



COMMERCE AND EMPLOYMENT

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

FORM EMPROT 3

For office use only.
Case No: UD040/05

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 30 March 2006
between**

Applicant: Miss Karen Roberts -v- Respondent: White Rock Café, Mr John Carroll

Adjudicator: Mr Peter Woodward

Nature of Dispute:

During the period of February 2000 to 23 December 2005, Mr Carroll, proprietor of the White Rock Café, employed Miss Roberts in a variety of roles. Miss Roberts claimed that, whilst in this employment, her position had become intolerable, as a result of actions by Mr Carroll, including an alleged significant variation in her terms of employment. Miss Roberts resigned and submitted a complaint of (constructive) unfair dismissal under The Employment Protection (Guernsey) Law, 1998, as amended.

Miss Roberts also submitted a complaint of 'Failure to be provided, on request, with a written statement of reason(s) for dismissal or if reasons have been provided, where the Applicant considers these to be inadequate or untrue'.

Adjudicator's Decision:

After carefully considering all the evidence of both parties and their submissions and giving due weight to the size of the company and its available resources to deal with these issues, I find, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, that Miss Roberts was not constructively dismissed by her employer, and therefore I make no award in respect of this complaint.

During testimony it was agreed that no written reason(s) for dismissal had been requested or provided. The Respondent denied dismissing the employee; in addition, no request for written reasons was made to the Respondent, in light of these reasons I make no award in respect of this complaint.

Amount of Award (if applicable): None

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:

Mr Peter Woodward

Date:

07/04/06

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 Martins, Guernsey, GY1 6AF



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

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

1. The Claim

During the period of February 2000 to 23 December 2005, Mr Carroll, proprietor of the White Rock Café, employed Miss Roberts in a variety of roles. Miss Roberts claimed that, whilst in this employment, her position had become intolerable, as a result of actions by Mr Carroll, including an alleged significant variation in her terms of employment. Miss Roberts resigned and submitted a complaint of (constructive) unfair dismissal under The Employment Protection (Guernsey) Law, 1998, as amended.

2.0 Representatives

- 2.1 Miss Roberts represented herself
- 2.2 Mr Carroll represented himself

3.0 Witnesses

For the Applicant:

Miss Karen Roberts

Mr Peter McKenzie

Witness statement from Ms M. E. Queripel

For the Respondent:

Mr John Carroll

Mrs Ann Carroll

4.0 Documents

- 4.1 The Applicant tabled a bundle of documents referenced EE1
- 4.2 The Respondent tabled a bundle of documents referenced ER1

5.0 Findings of Fact

- 5.1 During the period February 2000 to 23 December 2005, Mr Carroll, the proprietor of the White Rock Café, employed Miss Roberts in a variety of roles.
- 5.2 Miss Roberts resigned her employment by letter on 3 December 2005 with an expected final date for the end of employment of 23 December 2005.
- 5.3 There was agreement between both parties that Miss Roberts was in receipt of an hourly wage of £8.50 per hour at the time of her resignation.

6.0 Evidence and Submissions

Testimony from Miss Roberts

- 6.1 Miss Roberts was employed by Mr Carroll in early 2000, as a 'Kitchen and Counter Hand'. These arrangements remained in place until 2003 when Mr Carroll left for a six-month visit to Australia, during this period Miss Roberts took on agreed additional responsibilities including those of ordering stock, being a key-holder, organising staff rosters and ensuring that the café was regularly cleaned. Mr Carroll adopted the same routine the following year and again agreed with Miss Roberts that she would undertake additional duties during his absence. In recognition of these additional duties being discharged, Mr Carroll paid Miss Roberts a bonus of £2,000 in 2003 and £10,000 in 2004.
- 6.2 Miss Roberts then related the content of a meeting that took place between her and Mr Carroll in early 2005 when he indicated that she would return to the normal duties previously agreed in the year 2000; however, she would receive a bonus of £10,000 for the year of 2005. During this meeting Miss Roberts also stated that Mr Carroll had spoken of employee contracts being needed for all other staff, but he had told her that the working relationship between them was so good that a contract of employment would not be required in her case.
- 6.3 Miss Roberts stated that during 2005 there was some friction between her and Mr Carroll, for instance they were at odds as to who would clean the toilets.
- 6.4 In August 2005, Miss Roberts met with Mr Carroll who indicated that she would need to wait for her 2005 bonus until December of that year as opposed to October, the month in which bonuses had been paid in previous years.
- 6.5 Miss Roberts testified that, in November of 2005, Mr. Carroll took a cruise and immediately afterwards went to the UK; it was during this period that clients expressed a desire to know the opening hours for the café during the Christmas period. Miss Roberts stated that Mr Carroll had not left her with a clear understanding as to what his decision would be over this, however

she understood from him that she would not be required to work for that period.

- 6.6** In late November, Mr Carroll was back in Guernsey and was admitted to hospital for an operation on his ear. At the same time Mr McKenzie had fallen ill, however Miss Roberts stepped in and ran the café for a period of four days until the return of Mr McKenzie.
- 6.7** On the 2 December 2005, Mr Carroll was still recuperating from his operation when Mrs Carroll visited the café to pay the staff wages. There was a dispute between herself (Miss Roberts) and Mrs Carroll over a scheduled holiday for the period 9 to 16 December 2005, she wished to take this with Mr McKenzie, her co-worker and partner, however Mrs Carroll thought that it was too busy a period for both these individuals to be away at the same time for a full week. Mrs Carroll also indicated that Miss Roberts would not receive the bonus for the year 2005 of £10,000, which she thought had been promised. Miss Roberts stated that she was so upset by these statements that she declined a request from Mrs Carroll to meet with her husband that afternoon.
- 6.8** Miss Roberts stated that later in the morning of 2 December, Mr Carroll came to the café and spoke to Mr McKenzie and her; there was a heated discussion ending with Mr Carroll stating they could leave with bonuses of £5,000 and £2,500 respectively. Mr McKenzie advised Miss Roberts to take this sum and resign. Miss Roberts was so upset that she did not wish to discuss the matter further and stated that she had replied with the single word "right" that she agreed to this. It was then agreed that Mr Carroll would bring draft letters for them to sign in respect of the resignation and, once signed, would pay the bonuses.
- 6.9** The following day (December 3) Mr Carroll returned to the café and asked both Miss Roberts and Mr McKenzie to sign the pre-prepared resignation letters (ER1 Item 2 refers), and on Sunday 4 December, Mr Carroll issued a cheque to the value of £2500 to Miss Roberts as a full and final payment for her bonus in 2005. Subsequently, on 12 December 2005 Mr Carroll provided a personal reference to Miss Roberts recommending her as a good employee (ER1 Item 3 refers). I also note that Miss Roberts provided in her bundle, testimonials from other responsible people in Guernsey who clearly hold her capabilities in high esteem.
- 6.10** Miss Roberts continued to work at the café, taking her scheduled vacation for the week commencing 9 December 2005 and on her return on the 16 December 2005, she met Mr Carroll and it was agreed it would be better if she were to leave that day. On the 18 December, Miss Roberts sent a letter to Mr Carroll requesting immediate payment of the remainder of her notice pay and in that letter stated she had only been paid part of her verbally agreed bonus (ER1 Item 4 refers). She was subsequently paid her final weeks notice (which was un-worked) on the 19 December 2005. This was her last contact with Mr Carroll prior to the end of her employment.

- 6.11** I then posed some questions to Miss Roberts as to her refusal to sign an employment contract offered to her by Mr Carroll in June 2005. Her responses are dealt with in paragraph 8.2 of this judgement. During her testimony, Miss Roberts drew my attention to a witness statement in her bundle, prepared by a Ms Queripel (page 15, EE1 refers).

Testimony from Mr McKenzie

- 6.12** Mr McKenzie was invited to read his witness statement to the Hearing (EE1 Page 16 refers) and in this statement asserted that Miss Roberts had been promised a bonus of £10,000 for the year 2005 by Mr Carroll, during a meeting held in early 2005; Mr Carroll had also mentioned during this meeting that he would be issuing contracts to other staff but that they were not required for either Miss Roberts or Mr McKenzie.

Testimony from Mr Carroll

- 6.13** Mr Carroll testified that he had awarded a bonus to Miss Roberts of £2,500 in 2003 and £10,000 in 2004. These bonuses were in recognition of her taking on additional duties and her willingness to give particular commitment to the business whilst Mr Carroll and wife were in Australia for six-month periods in each of these years. However, he testified that the situation was significantly different in 2005, as he and his wife had decided to actively manage the business themselves. Whilst he did travel to Australia in 2005, he limited his time away from Guernsey to eight weeks, during which period his wife remained in Guernsey.
- 6.14** Mr Carroll testified that Miss Roberts had on a number of occasions mentioned to him that she and Mr McKenzie might be leaving his employment, it was therefore not abnormal, he stated that it was for this reason that when, during the conversation with Miss Roberts, she had expressed her lack of desire to work during the Christmas period, he had asked her if she and Mr McKenzie wanted to leave and, if so, he would still pay them their bonuses. However, Mr Carroll stated he was “astounded” when Miss Roberts said she would take the money and leave. He also testified that in his opinion there was little doubt as to the opening hours for Christmas 2005, as they had been publicised by Island FM (ER1 tab 1 refers), which clearly indicated that the café would be opening for limited periods over Christmas.
- 6.15** Mr Carroll testified that, in his opinion, he did not pressure Miss Roberts into resigning; however, it was Mr McKenzie who had stated that Mr Carroll could prepare the letters of resignation for both him (Mr McKenzie) and Miss Roberts. Mr Carroll said that Miss Roberts relied on Mr McKenzie to speak for her during this meeting, and indeed she gave the impression that she did not want to discuss these issues directly with Mr Carroll.
- 6.16** Mr Carroll met with Miss Roberts and Mr McKenzie after the café had closed on Sunday December 4 and, after they had signed the pre-prepared letters of resignation, immediately gave each of them their bonus cheques. Mr Carroll stated the situation was the same as on the previous day in that

Mr McKenzie spoke for both of them and that there was no meaningful discussion with Miss Roberts.

- 6.17** Mr Carroll believed that Miss Roberts was content to continue to work until the agreed final date of 23 December 2005, however on her return from a one week agreed vacation on 16 December the working relationships at the café had become very difficult and he decided to pay Miss Roberts until 23 December, but not require her to attend work for the remaining period. Her final weeks notice was paid to her on 19 December 2005. There was no further contact with Miss Roberts after the 19 December.

Testimony from Mrs Carroll

- 6.18** Mrs Carroll confirmed that she too had been surprised by the decision of Miss Roberts to resign and believed that there had been no pressure on Miss Roberts to sign the resignation letter, which she had prepared at the request of Mr McKenzie and Miss Roberts.

7.0 Closing Statements

7.1 The Applicant

Miss Roberts had nothing significant to add in conclusion, stating that her testimony had been a full and accurate account of the ending of her employment relationship with Mr Carroll.

The Respondent

- 7.2** Mr Carroll reaffirmed that the situation in 2005 was radically different from the two previous years and that he had at no stage led Miss Roberts to believe that she would receive a bonus of £10,000 for the year 2005. He was surprised that Miss Roberts had such uncertainty over the year-end opening arrangements as these were no different from previous years and had been publicised via the media. He believed her work had been of a high standard and was disappointed that the employment relationship had ended in the manner that it had.

Conclusions

- 8.1** The Applicant alleged Unfair Constructive Dismissal and for this to be upheld needed to establish that she could terminate her contract with or without notice by reason of the employer's conduct (within the provision of paragraph 5(2) (c) of the 1998 Law). The employee should have indicated by word or conduct that she was treating the contract as repudiated by the employer.
- 8.2** During testimony, it emerged that Miss Roberts had not signed the employment contract, which was presented to her in June 2005 and she asserted that it was deficient in three critical areas as follows.
- It incorrectly stated her paid holiday entitlement as three weeks in a calendar year when there had been a verbal agreement to pay four weeks paid holiday entitlement. In the event Miss Roberts testified

that in 2005 she took four weeks paid vacation entitlement so I must conclude that, in this respect, the verbal contract had been honoured by Mr Carroll.

- Secondly the notice of termination was expressed in this contract as two weeks notice to be given either by employee or employer, or alternatively as mutually agreed. Miss Roberts was employed in excess of five years and could have relied on the legal minimum stipulated in the 1998 Law i.e. not less than four weeks notice. However, Miss Roberts testified that by mutual agreement with Mr Carroll a period of three weeks was paid in respect of her notice, including a week that was not worked. I am persuaded that this notice period was mutually agreed between Miss Roberts and Mr Carroll.
- Finally the written contract was silent on the issue of bonus. Miss Roberts testified that there had been a verbal agreement early in 2005 that a bonus of £10,000 would be paid toward the end of that year, in addition to her normal wages. It was agreed by both parties that, in 2003, Miss Roberts had received a bonus of £2,000 and in 2004 a further bonus of £10,000; however it was also given in testimony by Mr Carroll that these bonus payments were made in the knowledge that he would be absent in Australia, together with Mrs Carroll, for six months in each of those years and that during those periods Miss Roberts would carry out extra duties. The situation was different in 2005, Mr. Carroll only returned to Australia for eight weeks and, whilst he had indicated that he would pay Miss Roberts a bonus, that he had not committed to pay her a £10,000 bonus, as previously paid in 2004. I am persuaded by the testimony of Mr. Carroll that he did not make a commitment to Miss Roberts of a £10,000 bonus in 2005 and that he thought that the bonus he actually did pay (£2,500) was an equitable sum for Miss Roberts for that year.

8.3 I have, therefore, concluded that there was not an explicit breach of the verbal contract between Mr Carroll and Miss Roberts. However, I would draw to the attention of Mr Carroll that the written contract that was presented to Miss Roberts in June 2005 would appear to have significant deficiencies in regard to the requirements of the “Conditions of Employment (Guernsey) Law, 1985” and the minimum periods of notice stipulated in the 1998 Employment Protection (Guernsey) Law. As Mr Carroll testified that all employee contracts given to his employees, including that given to Miss Roberts, were in the same format it would seem advisable that he seeks assistance in rectifying these deficiencies.

8.4 I have also considered the events of the 2, 3 and 4 December 2005 in which period Miss Roberts confirmed her intent in writing to leave her employment and was paid a £2,500 bonus. From the testimony of both parties I am persuaded that Miss Roberts was unhappy about working over the Christmas period 2005. However, I am not persuaded that there was still uncertainty as to the projected working arrangements for this period as of the 2 December 2005, particularly as the White Rock Café had publicised these opening times on Island FM in November 2005. Whilst I note with regret that the

working relationship between Mr Carroll and Miss Roberts was no longer amicable in December 2005, I am not persuaded that Mr Carroll had acted in such a way as to fundamentally undermine trust to such a degree that it went to the root of the employment contract and could be sufficient justification for Miss Roberts to resign her employment and claim unfair dismissal.

- 8.5** I took account of testimony from Mr McKenzie and Mrs Carroll, as well as the witness statement from Ms Queripel, in coming to these conclusions.

9.0 Decision

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 these issues, I find, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, that Miss Roberts was not constructively dismissed by her employer.

During testimony it was agreed that no written reason(s) for dismissal had been requested or provided. The Respondent denied dismissing the employee; in addition, no request for written reasons was made to the Respondent, in light of these reasons I make no award in respect of this complaint.

Signature of Adjudicator:

Mr Peter Woodward

Date:

07/04/06.