FORM ET 3

COMMERCE AND EMPLOYMENT
A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

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Case No: ED018/06

EMPLOYMENT AND DISCRIMINATION TRIBUNAL: NOTIFICATION OF TRIBUNAL'S DECISION

On a complaint made to the Employment and Discrimination Tribunal, as specified below.

Hearing held on 27 September 2006

between

Applicant: Mr Michael Perry **and** **Respondent: INK Limited**

Tribunal Chairman: Mr P Woodward

Side Members: Mr J Guilbert and Ms K Tracey

Nature of Dispute:

During the period 8 June 2004 to 27 February 2006 Mr Michael Perry was employed as a Bindery Assistant. Mr Perry claimed that, on the 27 February 2006, his employer informed him that the company had ceased operation and that he was dismissed with immediate effect. Mr Perry subsequently claimed that the company failed to observe multiple elements of the recommended redundancy procedures contained in the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy" and this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent gave testimony to the Tribunal but chose not to contest this allegation.

Tribunal Decision:

After carefully considering all the evidence of and submission, and giving due weight to the size of the company and the available resources to deal with this dismissal, the Tribunal found that under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, Mr Michael Perry was unfairly dismissed by the Respondent.

Amount of Award (if applicable): £11,975.00

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

Signature of Tribunal Chairman: Mr Peter Woodward

Date: 18/October/2006

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Employment and Discrimination Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF

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

1.0 The Claim

During the period 8 June 2004 to 27 February 2006 Mr Michael Perry was employed as a Bindery Assistant. Mr Perry claimed that, on the 27 February 2006, his employer informed him that the company had ceased operation and that he was dismissed with immediate effect. Mr Perry subsequently claimed that the company failed to observe multiple elements of the recommended redundancy procedures contained in the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy" and this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent gave testimony to the Tribunal but chose not to contest this allegation.

2.0 Representatives

2.1 Advocate T Crawford represented Mr Perry
2.2 Mr Littlewood appeared for the company

3.0 Witnesses

3.1 <u>For the Applicant</u>
Mr M Denning (Evidence in Chief)
Mr A Perry

3.2 <u>For the Respondent</u>
Mr Littlewood

4.0 Documents

4.1 For the Applicant: Documents identified as EE1 and EE2

5.0 Findings of Fact

5.1 Mr Perry was employed by INK Limited (the "Company"), his total period of employment being between 24 June 2002 to 27 February 2006.

6.0 Testimony given by Mr Littlewood

6.1 The Tribunal adopted the Testimony given by Mr Littlewood in the Judgement of Martyn Denning V INK Ltd. Case Number ED014/06.

7.0 Testimony from Mr. Michael Perry

7.1 Mr Michael Perry confirmed that he had heard the "Evidence in Chief" of Mr Martyn Denning during the Hearing of Case Number EDO14/06, having been sworn in prior to this evidence being given. Mr Michael Perry stated that he wished to adopt this evidence for his own Hearing, with the exception of any references to personal contractual conditions relevant only to Mr Martyn Denning.

8.0 Closing Statement by Advocate Crawford

8.1 Mr Michael Perry confirmed that having heard the closing statement in the Hearing of Mr Martyn Denning and having been provided with a copy of this statement (EE2 refers) prior to this Hearing, that he would wish to adopt this closing statement for his own Hearing.

9.0 Conclusions

9.1 It would seem to the Tribunal that the Applicant was using somewhat restrained language when referring to a "nonchalant" attitude being taken by the employer towards good industrial relations.

9.2 It is the opinion of all three Tribunal members that Directors of INK Ltd, having had responsibility for the employment of more than 25 employees in this jurisdiction, signally failed to discharge their responsibilities toward Mr Michael Perry and his work colleagues as compassionate and concerned employers.

9.3 The Tribunal accepts that the company was in a dire financial position; however that does not excuse the requirement to keep a workforce informed when their livelihoods are at stake.

9.4 The Tribunal takes account of the influential UK ruling in Polkey V Dayton Services Ltd

In Polkey v A.E. Dayton Services Limited [1988] AC 344, HL, Lord Bridge stated that "... in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation".

The judgement included 4 basic principles of fairness 'which should always be considered' in situations of redundancy:

1. *The duty to consult the employee*
2. *The duty to warn of redundancy*
3. *The duty to establish fair criteria for the selection of employees*
4. *The duty to explore alternatives to redundancy.*

Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too.

9.5 These principles are very relevant to the application by Mr Perry and it evident from the testimony given that none of them were observed by the Directors of INK Ltd

9.6 The Tribunal also notes the previous Guernsey Adjudications referenced in the closing statement by Advocate Crawford and whilst not bound by these decisions take note of the lack of consultation and lack of adequate process in those cases leading to findings of unfairness.

9.7 The Tribunal notes that the Applicant was not provided with an individual letter of dismissal and had to assume the closure was due to the economic circumstances of the company whilst being criticised on his final day of employment for "poor workmanship". It would seem to the Tribunal that this compounded the error of total lack of procedure and demonstrated a total disregard of just under 2 years previous good service to the employer.

10.0 Decision

10.1 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, the Tribunal finds that this dismissal was unfair within the meaning of sections 5(2)(a), 6(2)(c) and 6(3) of the Employment Protection (Guernsey) Law, 1998 as amended by reason of the Company's failure to follow a fair and reasonable procedure in relation to this dismissal

10.2 An award of £11,975.00 is awarded, having been determined by the inspection of payslips relating to the Applicant's final six months employment with INK Ltd and verbal testimony given during the Hearing.

Signature of Tribunal Chair: Mr Peter Woodward	**Date:** 18/October/2006