

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Ms Tyrane Mollet  
**Represented by:** Self

**Respondent:** Harlequin Hire Cars Limited  
**Represented by:** Mr Guy Plante

**Tribunal Members:** Mr Peter Woodward (Chairman)  
Ms Georgette Scott  
Mr Andrew Vernon

**Hearing date(s):** 13 March 2019

**Decision of the Tribunal**

The applicant, Ms. Tyrane Mollet, alleged that she had been unfairly constructively dismissed and that she had been subject to sexual discrimination in the workplace prior to this alleged dismissal.

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 not constructively unfairly dismissed and makes no award.

In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representation of both parties and having regard to all the circumstances, the Tribunal finds that, under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the Applicant has not been discriminated against. In respect of this decision the Tribunal makes no award.

Mr Peter Woodward  
.....  
Signature of the Chairman

25 March 2019  
.....  
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);  
The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

Extended Reasons

**1.0 Introduction**

- 1.1 The Applicant, Ms Tyrane Mollet, represented herself and gave evidence on her own behalf. She submitted document bundle EE1 and was supported by Ms Heather Guest for the early part of the Hearing.
- 1.2 Harlequin Hire Cars Limited, the Respondent, was represented by Mr Guy Plante, the owner of the company. He gave evidence on its behalf and a document bundle, ER1, was submitted.
- 1.3 Mr Michael West, who gave evidence to the Tribunal, manages the business in Guernsey on behalf of Mr Plante, and was the direct manager of the Applicant.
- 1.4 Ms Mollet had made complaints of alleged constructive unfair dismissal and sex discrimination.
- 1.5 Both parties agreed that the Applicant had been in receipt of gross earnings for the 26 weeks prior to the Effective Date of Termination of £9,172.28
- 1.6 The Tribunal was conscious that neither of the parties were legally represented and was anxious to make sure that all necessary steps were taken to ensure that they had a fair hearing. The Tribunal took account of the Deputy Bailiff's general comments in *Cotterill v States of Guernsey* (Guernsey Royal Court, Judgment 58/2017) and in particular those at paragraph 45 concerning the need to give appropriate help to unrepresented parties regarding procedure and possibly also with the case that they wish to present.

Accordingly, the Tribunal Chair spent time during the Case Management Meeting, held prior to this Hearing, to ensure both parties understood the process and legal tests that would be applied; the Chairman also explained the role of a "McKenzie" friend and the Applicant chose to have such a person with her at the during the early part of the Hearing.

In addition, on the day of the Hearing, the Tribunal was prepared to 'look behind' the language used to articulate arguments where that was appropriate so that the merits of the case could be explored without pedantic insistence upon the use of correct terminology. That being said, the Tribunal was also mindful of the commentary in paragraph 44 of *Reynard v Fox* [2018] EWHC 443 (Ch) that the fact that a litigant was acting in person

was not in itself a reason to dis-apply procedural rules or orders or directions, or excuse noncompliance with them. The exception to that principle being that a special indulgence to a litigant in person might be justified where a rule was hard to find, difficult to understand, or it was ambiguous.

## **2.0 Facts Found**

- 2.1 The Respondent, acting in conjunction with “Europcar” Ltd, manages car hire businesses in both Guernsey and Jersey. The current fleet of hire cars in Guernsey can be up to 250 vehicles during the high season.
- 2.2 Included in the Applicant’s bundle of documentation was a copy of the Applicant’s original signed contract of employment dated 14 April 2014 (ER1 8.1 to 8.9 refer); subsequent changes to the employment contract to confirm increases in pay are found in ER1 sections 8.10 & 8.11.
- 2.3 Ms Mollet was employed as a “Rental Agent” from 14 April 2014 based at the Airport desk and was subsequently promoted to a supervisory agent position, based at company offices in St Martins as of 1 January 2018. The promotion was due to her expertise.
- 2.4 The Respondent’s business is seasonal in nature with increased demand in the spring and summer months and a lesser demand in the winter months such as November. Employees are based at the airport, the St. Martins office and from time to time at the harbour and specific hotels.
- 2.5 At the time of her resignation the Applicant was contracted to work between the hours of 9 AM to 2.30 PM each Monday to Saturday, i.e. a 33 hour working week.
- 2.6 As a “Front of House” employee the Applicant was required to wear a corporate standard uniform that was provided by the Respondent.
- 2.7 The last day worked by the Applicant was 29 June 2018; this was followed by certified sick leave during the month of July 2018. (ER1 10.1 to 10.3 refer)
- 2.8 The Applicant submitted a letter of resignation dated 30 July 2018 claiming that her role had become untenable. (ER1 6.2 refers)

## **3.0 Ms Mollet**

- 3.1 Ms Mollet did not provide a witness statement and relied upon her ET1 submission and bundle. (EE1 refers).
- 3.2 Whilst performing her role as a Rental Agent Ms Mollet was based at the airport front desk. On her promotion at the beginning of 2018 Ms Mollet was

permanently based at the St. Martins office; as a result of this transfer and the changed working conditions Ms Mollet claimed she became stressed to an intolerable level, this due to the behaviour of Mr West, and ultimately his poor behaviour toward her led to her resignation.

- 3.3 The Applicant alleged that Mr West was constantly throwing pens at her head, that he shouted at her, and had called her a useless “black bitch” and “nigger”; further that he was constantly telling her to shut up.
- 3.4 The Applicant claimed that Mr West was overly intrusive in questioning areas of her private life and these intrusive questions added to her stress.
- 3.5 The Applicant also claimed the ‘the Boys had breaks which she was not allowed’, the Tribunal understood that these references to “Boys” were in relation to the car valeting staff.
- 3.6 Another area of claimed disparity between male and female employees was the different treatment meted out between the two sexes as to “dress code”. The Applicant claimed that male staff always got away with not wearing the required uniform without comment or sanction. This compared and contrasted with Mr West requiring the Applicant to discipline a female agent who had failed to wear a company scarf.
- 3.7 The Tribunal requested the Applicant to provide further detail of the required uniforms. In summary the “agent” uniform is composed of a dress, coat, skirt and scarf with an apparently equivalent requirement if a male was performing a “front of house” / “customer contact” role. Whereas car valeting staff, who were typically not in contact with clients, were provided with company “T Shirts” and “Fleeces”.
- 3.8 The Applicant further alleged that working hours and changed work routines in 2018 added to her stress and to her belief she was being treated unfairly in relation to other staff. She claimed that in 2018 she did not have a work rota, as in the past. She was not allowed breaks or proper eating times and had been made to work extra hours over and above her contracted hours.
- 3.9 The Tribunal queried why the Applicant had not raised these grievances either formally or informally with Mr Plante. The Applicant responded that this was because she seldom saw him and was concerned about consequences of raising a complaint.
- 3.10 When questioned by the Tribunal as to specific examples of bullying or of harassment by Mr West the Applicant stated that when working directly with Mr West she was constantly “on edge” and she suffered a raised level of blood pressure.

- 3.11 The Applicant informed the Tribunal that as the months passed into spring and summer that work pressures increased to an intolerable level.
- 3.12 The Applicant submitted a resignation letter on 30 July 2018. This letter stated that her position with the company had become “indenable”; during the Tribunal it was established that Ms Mollet had meant “untenable” or a word with a similar meaning.
- 3.13 Toward the end of the proceedings and after she presented her case Ms Mollet claimed she had requested time off from temporary manager, Stuart Poole. Permission was declined; there was no evidence that the Applicant appealed this decision to either Mr West or Mr Plante. She informed the Tribunal that the end of June 2018 was the anniversary of her son’s death and this had been a very distressing time.

#### **4.0 Mr Michael West**

- 4.1 Mr West did not provide a witness statement and relied upon the ET2 and the ER1 submissions (ER1 refers).
- 4.2 Mr West has been in the car-rental industry for 30 years and started out as a car valet, he was subsequently promoted to supervisory and management roles. He has worked some 15 years for Mr Plante.
- 4.3 He works out of the head office in St Martin’s and the fleet of 250 cars are all leased as short term rentals, thus there is a demanding work environment, particularly in the high season.
- 4.4 By appointing the Applicant to a supervisory a role on January 1, 2018 he was recognising the need to increase their capability to deal effectively with high season demand.
- 4.5 His own work routine was apparently demanding and he informed the Tribunal that he normally worked between 8 AM and 6 PM, and on occasions this pattern was for seven days a week. In winter his working routine would typically be reduced to 5.5 days a week.
- 4.6 The contracted hours the Applicant worked had been agreed with her in order that she could drop off and collect her son from his school.
- 4.7 There were no formal breaks in her contract, however she often had coffee at the desk, typically took 3 to 4 smoking breaks outside the office and on occasion she would go to the local Marks & Spencer outlet to buy food. As he believed her to be an exemplary and committed worker he did not object to these informal breaks.

- 4.8 He vigorously denied shouting at the applicant however given the nature of the business he would occasionally chivvy people to be on time for deliveries. Good service he stated was critical for the company.
- 4.9 He told the Tribunal that all employees have uniforms provided by the company. He stated that both male and female employees were subject to equivalent dress codes, and the same standards of compliance were required. In the event that an employee had forgotten to bring an item of dress, e.g. a tie, the company always held extra supplies. The car valeting team, by the nature of their role, would dress informally, but normally with company T-shirts; and fleeces were also provided. They were not “front of house” employees charged with the role of liaising with clients and thus their dress code for their manual role was different.
- 4.10 In response to questions posed by the Tribunal the witness stated he had maintained the most friendly of relationships with the Applicant. For example in the exchange of Christmas and birthday cards. He stated there was some banter at work and socially outside of work, but of an inconsequential nature; for example discussion of some joint shopping trip or setting up a barbecue.
- 4.11 Mr West vigorously denied he ever called her by the names she alleged. He stated he had never used the term “black bitch”.
- 4.12 Responding to questions as to work performed by the Applicant outside her basic hours the witness stated that on many occasions she would collect her son from school and then they would go together to “pick ups”. All such extra hours were either paid or time taken off in lieu.
- 4.13 The Tribunal enquired if he shouted or acted inappropriately during times of greater stress. He denied this and stated that whilst there are stresses and strains in his role this does not change his behaviour, “I do not shout at work,” he stated.
- 4.14 The witness stated he knew nothing outside of work of the personal pressures the Applicant might have been subject to. The witness was visibly taken aback when Ms Mollet stated the end of June was the anniversary of the loss of her son. He stated that whilst he was aware of the history he had no knowledge of the actual date.

## **5.0 Mr Guy Plante**

- 5.1 Mr Plante did not provide a witness statement and relied upon the ET2 and the ER1 submissions.
- 5.2 Mr Plante has been in the car rental business since 1986 in Jersey and for the last 15 years in Guernsey.

- 5.3 Mr Plante could not understand the complaint re the Applicant's issues with her contracted hours. He stated that in 2014, rather than lose her as a member of the team, he responded by giving her start / finish times that supported her school runs and child care needs. In addition the company would always pay for any extra hours worked or agree to time off in lieu.
- 5.4 He had no problem with Ms Mollet taking smoking and other informal breaks during her contracted hours and that this was accepted custom and practice.
- 5.5 Mr Plante disagreed with the Applicant's assertions that there was any gender discrimination in relation to the dress code. He told the Tribunal that due to client expectations and company standards the "front of house" staff were required to conform with one standard of dress, regardless of gender; whereas the valeting team, without client contact, and engaged in a manual role would observe a different dress code. A male "front of house" employee was required to wear a company jacket, tie etc. as an equivalent standard to the female dress code. The company was subject to "no-notice" audits by Europcar on all aspects of the business, including dress code, and this was a further incentive to conform to the required standards and equality of treatment
- 5.6 Mr Plante informed the Tribunal that he believes he has a "Hands-on" style of management and managed many satisfied and happy employees. He would like to think he is fair and listens to both sides of business issues. He also referred to very positive testimonials from both past and current employees in relation to Mr West. (ER1 11.1 to 11.7 refer). He drew the attention of the Tribunal to the fact that, by contrast, the Applicant could not provide any corroborative witness statements for Mr West's alleged behaviour.
- 5.7 Mr Plante stated that he tries to practice an "Open Door" policy, he visits Guernsey at least once a month and always makes time to talk to staff to discuss how things were going; he is very pleased to hear of suggestions which might improve the business. Both he and the Applicant had each other's phone numbers, he could not understand why she did not make a call, even just on an informal basis; he was very disappointed that the Applicant did not feel she could talk to him as to her concerns
- 5.8 In summary he had always believed their working relationship was conducted in a very cordial fashion and he was totally surprised that she would make such allegations.
- 5.9 Mr Plante stated that he had always understood the relationship between Mr West and the Applicant had always been very friendly and cordial. He drew the attention of the Tribunal to text messages between them. (ER1 5.3 to 5.8 refers).

- 5.10 Mr Plante expressed surprise and confusion at the nature of the alleged offensive and discriminatory terminology claimed by the Applicant to have been used against her by Mr West, noting she was a “Caucasian Guernsey Girl”.
- 5.11 Mr Plante confirmed that Ms Mollet had always been paid for hours worked, both for her contracted 33 hours per six day week and for “out of hours” work. Also as an illustration of the good will toward Ms Mollet the company would make sickness payments in excess of her contractual rights upon leaving the company.
- 5.12 Post 29 June 2018 the witness found it very frustrating when he made repeated attempts to contact the Applicant by phone with no response. In his view the Applicant did not have the courtesy to reply to messages that he clearly believed she had received.
- 5.13 Mr Plante, as with Mr West, was visibly taken aback when Ms Mollet stated the 29 June was the anniversary of the loss of her son. He apparently had no prior knowledge of this. He expressed his concern and sympathy for Ms Mollet

## **6.0 The Law**

- 6.1 The first complaint was an alleged constructive unfair dismissal. It is now firmly established in previous judgments, given under the Employment Protection (Guernsey) Law, 1998 as amended, that in order for an employee to be able to establish constructive unfair dismissal, four conditions must be met:
- (i) The employer must be in breach of a term of the contract of employment.
  - (ii) The breach must be fundamental, amounting to a repudiatory breach of contract.
  - (iii) The employee must have resigned in response to that breach.
  - (iv) The employee must not have delayed too long in terminating the contract following the breach of contract, otherwise the breach can be found to have been waived and the contract affirmed.
- 6.1 The relevant section of the law in considering the complaint of sex discrimination is noted below:

Section 6.1 The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 states as follows:

### ***Direct and Indirect discrimination against women***

*1 (1) In any circumstances relevant for the provision of Part II of this Ordinance a person discriminates against a women if:-*



- (a) *on the ground of her sex he treats her less favourably than he treats a man, or*
- (b) *he applies to her a provision, criterion or practice which he applies, or would apply equally to a man but-*
- (i) *which is such that it would be to the detriment of a considerably larger proportion of women than of men*

Only a limited number of complaints have been heard by the Guernsey Tribunal since the Ordinance came into force, however, the recent Appeal Judgment '*Immuno Biotech Limited V Lucia Pagliarone*' 27 April 2016, handed down by Richard James McMahon, Esquire, Deputy Bailiff, gives valuable guidance. In this judgment there are references to a number of UK appeal decisions including '*Macdonald v Ministry of Defence*' (2003) UKHL34. The Deputy Bailiff has given guidance that it is appropriate, if not essential in some cases, for the Tribunal to consider an actual or hypothetical male comparator when dealing with an allegation of sex discrimination by a female.

## 7 Conclusion

- 7.1 At many times during the hearing the Tribunal found the evidence given by Ms Mollet to be confusing and lacking in clarity; whilst she drew attention to her highly stressed state and her high blood pressure it was difficult to obtain specific examples of events that might reasonably justify that a fundamental breach had occurred which could amount to a repudiatory breach of the employment contract
- 7.2 Mr Plante gave evidence that he is a regular visitor to Guernsey in order to liaise with his management team. Each time he visits it would seem that he wishes to have contact with his front line staff in Guernsey and seeks them out for suggestions to improve the business. He recalled several occasions when he collected keys from the Applicant when she would have had an opportunity to raise an issue with him informally.
- 7.3 The Tribunal also notes that the Applicant made no attempt to use the Respondent's formal grievance procedure.
- 7.4 The texted exchanges in the bundle would seem to confirm a very positive working relationship in and outside of working hours between the Applicant and Mr West. It would seem that these were good natured and friendly extending to cordial exchanges re such items as setting up barbecues. There is no evidence of any discriminatory attitudes or assumptions in these texts extending up to the point of her departure.
- 7.5 The Applicant alleged that the dress code was applied differently between males and females. It was her contention that male employees were treated more liberally than female employees. However the Tribunal is persuaded

that the comparison being made between “client facing” staff and “backroom” employees who perform valeting tasks and similar is not the appropriate test. The practice is to provide “backroom staff” with T-shirts and fleeces and due to their manual role they will wear less formal clothes.

- 7.6 It would seem that the correct comparison that might have led to discriminatory practice is that of comparing the dress code for male “client facing” employees with female “client facing” employees. The Applicant made the general statement that “boys got away from wearing uniform” but could not provide specific examples. The Tribunal has listened to the Respondent’s evidence and is satisfied that if a hypothetical male was in post as a “client facing” employee that the same rigour in enforcing an equivalent dress code, equally across the genders, has been and would be applied. The Tribunal concludes that there was neither direct or indirect sexual discrimination toward the Applicant in relation to the dress code by the Respondent
- 7.7 The Applicant alleged that Mr West had thrown pens at her, that he told her she was useless and he would shout at her. If these events occurred then it would seem that there were no witnesses and there was a lack of specificity as to what occurred. The Tribunal concludes that either these events did not happen or minor issues of work practice have been greatly exaggerated. The Tribunal also notes that Ms Mollet was promoted by Mr West and Mr Plante on 1 January 2018 on the basis of her excellent past record; it would seem contradictory that Mr West adopted the attitudes and behaviours alleged by the Applicant. Having assessed both the evidence of Mr West and his general demeanour the Tribunal has concluded that he did not, on the balance of probabilities, act in such a way, the Tribunal cannot establish that there was any fundamental breach of the employee’s contract.
- 7.8 The Tribunal also considered the allegations that Mr West had called the Applicant a “useless nigger” and “black bitch”. If proven these words would have had significant weight in supporting the complaints of both an unfair constructive dismissal and a breach of the sex discrimination ordinance. However, given any lack of corroboration the Tribunal has difficulty putting any weight on these allegations. In addition very close questioning of Mr West and Mr Plante by the Tribunal led the panel to conclude that use of such terms by them was highly unlikely.
- 7.9 There was some confusion in the Applicant’s assertion that she had not always received pay for her 33 weekly contracted hours, however no evidence was offered by her and the payroll records supplied by the Respondent do not confirm these allegations.
- 7.10 There was no evidence that Ms Mollet was compelled to work beyond her contracted hours, rather she seemed quite content to volunteer to perform “pick ups” in company with her son. Given the evidence the Tribunal is

satisfied that the Applicant was either paid for these extra hours or had “time off in lieu” agreed with her manager.

- 7.11 Whilst there were no formally contracted break times during the Applicant’s 5.5 hour working time there was a seemingly relaxed view of her taking 3 to 4 smoking breaks outside of the office every day. In addition the Applicant would go to a local store during working hours to buy food. These practices would seem to confirm there was a “light touch” management of her working hours and no oppressive practices. No evidence was submitted by the Applicant to demonstrate that male employees were allowed to have an even lighter regime of informal breaks.
- 7.12 The Applicant could not provide corroborative evidence or witnesses whereas both current and ex employees of the Respondent submitted such documentation (ER1 11.1 to 11.7 refer). On inspection these documents seem to confirm Mr West as a caring, diligent and competent manager who would not act in the manner alleged by the Applicant.
- 7.13 Finally, having heard her evidence, the Tribunal does not doubt that Ms Mollet was distressed on the 29 June 2018. Only at the end of the proceedings did it become evident that this was the anniversary date of the loss of her son. The Tribunal extends its deepest sympathy to Ms Mollet and her family
- 7.14 The Tribunal has concluded that both complaints should be dismissed

## 8 Decision

- 8.1 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 not constructively unfairly dismissed and makes no award.
- 8.2 In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representation of both parties and having regard to all the circumstances, the Tribunal finds that, under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the Applicant has not been discriminated against. In respect of this decision the Tribunal makes no award

Mr Peter Woodward

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Signature of the Chairman

25 March 2019

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Date