



THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: Mr Robert Pace
Represented by: Advocate Thomas Crawford

Respondent: The Channel Islands Co-operative Society Limited
Represented by: Advocate Paul Richardson

Tribunal Members: Ms Christine Le Lievre (Chairperson)

Decision of the Tribunal

The Respondent made an application, ET12 dated 19 July 2021, to Strike Out the Applicant’s claim based on the ET1 not being presented within a period of three months beginning on the effective date of termination under The Employment Protection (Guernsey) Law, 1998, as amended.

This preliminary issue was addressed by an appointed Chairperson, sitting alone, and considered on written submissions from both parties.

The Applicant’s effective date of termination has been determined as 2 April 2021. Therefore the complaint of unfair dismissal, presented to the Secretary of the Tribunal on 1 July 2021, was within the qualifying period of three months and the case may proceed to conciliation and/or a hearing.

Ms C Le Lievre
.....
Signature of the Chairperson

13 January 2022
.....
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, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH. (Telephone: 01481 220025)
Email: Employmentrelations@gov.gg.

ET3A**The Legislation referred to in this document is as follows:**

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

The Employment and Discrimination Tribunal (Guernsey) Order, 2020 (the 'Order')

Extended Reasons**1.0 Introduction**

- 1.1 The Applicant, in an ET1 Application dated and received by the Employment and Discrimination Tribunal on 1 July 2021, complains he was unfairly dismissed with an effective date of termination of 2 April 2021.
- 1.2 The Respondent made an application, ET12 dated 19 July 2021, to Strike Out the Applicant's claim based on the ET1 not being presented within a period of three months of the effective date of termination; that being 23 March 2021.
- 1.3 The Respondent's representative suggested holding a Case Management Meeting prior to any participation in conciliation (by letter dated 12 August 2021). A Chairperson was appointed and, following a review of the forms the parties were, on 17 November 2021, invited to consider resolution of the matter based upon written submissions; specifically on the point of whether or not the claim had been submitted out of time, with each party submitting any factual points by Wednesday 1 December 2021, and having the right to reply by Wednesday 15 December 2021.
- 1.4 This preliminary issue was addressed by an appointed Chairperson, sitting alone, based upon the document provided. All of that material has been taken into account whether specifically referred to in this judgment or not.
- 1.5 The only issue to be determined was the date of termination of the Applicant's employment.

2.0 Summary

- 2.1 The Parties agree that the Applicant started work in 2012 as a delivery driver.
- 2.2 Throughout the years of employment up to November 2020, under various contractual agreements and other arrangements, the Applicant had been permitted to take unpaid leave at intervals throughout each year. On some occasions the Applicant arranged cover for deliveries to be made in his absence, and on some occasions the Employer arranged cover. This arrangement apparently deteriorated during 2020 when longer periods of unpaid leave were required due to quarantine restrictions, brought in by the Guernsey Civil Contingencies Authority, as part of the coronavirus emergency measures.
- 2.3 The Applicant wished to take unpaid leave from 9 – 31 December 2020 and states he was advised that he would have to find cover for that period. The Applicant alleges that he found appropriate cover "for most if not all of the Unpaid Leave period".

2.4 The Applicant states that on 29 November 2020, the Respondent advised the Applicant that there was no suitable cover and he was therefore not permitted to take the Unpaid Leave he requested. The Applicant informed the Respondent that he had to take the leave and that he had found suitable cover. The Respondent provided the Applicant with a copy of the Unauthorised Leave of Absence section of the Staff Guidebook which provided that such absence may be treated as a serious disciplinary offence potentially constituting gross misconduct.

On 7 December 2020, the Applicant received a letter making it clear the Respondent was unable to approve the Unpaid Leave he requested “as we have not been able to find cover”.

2.5 The Applicant took the unpaid leave despite the Respondent’s disapproval of it and was absent from work from 9 – 31 December 2020.

2.6 The Applicant returned to work on 2 January 2021 and was spoken to about the unauthorised absence for which he would be subject to disciplinary proceedings which subsequently took place and led to the Applicant’s dismissal.

2.7 The Applicant received a letter, dated 5 February 2021, confirming his dismissal would take effect on 2 April 2021.

2.8 The Parties agree the Applicant subsequently handed in his van keys on 23 March 2021. The Respondent states the Applicant made it clear that he was not going to continue to perform the contract of employment. However the Applicant does not agree that he gave notice as this being the end of his employment. The Applicant’s view is that he was taking unpaid leave and, due to quarantine restrictions on his return, would be unable to return the van keys on 2 April 2021.

2.9 The Applicant considered his notice period to be ending on 2 April 2021 as evidenced by his subsequent request for receipt of holiday pay for the Good Friday (a public holiday) falling on 2 April 2021, albeit his pay had been restricted to the hours actually worked up to and including 23 March 2021.

3.0 The Law

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

Section 17(1)(a)(i) of the Law provides as follows:

‘The Tribunal shall not hear or determine the Complaint under Section 16(1) unless it is presented to the Secretary within a period of 3 months beginning on the effective date of termination.’

Section 5(3) of the Law provides:

‘Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer’s notice is due to expire, the employee shall for the purposes of this Part of the Law be taken to be dismissed by his employer, and the reason for the dismissal shall be taken to be the reasons for which the employer’s notice is given.’

Section 5(4)(a) of the Law provides that the effective date of termination is:

‘in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires.’

3.2 The Employment and Discrimination Tribunal (Guernsey) Order, 2020 (the ‘Order’).

The Respondent sought to strike-out the Complainant's claim pursuant to paragraph 2 of the Order on the grounds that the Complainant did not present his complaint to the Secretary within 3 months of the Effective Date of Termination.

Paragraph 4 of the Order provides for a Chairman sitting alone to exercise all the powers of the Tribunal.

4.0 Facts Found

- 4.1 A dismissal letter, dated 5 February 2021, confirmed the Applicant's dismissal would take effect on 2 April 2021 on completion of 8 weeks' notice period. It stated "Failure to work your notice period will result in the Society not paying you."
- 4.2 The dismissal letter included a paragraph referring to the Applicant's query at the end of the disciplinary hearing that stated should he elect to not work from 5 February 2021 the termination of his employment would be effective from that date.
- 4.3 An internal email of the Respondent, dated 11 March 2021, confirmed leaving details for the Applicant as "Last day of Working effective from 02/Apr/2021". A further internal email, dated 24 March 2021 and addressed to 'Payroll Mailbox', states that the Applicant handed in his keys "and so decided to leave the business before the end of his notice period". This email confirms hours worked and asks Payroll to ensure that the Applicant is not "paid for the rest of this week or next week as his leave date was set for Friday 2nd April and I have been told Kronos would automatically pay him for this period." A further internal email from the Respondent, dated 8 July 2021 (subsequent to the end of employment), confirms the Applicant's "Employment dates – 22.05.2012 – 02.04.2021".
- 4.4 A payslip, dated 4 April 2021, details final pay including, holiday pay, overtime and "Pro-rated Pay to 02/04/2021".
- 4.5 An email from the Respondent's pension provider confirms the Society made a pension contribution for the Applicant up to 2 April 2021.
- 4.6 No evidence was provided by either party to show the Applicant was not permitted to take unpaid leave during his notice period or that he gave specific notice to bring forward the date of his dismissal.
- 4.7 There was no evidence to show that the earlier date of 23 March 2021 had been formally accepted and/or acknowledged by the Respondent.

5.0 Conclusion

- 5.1 The dismissal letter, dated 5 February 2021, confirmed the Applicant's dismissal would take effect on 2 April 2021 on completion of 8 weeks' notice period. It is considered reasonable that formal acknowledgement would occur where a large employer, with a Human Resources service, received an early resignation from an employee during their notice period. The papers submitted are substantially indicative that both the employer and employee considered the notice period to end on 2 April 2021.
- 5.2 The wording of the internal email, dated 24 March 2021 and addressed to 'Payroll Mailbox', stating the Applicant handed in his keys "and so decided to leave the business before the end of his notice period" is ambiguous.
- 5.3 There is no evidence to suggest beyond reasonable doubt that the 'effective date of termination' was amended.

6.0 Decision

- 6.1 Consequently, the Applicant's effective date of termination has been determined as 2 April 2021. Therefore, the complaint of unfair dismissal, presented to the Secretary of the Tribunal on 1 July 2021, was within the qualifying period of three months and the case may proceed to conciliation and/or a hearing.