



# COMMERCE AND EMPLOYMENT

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

**FORM EMPROT 3**

For office use only.

Case No UD041/05

## EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998 NOTIFICATION OF ADJUDICATOR'S DECISION

On a complaint of unfair dismissal, suffering a detriment for refusing, or proposing to refuse, to work on a Sunday or failure by an employer to provide a written statement of reason(s) for dismissal, this award, (subject to the rights of appeal to the Royal Court, as set out in the Law), is legally binding and is the final decision of the Adjudicator.

**Adjudication Hearing held on 23 March 2006**

**between**

**Applicant:** Mr M O'Reagan      **Respondent:** Ideal Contractors Limited

**Adjudicator:** Ms Georgette Scott

### **Nature of Dispute:**

Mr O'Reagan, a Ganger and Team Leader for Ideal Contractors Limited, claimed that he was unfairly dismissed for gross misconduct on 9 December 2005, following a misunderstanding regarding work instructions.

Mr O'Reagan also claimed that that Ideal Contractors Limited failed to provide him, on request, with a written statement of reasons for dismissal, or if reasons for dismissal had been provided, that these were inadequate or untrue.

Ideal Contractors Limited claimed that Mr O'Reagan ignored or disobeyed direct instructions by the Managing Director on two separate occasions on 7 December 2005 regarding completion of works on a site at Maumarquis Road, St Andrews, Guernsey.

Ideal Contractors Limited refuted the claim that reasons for dismissal had not been provided.

### **Adjudicator's Decision:**

I find that Ideal Contractors Limited failed to fully follow their own disciplinary procedures by neglecting to recognise Mr O'Reagan's trade union status under those procedures and also failed to offer or provide an appeal to his dismissal. After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the Company and the available resources to deal with this dismissal, I therefore find, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, that Mr O'Reagan was unfairly dismissed.

I also find that no written request for reasons of dismissal was made by Mr O'Reagan to Ideal Contractors Limited and therefore dismiss this part of the claim.

**Amount of Award (if applicable):** £5,910.37

NOTE: Any award made by an Adjudicator may be liable to Income Tax

Any costs relating to the recovery of this award are to be borne by the Employer

Signature of Adjudicator:

Ms Georgette Scott

Date: 7.4.2006

The detailed reasons for the Adjudicator's Decision are available on application to the Secretary to the Adjudicators, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St



**EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998  
REASONS FOR ADJUDICATOR'S DECISION**

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998.

**1.0 The Claim**

- 1.1 Mr O'Reagan, a Ganger and Team Leader for Ideal Contractors Limited, claimed that he was unfairly dismissed for gross misconduct on 9 December 2005, following a misunderstanding regarding work instructions.
- 1.2 Mr O'Reagan also claimed that that Ideal Contractors Limited failed to provide him, on request, with a written statement of reasons for dismissal, or if reasons for dismissal had been provided, that these were inadequate or untrue.
- 1.3 Ideal Contractors Limited claimed that Mr O'Reagan ignored or disobeyed direct instructions by the Managing Director on two separate occasions on 7 December 2005 regarding completion of works on a site at Maumarquis Road, St Andrews, Guernsey.
- 1.4 Ideal Contractors refuted the claim that reasons for dismissal had not been provided.

**2.0 Representatives**

- 2.1 Mr Ron Le Cras, Regional Industrial Organiser, TGWU, represented the Applicant
- 2.2 Mr Geoffrey Jones, Managing Director, Ideal Contractors Limited, represented the Respondent.

**3.0 Witnesses**

**3.1 For the Applicant**

- 3.1.1 Mr Mark O'Reagan
- 3.1.2 Mr Douglas Flattery
- 3.1.3 Mr Ron Le Cras

**3.2 For the Respondent**

- 3.2.1 Mr Geoffrey Jones, Managing Director, Ideal Contractors Limited

**4.0 Documents**

- 4.1 The Applicant tabled documents marked EE1
- 4.2 The Respondent tabled documents marked ER1

## **5.0 Findings of Fact**

- 5.1 Mr O'Reagan was employed by Ideal Contractors Limited as a Ganger and Team Leader, supervising one member of staff, between January 1993 and 9 December 2005.
- 5.2 Mr O'Reagan was working on road works on a site at Maumarquis Road on 7 December 2005. He received a telephone call from Mr Jones, Managing Director of Ideal Contractors Limited, at 7.30 a.m. giving him instructions regarding continuation of works at the site.
- 5.3 At 11.45 a.m. Mr Jones arrived on site and spoke further to Mr O'Reagan regarding continuation of works on the site. Mr Jones issued Mr O'Reagan with a verbal warning.
- 5.4 As a result of returning to the site the following morning, (8 December 2005), he wrote to Mr O'Reagan inviting him to a disciplinary hearing on the following day, (9 December 2005).
- 5.5 Following the disciplinary hearing Mr O'Reagan was dismissed by letter for gross misconduct for failure to follow instructions. The letter of dismissal, dated 9 December makes no mention of any appeal process.

## **6.0 Respondent's Submission**

- 6.1 Mr Jones, Managing Director of Ideal Contractors Limited, advised that the Company had been established in 1982 as a utilities and civil engineering contractor. The Company currently had 32 employees and was part of the International Energy Group. Ideal Contractors Limited work in the very competitive field of road works, often against road closure deadlines.
- 6.2 The firm's disciplinary procedure was based on the Commerce and Employment model and had the approval of the Trade Union, the Transport and General Workers' Union.
- 6.3 At the time of the events leading up to his dismissal Mr O'Reagan was working on a critical site at Maumarquis Road, St Andrews, and an area sensitive to traffic management and close to the traffic lights at Hangman's Inn.
- 6.4 On 7 December 2005 Mr Jones called Mr O'Reagan at 7.30 a.m. at his home to give him instruction to commence trial holing that morning in preparation for the main trenching works that would follow.
- 6.5 Mr Jones called at the site at 11.45 that morning and found that no trial holes had been started and on speaking to Mr O'Reagan reiterated his instruction made at 7.30 a.m. that morning. He added that the patching work should not be undertaken and that the materials for this on the team's lorry should be dumped. Given Mr O'Reagan's general attitude and his failure to follow an instruction given earlier that morning Mr Jones served him with an informal verbal warning.

- 6.6 Mr Jones left the site at 12.15 p.m. with the agreement from Mr O'Reagan that he would commence the trial holing and trenching work that afternoon.
- 6.7 When Mr Jones returned to the site the following morning Mr O'Reagan and his team mate had only just begun the excavation of a trial hole.
- 6.8 Mr Jones spoke to Mr O'Reagan and told him that he had not followed his instructions and this was unacceptable and suspended him from duty with full pay.
- 6.9 Mr Jones invited Mr O'Reagan by letter to a disciplinary hearing the following day. He stated that Mr O'Reagan was entitled to being along a colleague to the hearing as per the disciplinary procedure.
- 6.10 At the hearing on 9 December 2005, the events were discussed and it was agreed by the parties present that the meeting would close for "reflection" and Mr Jones would convey his decision by letter to Mr O'Reagan.
- 6.11 In a letter of 9 December 2005 Mr Jones advises Mr O'Reagan that he is being dismissed immediately for gross misconduct. He added that a proposed further meeting arranged for Monday 12 December would not now take place. This meeting was designed to discuss matter of Mr O'Reagan continuing work had he not been dismissed.
- 6.12 Mr Jones stated that he felt that that his actions in terminating Mr O'Reagan's employment had been both fair and justified.

## **7.0 Applicant's Submission**

- 7.1 Mr Le Cras, Regional Industrial Organiser, TGWU, represented Mr O'Reagan and advised that Mr O'Reagan was a Shop Steward for the TGWU within Ideal Contractors Limited.
- 7.2 With regard to the differences between Mr O'Reagan's earnings on forms Emprot 1 and Emprot 2, (the Application and Employer's Response form), Mr Le Cras confirmed that the correct figure was on form Emprot 2.
- 7.3 In cross examination of Mr Jones, Mr Le Cras confirmed that Mr Jones had not given Mr O'Reagan any instructions about picking up the correct materials and tools to undertake trial holing and trenching. Mr Le Cras stated that different materials and tools were used for the different jobs and these were not available on site.
- 7.4 Mr Le Cras referred to the verbal warning given by Mr Jones on site, which according to Mr Jones was for failure to follow instruction, yet in his letter to Mr O'Reagan inviting him to the disciplinary hearing it was said to be "about your timekeeping, responsibilities as a ganger and general attitude to work". Mr Le Cras claimed that the verbal warning was clearly not for matters immediately associated with the events on the site at Maumarquis Road.
- 7.5 With regard to the letter of dismissal Mr Le Cras pointed out that the letter made no mention of an appeal process which was a contravention of the company's own disciplinary process. Mr Le Cras also sought an appeal after Mr O'Reagan was

dismissed, this was denied. He felt an ideal opportunity to discuss an appeal would have been at the meeting previously arranged for 12 December 2005.

- 7.6 Mr Le Cras also felt it inappropriate for Mr Jones to have conducted the disciplinary hearing having been so closely involved in the events leading to the dismissal. Mr Le Cras also referred to a section of the Company's disciplinary procedures where it stated that "wherever possible, the person conducting the disciplinary hearing should not also conduct the investigation" and with regard to the appeal, "preferably the appeal should be conducted by someone not involved with the original hearing". This left it necessary for someone at Group HQ to conduct any appeal. Mr Le Cras said that he sought out the company's Group Managing Director to undertake an appeal, but to no avail.
- 7.7 In respect of the Company's disciplinary procedures the Company had failed to notify the Trade Union that one of their officials was being disciplined and the letter inviting Mr O'Reagan to the disciplinary hearing should have referred to him being supported by a trade union official not just a colleague.
- 7.8 With regard to the call made by Mr Jones to Mr O'Reagan on 7 December, Mr O'Reagan disputed Mr Jones' version of the content of the call and said that he had been told to "forget about patching the boxes and speak to Douglas Flattery on the site". This he had done and followed instruction. He also disputed that Mr Jones had reiterated his version of the instructions when he visited the site later the same morning.
- 7.9 Mr Douglas Flattery, Head Ganger on the site confirmed Mr O'Reagan's version of events in that Mr O'Reagan had sought him out on 7 December 2005 and explained that he had to take instruction from him.
- 7.10 With regard to the claim over the written statement of reasons for dismissal Mr Le Cras accepted that the requirement was for the Applicant to request in writing a statement of the reasons for dismissal of the employer and that this had not been undertaken.

## **8.0 Conclusion**

- 8.1 It is difficult to reconcile the two versions of events leading up to this case since the exchanges were verbal, unrecorded and largely without witness. This is clearly the nature of work on such sites and it is not surprising that misunderstandings occasionally occur. However, the management of the disciplinary process should be less flawed, given the size of the firm and the fact that it had developed a procedure that mirrored the Commerce and Employment model and had taken the steps to have this approved by the Union. There is clear evidence that Ideal Contractors Limited failed to recognise Mr O'Reagan's trade union status within the procedures but, more importantly, failed to offer or provide an appeal to the dismissal and therefore failed to provide Mr O'Reagan with a fundamental right under those procedures.

## **9.0 Decision**

- 9.1 I find that Ideal Contractors failed to fully follow their own disciplinary procedures by neglecting to recognise Mr O'Reagan's trade union status under those procedures and

also failed to offer or provide an appeal to his dismissal. After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the company and the available resources to deal with this disciplinary issue, I therefore find, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, that Mr O'Reagan was unfairly dismissed.

- 9.2 I also find that no written request for reasons of dismissal was made by Mr O'Reagan to Ideal Contractors Limited and therefore dismiss this part of the claim.

Signature of Adjudicator:

Ms Georgette Scott

Date:

7.6.2006