respondent's clients.
- 3.4 One of those clients was the ultimate beneficial owner (UBO) of a structure administered by the Respondent, which included a Guernsey registered company which owned and operated a vessel for the benefit of the UBO. The staff of the vessel were employed by a Guernsey serviced entity which was managed by the Respondent.
- 3.5 On 22 September 2016, the Applicant was suspended by the Respondent pending an investigation into allegations relating to bribery and deliberate concealment of goods on board the vessel to avoid tax duties. The Respondent alleged that the Applicant had stated to the Personal Assistant of the UBO that she should ensure that the Captain had "sufficient cash on board to pay the crew and any bribes necessary" and to the Captain of the boat that he should "hide everything under bunks, in the jacuzzi and put the cover on" in respect of bottles of wine. These allegations arose from one side of the telephone conversations involving the Applicant that were overheard in the open plan office at the offices of Safehaven International Limited by Ms Ozanne, the Office Manager and a co-worker.
- 3.6 The Applicant had provided a verbal explanation and short email about the allegations to Ms Ozanne prior to his suspension but refused the request to put his response formally in writing.
- 3.7 The Respondent and Applicant did not concur about the dates of the alleged telephone conversations concerning the payment of 'bribes' on the Suez Canal and the storage of the wine in the jacuzzi and other onboard storage areas.
- 3.8 The Respondent disabled the Applicant's remote access to the Company's files and required him to surrender his mobile telephone, access security card and Company credit card during his suspension. This placed the Applicant at a disadvantage in obtaining information for his defence.
- 3.9 During the Applicant's suspension, a further allegation in relation to a potential breach of client confidentiality was included in the investigation. This allegation was subsequently dropped due to new evidence that was uncovered in course of the investigation that showed it to be erroneous. The Applicant asserted that in submitting this third allegation the Respondent was seeking to contrive as many grounds as possible to dismiss him.
- 3.10 The Applicant asserted that the oppressive nature of the suspension made him suspicious that he was being managed out of his employment.
- 3.11 The Respondent undertook a formal investigation into the Applicant's alleged gross misconduct. The Office Manager, Ms Ozanne, was appointed as the Investigation Officer.

- 3.12 Ms Ozanne advised the UBO and Captain of the boat, by email on 23 September 2016, that the Respondent did not condone or encourage any concealment or avoidance of liability to authorities who may require duties to be paid for the importation of goods.
- 3.13 The UBO telephoned Ms Ozanne and informed her that he did not understand her email dated 23 September 2016 and that it was normal practice to store wine on the deck where it was not visible and there was nothing unlawful or illegal with the practice.
- 3.14 The investigation was carried out by Ms Ozanne who questioned two co-workers in the office. Ms Ozanne also reviewed the Applicant's emails and gathered together a variety of documentation to include in the appendix of her investigation report.
- 3.15 Ms Ozanne did not obtain information or witness statements from the Captain, UBO or Personal Assistant.
- 3.16 The Applicant asserted that Ms Ozanne had taken a personal dislike to him because he did not conform to her management style.
- 3.17 The investigation meeting was scheduled for 6 October 2016 and subsequently rearranged to take place on 21 October 2016 due to Ms Ozanne being unwell.
- 3.18 The Applicant submitted a written statement in advance of the investigation meeting on 13 October 2016 (EE1, File B, Pages 107-108 refer) in which he responded to and denied all three allegations.
- 3.19 The Applicant asserted in his written statement that the word bribes was merely shorthand for what are known as "baksheesh payments" that are paid to officials in the Suez Canal. The Applicant asserted that such payments did not amount to bribes but were "palm greasers, tips or perks" and that they were not there to "persuade someone to do something they would not otherwise do, but perhaps to do it more quickly or more smoothly". In addition, the Applicant asserted that the boat was short of storage space and that the captain would have to be "creative in finding space".
- 3.20 The Applicant attended an investigation meeting on 21 October 2016. Ms Ozanne asked various questions of the Applicant to both clarify his witness statement and seek further information. The Applicant responded with only brief replies to the questions that were put to him in the investigation meeting because he was concerned that it was an attempt at a "set up" to incriminate him.
- 3.21 The Respondent concluded that there was a case to answer concerning the two original allegations. The Respondent dismissed the allegation of breach of confidentiality.

- 3.22 Following the review of the investigation report the Respondent determined that a formal disciplinary procedure would be followed in relation to the two original allegations and invited the Applicant, by letter dated 18 November 2016, to attend a disciplinary hearing on 24 November 2016, enclosing a copy of the investigation report. This gave the Applicant a short time only to prepare his defence.
- 3.23 The Applicant sought to postpone the date of the disciplinary hearing by one month and sought permission to make direct contact with the UBO and the Captain of the vessel. The Respondent did not consent to the Applicant contacting the UBO or the Captain of the vessel because of the risk of collusion but agreed to the postponement of the disciplinary hearing until 30 November 2016.
- 3.24 The Finance Director informed the Applicant by letter dated 12 December 2016 that both the UBO and Captain had previously refused to answer any questions from the Respondent but that the Applicant's questions and additional questions from the Respondent had been sent to them in writing. (Email 12 December 2016, ER1, Tab 78 Page 704 refers).
- 3.25 The Applicant was signed off work suffering from stress and anxiety for six weeks from 28 November 2016. During the period that the Applicant was absent due to illness, the Respondent informed its pension and private medical insurance providers that the Applicant's employment had been terminated. The Respondent asserted that this was caused by a communication error and restored the Applicant's benefits in full with immediate effect. The Applicant asserted that the fact that two external intermediaries were advised by the Respondent that his employment had ceased was consistent with the Respondent having decided at the outset to dismiss him and that, as a result, the disciplinary hearing was prejudged. The Applicant claimed that the disciplinary hearing was an exercise designed to give his dismissal the semblance of fairness.
- 3.26 The Finance Director sought the Applicant's consent to obtain a medical report, by letter dated 12 December 2016.
- 3.27 On 15 December 2016, the Applicant's advisor informed the Respondent that there was no reason for the Applicant not to return to work on 5 January 2017 upon the expiry of his certificated sick leave. In the same letter, the Applicant's advisor asserted that the Applicant's right to question the UBO and Captain as he wished to, had been disregarded by the Respondent.
- 3.28 The Finance Director advised the Applicant, in a letter dated 20 December 2016, that the Respondent would forgo its request for a doctor's report and that the disciplinary hearing had been rearranged to take place on 5 January 2017.
- 3.29 The hearing was attended by the Applicant and his advisor. Ms Ozanne attended as the Investigation Officer and the Finance Director, as the Respondent's representative. Mr Whitworth, a Non-Executive Director of the Company, was the appointed Chairperson.

- 3.30 The Applicant submitted a written statement at the disciplinary hearing. (ER1, File A, pages 76-78 refer). The Applicant confirmed that it was possible that he had used the word bribe during the alleged conversation with the Captain but that the reference in this context was to baksheesh. The Applicant denied having the alleged conversation with the Personal Assistant of the UBO. In relation to the allegation relating to the concealment of the wine the Applicant asserted that he had told the Captain to be “creative” with storing the wine and that he should use the jacuzzi for this purpose to avoid the risk of petty pilfering.
- 3.31 The Applicant was given the opportunity to ask Ms Ozanne some questions during the disciplinary hearing.
- 3.32 Mr Whitworth informed the Applicant’s advisor by email on 12 January 2017, that he had obtained additional information since the disciplinary hearing regarding the dates of two original telephone conversations of alleged bribery and concealment of goods to avoid duty and suggested reconvening the disciplinary hearing.
- 3.33 The Applicant’s advisor replied by letter, dated 13 January 2017, that the Applicant remained firmly of the view that there were significant inconsistencies in the dates of the two alleged telephone conversations but that what was important was that he did not do or say what amounted to the two allegations and that he had provided more than enough evidence for the Respondent to draw the same conclusion. The Applicant’s representative suggested in the same letter that it was not too late for the Respondent to approach the UBO and Captain to elicit the required information from them. However, if this was not acceptable then the Applicant’s advisor asserted that the Respondent would have to decide the outcome of the disciplinary process without that evidence.
- 3.34 The Applicant did not wish the disciplinary hearing to be reconvened and this was confirmed in an email dated 17 January 2017 from the Applicant’s advisor to Mr Whitworth.
- 3.35 The Applicant was dismissed for gross misconduct by the Respondent and advised of his right to appeal in a letter dated 18 January 2017.
- 3.36 The Applicant’s advisor wrote to the Respondent on 25 January 2017 to appeal against the decision to dismiss him for gross misconduct.
- 3.37 The Respondent invited the Applicant to an appeal hearing which was to be chaired by the Respondent’s Managing Director with Ms Ozanne and Mr Dickinson in attendance.
- 3.38 The Applicant withdrew his appeal on 7 February 2017 on the basis that he did not have trust and confidence in the Respondent to conduct the appeal fairly and objectively.

#### **4.0 Witness statement of Ms Tracey Ozanne**

- 4.1 Ms Ozanne is the Office Manager and Money Laundering Reporting Officer (MLRO) with responsibility for Human Resources at Safehaven International Limited. Ms Ozanne has held this position since 31 March 2014.
- 4.2 Ms Ozanne stated that she and a co-worker overheard the Applicant speaking with the Captain where the Applicant advised him to “hide everything under bunks, in the jacuzzi and put the cover on”. Ms Ozanne then heard the Applicant mention 400 bottles of wine on board the boat and that the UBO was looking to purchase more. Ms Ozanne stated that when she spoke to the Applicant about this to ascertain if there was anything to be concerned about, he had responded “no everything is fine no one ever goes on board”. Ms Ozanne gave evidence that another employee had overheard the Applicant advise the Captain that it was not necessary to declare several hundred bottles of wine and that he should consider storing it in the jacuzzi where it would not be as likely to be seen.
- 4.3 Ms Ozanne asserted that she overheard the Applicant on the telephone with the Personal Assistant where the Applicant advised her that she should ensure the “Captain has sufficient funds on board to pay the crew and any bribes necessary”. In her capacity of MLRO, Ms Ozanne requested that the Applicant should provide her with a file note explaining the context, content and reasons for the advice that he appeared to have given. (ER1, tab 19).
- 4.4 The Applicant replied by email on 21 September 2016 (ER1, Tab 20) and stated that wine was picked up every time the UBO was in Rhodes and if there was no space elsewhere then he would have to store it in other areas. In the same email, the Applicant explained that the boat could not go through the Suez Canal without giving out cash or gifts and that this was *“just the way that it works”*.
- 4.5 After seeking guidance from the Directors, in an email dated 21 September 2016 (ER1, Tab 24), Ms Ozanne requested that the Applicant prepare a formal signed memo, which detailed:
- The practice in question;
  - Where/what laws may have been breached by such practices even if normally authorities “turn a blind eye”;
  - What were the real risks of exposure that is fines, seizures, licence revocations etc.;
  - How many other clients and files may have similar issues occurring.
- 4.6 Ms Ozanne gave evidence that the Applicant verbally informed her that he was not prepared to respond formally in writing and moreover that he could not answer the questions raised.
- 4.7 The request by the Applicant to be accompanied to the disciplinary meeting by his advisor was declined by Ms Ozanne because the view was taken that the advisor had

been engaged to provide employment law advice and the Company Disciplinary Policy only allowed for a colleague or friend for the purposes of providing support.

- 4.8 Ms Ozanne explained that the decision to exclude the Applicant's advisor was later reversed due to the Applicant's subsequent ill health and that the advisor was permitted to attend the postponed disciplinary hearing, in a supportive capacity only.

## **5.0 Witness statement of Mr David Whitworth**

- 5.1 Mr Whitworth is a Non-Executive Director of Safehaven International Limited and has held this position since July 2015. Mr Whitworth is not involved in the day to day activity of the Company.
- 5.2 Mr Whitworth stated that he decided to record the disciplinary hearing on 5 January 2017 (ER1 Tab 99 refers).
- 5.3 At the start of the disciplinary meeting the Applicant informed Mr Whitworth that he had prepared a second written statement in addition to the one that he had provided during the investigation by Ms Ozanne and background papers concerning the payment of baksheesh and the Suez Canal.
- 5.4 Mr Whitworth asserted that it was necessary for him to interject on occasions in relation to the questions the Applicant put to Ms Ozanne during the disciplinary hearing to seek clarification and to be able to chair the meeting.
- 5.5 Mr Whitworth stated that he regarded the anomalies that were raised by the Applicant about the dates of the telephone conversations as fundamental and determined that the meeting should be adjourned to allow time to investigate these anomalies.
- 5.6 Mr Whitworth stated that he determined, on further investigation, that Ms Ozanne's chronology regarding the dates of the alleged telephone conversations was not accurate. Mr Whitworth regarded an email from the Applicant, to the Executive Assistant, where the Applicant states "Good to talk to you just now" and "...just wanted to recap on these two points" concerning electricity, water and hiring a car (ER1, Page 799) on 20 September 2016, as evidence that the alleged telephone conversation with the Personal Assistant concerning 'cash for bribes' had taken place. The Applicant denied this.
- 5.7 Mr Whitworth found that the Applicant did make the verbal statements reported by Ms Ozanne in the two original allegations and he concluded that baksheesh were illegal bribes and therefore were contrary to the express provisions of Sections 263 to 266 of the Company's Anti-Money Laundering Manual. In relation to the alleged storage of the wine in the jacuzzi, Mr Whitworth determined that this was specifically to avoid duty because the reason of petty pilfering was only put forward latterly in the Applicant's second statement and the jacuzzi was not lockable. Mr



Whitworth did not consider this to be a credible or professional explanation. Mr Whitworth told the Tribunal that there was no definitive evidence of the completion of the intended purchase of additional wine, there was also no evidence that duty had in fact been paid.

5.8 The Applicant's assertion that the worst he could be accused of was having given bad or incorrect advice was rejected by Mr Whitworth because he was satisfied that such advice could amount to gross misconduct in circumstances where that advice involves encouraging the Captain to place himself in a position whereby he is guilty of an offence.

5.9 Mr Whitworth asserted that he made the decision to dismiss the Applicant for gross misconduct after careful consideration of all the facts.

## **6.0 Witness statement of Mr Niall Rhys Evans**

6.1 Mr Rhys Evans stated that he was principally responsible for looking after the technical aspects of the yachts, looking after their captains and crew and ensuring compliance with their flag state regulations.

6.2 The marine department was managed by Mr Rhys Evans from 2014 until Ms Ozanne took over the role of Office Manager. The department operated in a 'non-interventionist manner' with the employees working independently of one another prior to Ms Ozanne's appointment.

6.3 Mr Rhys Evans stated that following a visit from the Guernsey Financial Services Commission, the position of Office Manager and Money Laundering Reporting Officer (MLRO) was created in 2014.

6.4 The Applicant had received minimal Anti-Money Laundering training over the years which had consisted principally of one-hour seminars in the office.

6.5 Ms Ozanne requested that Mr Rhys Evans undertake 'due diligence' and 'know your client' procedures on the new clients of the marine department. Mr Rhys Evans was required to complete a short online course in Anti-Money Laundering training in 2016. Mr Rhys Evans stated that he was not comfortable with the procedures after completing the online training and that, as a result, the due diligence and know your client tasks in relation to his clients reverted to Ms Ozanne and a co-worker.

6.6 Mr Rhys Evans asserted that he had not been provided with a copy of the Respondent's Anti-Money Laundering Manual and that he had not received any anti-bribery and corruption training relating to his job or otherwise and had not received any anti-money laundering training tailored to the specifics of his role as Yacht Compliance Officer.

6.7 The Applicant found it difficult to conform to the management style of Ms Ozanne. He described this style as somewhat dictatorial and divisive and that Ms Ozanne

would constantly interfere with his way of doing his job. Mr Rhys Evans asserted that Ms Ozanne took a personal dislike to him and that she had not carried out an annual appraisal of him in 2016 despite carrying them out for his colleagues. Increasingly, the witness felt marginalised and victimised and that Ms Ozanne was looking for an opportunity to remove him from his employment.

- 6.8 Mr Rhys Evans asserted that he had flippantly ‘parroted’ the terminology “bribe” or “bribery” back to the Captain during the telephone conversation overheard by Ms Ozanne but that he did not believe that the payment was genuinely a bribe or that it was corrupt or dishonest. He said it was a payment customarily demanded and expected by the Egyptian authorities for doing nothing more than their job, rather than a payment offered to them voluntarily to get something extra or on the side. As a result, the Applicant saw it as giving the Captain practical advice based on the realities of transiting the Suez Canal. The Applicant explained to Mr Whitworth in the disciplinary hearing that baksheesh was a ‘fact of life’ in the area and not a bribe but a ‘present’ and a common way of dealing with officials in North Africa and the Middle East.
- 6.9 In relation to the alleged conversation about the storage of wine, Mr Rhys Evans told the Tribunal that this was to avoid petty pilfering and disagreed with the alleged date of the telephone conversation noted by Ms Ozanne. Mr Rhys Evans denied speaking to the Personal Assistant at all about the storage of the wine but confirmed that he had spoken to the Captain about the storage of wine in the jacuzzi.
- 6.10 Mr Rhys Evans stated that his advisor had told him that the allegations against him were so serious and criminal in nature that he should exercise control and restraint over what he said and to treat the investigation interview like a Police interview.
- 6.11 Mr Rhys Evans told the Tribunal that the disciplinary meeting was recorded without his consent and the Chairperson, Mr Whitworth, had been verbose in defending the Respondent’s case, interfering with questions he wished to ask Ms Ozanne and answering questions on her behalf.
- 6.12 The Applicant asserted that the Respondent had acted recklessly and without integrity in making and finding allegations of such a serious and criminal nature against him for its own ends and that this had been done without any consideration to the effect on his reputation and previously unblemished employment record.

## **7.0 The Law**

- 7.1 The Law referred to in this section is The Employment Protection (Guernsey) Law, 1998, as amended.
- 7.2 Section 5(1) states: *‘in this Law “dismiss and dismissal” shall be construed in accordance with the following provisions in this section.’*

- 7.3 Section 5(2) states: *“Subject to subsection (3) an employee shall be treated as dismissed by his employer if, but only if.....*
- (a) The contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice.”*
- 7.4 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law states: *“...it shall be for the employer to show -*
- (a) What was the reason (or, if there was more than one, the principal reason) for the dismissal, and*
- (b) that it was a reason falling within subsection (2).”*
- Subsection 6(2) states: *“For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which ...b) related to the conduct of the employee,”.*
- 7.5 Section 6(3) of the Law states: *“Where the employer has fulfilled the requirements of subsection (1), then ..... the determination of the question whether the dismissal was fair or unfair, having regard for the reason shown by the employer, shall depend on whether the circumstances (including the size and administrative resources of the 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.”*
- 7.6 Section 23(2) states: *“Where in relation to such a complaint the Tribunal considers that, by reason of any circumstances other than those mentioned in subsection (1), it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal to any extent, the Tribunal shall, subject to subsection (3) and subsection (4), reduce that amount accordingly.”*

## **8.0 Conclusion**

- 8.1 All submissions and arguments put forward by both parties were considered by the Tribunal, whether they are mentioned specifically in this judgment or not.
- 8.2 The Tribunal noted that during the hearing the Respondent’s witnesses were unable to recall a substantial number of aspects of the process and events leading up to the summary dismissal of the Applicant.
- 8.3 The Tribunal did not place weight on the assertion that Ms Ozanne disliked the Applicant.
- 8.4 The focus of the Tribunal was on the procedures and process leading up to and including the disciplinary action that was undertaken against the Applicant. It was not for the Tribunal to undertake a secondary investigation into the allegations against the Applicant. It was for the Respondent to prove that the process followed,

up until the point of dismissal, was fair and that the decision to dismiss was, on the balance of probabilities, within the range of reasonable responses open to an employer.

- 8.5 The Tribunal regarded the allegations concerning bribery and deliberate concealment of goods to avoid duty as extremely serious. Such allegations represented a potentially fair reason for dismissal. However, the Tribunal did not consider the allegations sufficient, on their own, to justify summary dismissal. Whether the Respondent acted reasonably or not is a question of Law and the Tribunal based its decision on the facts that were put before it. In doing so, the Tribunal was mindful not to put itself in the position of the Respondent by considering what it would have done in the circumstances. The Tribunal sought to ascertain whether the Respondent's interpretation and application of the Company's disciplinary policy was reasonable in the circumstances.
- 8.6 The Tribunal was mindful that the allegations against the Applicant were momentous. The burden of proof was on the Respondent to show that the reason or principal reason for the dismissal was genuinely related to the conduct of the Applicant.
- 8.7 The investigation was undertaken by Ms Ozanne who was both the complainant and principal witness. The Tribunal considered it incongruent for Ms Ozanne to effectively 'interview herself' as part of the investigation. The Tribunal regarded this as a conflict of interest and a breach of the principles of natural justice. In addition, as the complainant and principal witness, she could discuss the evidence with the two co-workers she interviewed, as opposed to the Applicant who was denied the opportunity to contact the Captain or UBO to prepare his defence because of the stated risk of collusion. The focus of the investigation was primarily weighted towards evidence that may point to guilt and not on evidence that may point to innocence. In weighing up evidence about the reasonableness of the investigation process, the Tribunal considered that the Respondent was a relatively small professional employer. It was also one with considerable resources as illustrated by the Non-Executive Director, Mr Whitworth, who confirmed under cross-examination that legal advice was taken prior to the dismissal. The view of the Tribunal was that a reasonable professional employer with the considerable resources of the Respondent would have engaged an independent investigator if there was no other suitable employee available, specifically to avoid this conflict of interest.
- 8.8 The fact that the people on 'the other side' of the alleged telephone conversations were not interviewed in the light of the seriousness of allegations of a potentially criminal nature, was found to be a fundamentally flawed aspect of the process. The Tribunal took the view that the standard of reasonableness is particularly high where dismissal for gross misconduct is a possible consequence and the potential serious impact on future employment merely reinforces the need for an extremely careful and conscientious enquiry. The Tribunal placed weight on guidance from the English Employment Appeal Tribunal decision of *A v B* (2002) UKEAT/1167/01:

*“Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation.....Employees found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field, as in this case. In such circumstances anything less than an **even-handed approach** to the process of investigation would not be reasonable in all the circumstances.”*

In concluding, the Tribunal was further assisted by the English case of *Salford v Royal NHS Foundation Trust v Roldan* (2010) EWCA Civ 522:

*“...That is not the same as saying that they disbelieve the complainant. For example, they may tend to believe that a complainant is giving an accurate account of an incident but at the same time it may be wholly out of character for an employee who has given years of good service to have acted in the way alleged. In my view, it would be perfectly proper in such a case for the employer to give the alleged wrongdoer the benefit of the doubt without feeling compelled to come down in favour of one side or the other.”*

- 8.9 The Tribunal noted that the allegation concerning concealment of wine to avoid the payment of duty was upheld by the Respondent without any evidence that the wine had been purchased, delivered or transported on the boat on the Suez Canal without payment of duty. There was no evidence put before the Tribunal that confirmed a plan to hide wine to avoid tax duties. The Tribunal preferred the evidence that the stock of wine on the vessel had previously been declared and as such did not need to be declared again. The Captain denied any wrongdoing to the Investigation Officer, Ms Ozanne, but this was not seemingly sufficient to satisfy the Respondent or at the very least, lead to consideration of a lesser sanction. Assumptions were made about the entirety of the alleged telephone conversations by the Respondent in the investigation process. The co-worker, who overheard the alleged conversation about the storage of wine, differed from the complainant and principal witness, Ms Ozanne, in his version of the events and this served to undermine the credibility of the investigation process. In addition, the inconsistency in the dates in relation to the alleged telephone conversations further undermined the credibility of the investigation process to the Tribunal. The Tribunal preferred the evidence of the Applicant that the alleged telephone conversation about the ‘cash for bribes’ with the Personal Assistant had not happened at all. On the balance of probabilities, the Tribunal did not view the investigation as that which a reasonable employer would have carried out.
- 8.10 Regarding the allegations concerning bribery, the Tribunal placed weight on the fact that the Respondent had not established appropriate policies in relation to the payment of baksheesh in the Suez Canal. There was no consideration given to the custom and practice of the Company regarding baksheesh prior to the allegations of impropriety against the Applicant. Considerable witness testimony was heard in relation to the Company Anti-Money Laundering Manual, both the 2014 version and the most recent version, and specifically the section on bribery and corruption, but there was no evidence that this had been translated into country-specific procedures, or that there had been bespoke training in country risk assessments on

such matters. The training received was limited, generic and relatively infrequent. The investigation report did not include the most recent version of the manual and there was no evidence that the most recent version had been provided to the Applicant.

- 8.11 The Tribunal could not find any dishonest intent or evidence of inducement of improper performance of Suez Canal Official duties in the evidence that was put before it. It therefore found the sanction of summary dismissal for gross misconduct unreasonable in all the circumstances. Importantly, the decision to dismiss the Applicant did not elucidate why summary dismissal was justified as opposed to a first or final written warning and the Tribunal took the view that this did not fall into the band of reasonable responses open to a reasonable employer in relation to a long serving employee with a previously unblemished employment record.
- 8.12 The Tribunal was persuaded that the communication of the cessation of the Applicant's employment to two external intermediaries during December 2016 was not credibly explained as human error and that this was an indication that the disciplinary hearing scheduled for 5 January was effectively a facade for a decision to dismiss the Applicant that had been predetermined.
- 8.13 The Tribunal took guidance from the case of *British Home Stores V Burchell* (1980) ICR 303, EAT and the importance that the employer 'believed' the employee to be guilty of misconduct.
- 8.14 The Tribunal found that the Respondent had failed to convince it that it had had a 'genuine belief' that the Applicant was guilty of gross misconduct. Furthermore, the Tribunal determined that the Respondent did not have reasonable grounds on which to base its stated belief that the Applicant was guilty of gross misconduct, sufficient to justify his summary dismissal.
- 8.15 On the balance of probabilities, the Tribunal concluded that the sanction of summary dismissal for gross misconduct fell outside the band of reasonable responses rendering the dismissal unfair.

## **9.0 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 the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed. The Tribunal therefore makes an award of £33,429.37.

Ms Helen Martin

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Signature of the Chairman

6 November 2017

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Date