

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Anthony Brown
Represented by: Self represented

RESPONDENT: Project Hire & Sale (Guernsey) Limited
Represented by: Mr Gareth Bell (Senior Associate, Collas Day)

Witnesses

For the Applicant

Mrs Susan Brown (Wife)

For the Respondent

Mr Martyn Guilbert (Managing Director)
Mr Sierd Jan Looijenga (Operations Director)
Mr Andrew Stephen Mathews (Supervisor)

Called by Tribunal

Ms Laura Wishart (Human Resources and Training Coordinator NP Group)

Decision of the Tribunal Hearing held on 19 October 2007.

Tribunal Members

Mr Peter Woodward
Ms Alison Anderson
Mr Steven White

UNANIMOUS DECISION

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Anthony Brown was not, as alleged, constructively dismissed

Mr Peter Woodward

Signature of the Chairman

Date

8 / November / 2007

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

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 are available on application to the Secretary to the 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.

Extended Reasons

1.0 Introduction

- 1.1 The Applicant represented himself and gave witness testimony under oath, which was also supported by documentary evidence. (EE1 – EE4 Refer).
- 1.2 Mrs Susan Brown gave witness testimony under oath on behalf of Mr Brown.
- 1.3 The Respondent was represented by Mr Gareth Bell.
- 1.4 Mr Martyn Guilbert, Mr Sierd Jan Looijenga, Mr Andrew Mathews and Ms Laura Wishart gave witness testimony under oath, and were also supported by documentary evidence (ER1 Refers).
- 1.5 At the outset of the hearing the parties confirmed that:
 - 1.5.1 It was agreed that the effective date of termination was the 23 May 2007.
 - 1.5.2 The salary figures as detailed in the Applicant's ET1 were agreed by the Respondents.
 - 1.5.3 It was disputed by the Respondent that the Applicant had been Constructively Dismissed as alleged in his ET1; the Respondent asserted that the Applicant had resigned from his employment on the 23 May 2007 with insufficient grounds to prove he had been constructively dismissed.
- 1.6 Mr Bell objected to the inclusion of a "without prejudice" document in the bundle EE1. The Tribunal heard submissions on this document from both parties; notably that it related to events after the alleged dismissal, and ruled that it should be withdrawn from all bundles, sight unseen by the Tribunal.

2.0 Findings of Fact

- 2.1 Mr Brown commenced his employment with the Respondent on the 23 May 2005; initially in the role of Hire and Sales Assistant. He was then promoted to Hire Controller in September 2005.
- 2.2 Mr Brown became dissatisfied with his role and this was formally communicated to his employers on the 22nd of June 2006 when prior to being given a performance appraisal by Mr Looijenga Mr Brown submitted a list of concerns and complaints including issues with hire equipment, lack of personal training and development and alleged shortcomings in the way he and the work team were managed. (EE1 Document 13 refers). There are no formal records as to how these concerns were dealt with.
- 2.3 Mr Brown and Mr Looijenga were joint signatories to a Personal Development plan for Mr Brown agreed on the 18 September 2006.
- 2.4 Whilst there had been some informal counselling by Mr Looijenga as to Mr Brown's timekeeping and credit sales no formal disciplinary action was taken; otherwise Mr Brown's period of employment with the Respondent would appear to have met required company standards.

- 2.5 From witness testimony given the Tribunal is satisfied that there was an underlying fractious relationship between Mr Brown and Mr Looijenga for a number of months preceding the events of April 2007, however neither party placed any formal record of their concerns on Mr Brown's Personnel File, nor was any formal grievance raised to the Human Resources department.
- 2.6 During the period of his employment with the Respondent Mr Brown and two other members of the staff covered the showroom area, and two of these three staff were expected to cover for a Saturday shift each week. A roster was drawn up by the Respondent detailing who would be on duty each successive weekend. (EE1 Document 14 refers).
- 2.7 Testimony from both the parties confirms that an altercation took place between Mr Brown and Mr Looijenga on the 20 April 2007 due to the late substitution of Mr Brown for a colleague for the Saturday shift of the 21 April 2007.
- 2.8 Mr Brown gave notice of his resignation from the Respondent's employment on the 23 April 2007 and was subsequently employed until the 23 May 2007.

3.0 The Law

- 3.1 Mr Brown claimed that he had been constructively dismissed, within the meaning of paragraph 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998 as amended; i.e.:-

"the employee terminate that contract, with or without notice, in circumstances such that he is entitled to terminate without notice by reason of the employer's conduct."

- 3.2 For Mr Brown to succeed in his claim of a constructive dismissal within the meaning of Section 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998, as amended it was necessary for him to demonstrate:-
- 3.2.1 That the behaviour of his employer was such that it could be held as a fundamental breach of the employment contract.
- 3.2.2 That the breach led directly to his resignation.
- 3.2.3 That he took action within a reasonable timescale following the alleged breach.
- 3.3 It is accepted that any alleged fundamental breach might be either an express or implied term of the employment contract and should be proven on the balance of probabilities. In addition any alleged breach might be the result of a single event, or a series of events culminating in a "last straw" event, leading to the employee resigning and claiming Constructive Dismissal.

4.0 Testimony from Mr Anthony Brown

- 4.1 Mr Brown read from his witness statement (EE1 document 8 refers) and commenced by recounting the events leading up to the altercation between himself and Mr Looijenga on Friday 20 April 2007. Mr Brown stated that he became aware on Wednesday 18 April 2007 that neither Matt Lesbirel nor Andrew Mathews would be available to work on the Saturday shift 21 April 2007. Mr Mathews was attending a wedding and Mr Lesbirel had expressed the wish to visit Jersey that weekend, even though he was rostered for the 21 April. Mr Brown offered to stand in for Mr Lesbirel and alleges that he informed Mr Looijenga of this intended substitution on Thursday 19 April.
- 4.2 On the morning of Friday the 20 April Mr Brown alleges that Mr Looijenga stormed into the showroom and in the presence of the Applicant, Mr Lesbirel and Mr

Mathews declared “this is a fucking kindergarten” as we could not decide as a team who was due to work on the following day. Mr Looijenga denied that he had been told of the proposed changes to the roster the previous day and declared to Mr Brown that he was “bloody useless”. Mr Brown retorted to Mr Looijenga he could “stick his job” however Mr Looijenga did not respond to this and walked away. Mr Brown stated that he thought of quitting immediately however he did not wish to leave his colleagues with a heavy workload.

- 4.3 Mr Brown worked alongside Mr Looijenga on the 21 April 2007 and hoped for an apology, but it was not forthcoming. Mr Brown did not think this situation was tolerable and on Monday 23 April submitted his written notice to Managing Director Martyn Guilbert. His resignation was accepted and Mr Guilbert told the Applicant that he had been aware of a personality clash between Mr Brown and Mr Looijenga and that Mr. Looijenga had briefed him on the events of the previous Friday morning. Despite the fact that the Applicant told him that in his opinion it was a deliberate provocation by Mr Looijenga he was told by Mr Guilbert there was no intention by the Company to investigate the issue any further.
- 4.4 Mr Brown then recounted that in his opinion the personality clash had been apparent for a period of 12 to 15 months. He believed that Mr Looijenga was constantly seeking to undermine him in his day to day work and challenged his judgment. In addition Mr Looijenga had reneged on commitments to formally train him on first aid and various machinery courses. However the most significant event occurred on the 22 June 2006 when, as part of the normal performance appraisal process, Mr Brown made a personal submission (EE1 Document 13 refers). In this document Mr Brown listed criticisms ranging from “prejudicial treatment of staff”, to lack of personal support from his Manager, alleged internal safety issues and included allegations of machinery being issued for hire that was in a dangerous condition.
- 4.5 Mr Looijenga was most displeased with this personal submission and after initial discussions with Mr Brown involved Mr Guilbert in the performance appraisal discussion. Both Directors were very critical of the submission and requested that he withdraw the document. Mr Brown refused to retract the document despite the fact that Mr Guilbert thought some of the comments to be libellous.
- 4.6 According to the testimony from Mr Brown there was no further discussion of this document and the Company did not follow its written procedure which required that a Managers Report on his performance should have been issued to him as part of the overall appraisal process.
- 4.7 Mr Brown drew the attention of the Tribunal to Document 5 EE1 which detailed from his point of view significant interactions between himself, his colleagues and his employer during the period 18 April 2007 to 17 May 2007.
- 4.8 Mr Brown also drew the attention of the Tribunal to Document 6 EE1 which described contributing factors to his resignation. He detailed a number of examples which he thought demonstrated that he been prevented from carrying out his duties as required and that from time to time his position had been undermined by his immediate management. Of particular note are allegations of being systematically delayed each day when he had to conduct the ' Tilling Up" after hours; that his word was seldom taken when he pointed out that stock items were not being reordered, and when management claimed, unfairly in his opinion,, that he had not processed orders correctly.
- 4.9 Turning to events subsequent to the 23 April 2007 Mr Brown testified that he had worked his notice, and told the Tribunal of his firm conviction that he was required to

work his notice even though it was the actions of the employer that had led to his resignation.

- 4.10 Mr Brown alleged that the copy of his 2006 Appraisal sent to him by the Respondent whilst he was preparing for this hearing was a “hoax” document.
- 4.11 Under cross examination by Mr Bell the Applicant denied that it had neither been his practice, nor that of his work colleagues, to “wind up” Mr Looijenga.
- 4.12 The Applicant was asked to give an example as to how the Respondent had lied to customers but could not relate a specific example with a specific customer.
- 4.13 In response to a question from Mr Bell the Applicant reiterated his testimony that he had worked his notice and that he thought that was the correct thing to do. He added that he needed the money for this period.

5.0 Testimony from Mrs Susan Brown

- 5.1 Mrs Brown read from a witness statement (EE1 document 9 refers), and related how upset Mr Brown had been when they met for lunch on the 20 April 2007. She shared the view with Mr Brown that Mr Looijenga had known a couple of days before 20 April that Mr Brown would be substituting for Mr Lesbirel for the Saturday 21 April 2007 shift.
- 5.2 Mrs Brown testified she had seldom seen her husband so upset however she agreed with her husband that it would be advisable to work on Saturday and see if Mr Looijenga would offer an apology; in the event Mr Looijenga did not offer an apology.
- 5.3 Mrs Brown testified that she was aware of the frustrations and concerns building over a number of months and that in the outcome Mr Brown was so demoralised by the treatment meted out to him that he no choice but to resign.
- 5.4 Mr Bell did not seek to cross examine Mrs Brown on any element of testimony.

6.0 Testimony from Mr Jan Looijenga

- 6.1 Mr Looijenga read from his witness statement (ER1 Tab2 refers) and stated that it was not until the morning of Friday 20 April 2007 that Mr Lesbirel approached him to ask for the following day off as holiday. Given the short notice for this request Mr Looijenga declined it.
- 6.2 Mr Lesbirel then spoke with Mr Gilbert who agreed that he could take the following day off but only with the agreement that he would work from noon on the 23 April 2007.
- 6.3 Mr Looijenga then spoke with Mr Lesbirel who informed him that it had been arranged between the team members that the Applicant would take his place for the Saturday shift and that he would inform him directly of this.
- 6.4 Subsequently Mr Looijenga approached the Applicant and in a “raised voice” asked him when he and Mr Lesbirel were going to inform him of the change. The Applicant responded by telling Mr Looijenga that he would have found out on Saturday morning. Mr Looijenga alleged that this was said by the Applicant with a smile on his face.

- 6.5 Mr Looijenga testified that he had then said to all the counter staff present that it was “like running a blumming kindergarten”; Mr Looijenga denied using any stronger language than this and also denied the allegation that he had told Mr Brown he was “bloody useless” in front of his colleagues.
- 6.6 In response to questions from the Tribunal Mr Looijenga denied the allegations of bias when he turned down the a holiday request from the Applicant at 10 days notice for three days vacation, nor was he biased against Mr Brown in not placing him on training courses as these were scheduled for employees in relation to business need.
- 6.7 Mr Looijenga testified as to having given Mr Brown informal warnings on his timekeeping and credit sales.
- 6.8 Mr Looijenga denied that he was undermining the Applicant by not allowing him to use discretion in financial deals with clients, there needed to be in his opinion clear cut off points between team members and the management as to who could give discounts and similar incentives. He believed he made the Applicant and all other team members aware of correct cash handling procedures.
- 6.9 Mr Looijenga seemed to recollect that the Applicant had voluntarily withdrawn the personal submission (EE1 Document 13 refers) of the 22 June 2006 but agreed that the withdrawal had been a response to a management request.
- 6.10 Mr Looijenga in response to further questioning from the Tribunal stated that an HR representative was available to Mr Brown if he wanted to express a grievance or make a formal complaint, however Mr Brown apparently chose not to consult with HR.
- 6.11 Mr Looijenga adamantly rejected the allegation he had told lies to customers.
- 6.12 Mr Brown in conducting a cross examination of Mr Looijenga asked him would it not have been reasonable deduction that Mr Brown would be the substitute for Mr Lesbirel on 21 April 2007? Mr Looijenga replied by stating that it was the principle of “being informed before the event” which was important.
- 6.13 Mr Looijenga denied that he had informed Mr Guilbert of his loss of temper on 20 April 2007 in an “attempt to cover his back”. Mr Looijenga claimed it was routine for the three Directors to discuss issues on a daily basis and he thought it necessary to inform Mr Guilbert of the incident in case Mr Brown raised a grievance.
- 6.14 Mr Looijenga rejected the allegation that he deliberately held Mr Brown after 5pm each day to perform “tilling up” routines; rather it was a product of the work routines adopted by Mr Brown.
- 6.15 Mr Looijenga did not think there was any merit in the Applicant’s criticism that he had been unfairly excluded from company computer access. Mr Looijenga described a system with a hierarchical level of access entitlements appropriate to the proper control of the business and that Mr Brown had been given a level of access required by his role.
- 6.16 Mr Looijenga agreed he had signed a personal development plan for the Applicant that defined future training but stated that this was a statement of possibilities. The rule was to give priority to training in line with business need; for example if a qualified “First Aider” left the company there would be a priority to replace this capability as soon possible.

- 6.17 Mr Looijenga refuted the allegation that document EE3 established that there was a deliberate attempt to produce a “hoax” performance appraisal for the company files.

7.0 Testimony from Mr Martyn Guilbert

- 7.1 Mr Guilbert read from his witness statement (ER1 Tab 4 refers) and stated that the company held “Investors in People” (IIP) accreditation, this was evidence that the company was committed to an “open door” policy and believed in “investing” in its people.
- 7.2 Mr Guilbert confirmed that on the 20 April 2007 he had been informed by Mr Looijenga of the altercation between himself and Mr Brown earlier that day. He also confirmed that the company directors routinely talk to each other on a range of issues, including those concerning the staff.
- 7.3 Mr Guilbert stated that the Applicant had held appropriate access rights to the computer system whilst employed and disagreed with Mr Brown that he had been “required” to till up after 5pm each working day.
- 7.4 Turning to the document submitted by Mr Brown on 22 June 2006 ((EE1 Document 13 refers) it was his recollection that Mr Brown had withdrawn the document and had adopted a conciliatory approach with Mr Guilbert after they had discussed its contents.
- 7.5 Mr Guilbert testified that the Company was reluctant to use formal disciplinary procedures, it was a small team and his hope was that the great majority of issues could be dealt with by informal discussion and counselling; however he had recourse to the formal discipline route once in the past 5 years.
- 7.6 Mr Guilbert confirmed that he had been aware of a “gathering storm” between Mr Looijenga and the Applicant but not to a level that he thought he needed to personally intervene. It was his opinion that two individuals might have a personality clash but could stay “civil” with each other.
- 7.7 Under cross examination Mr Guilbert did not accept the Applicant’s assertion that the Applicant had been constantly provoked by Mr Looijenga but rather it had been Mr Brown who provoked Mr Looijenga. Nor did he make judgments about individuals when he had only heard from one side of an issue.
- 7.8 Mr Guilbert denied that he had stated the comments in the document of the 22 June 2006 were libellous. He agreed that it must have been one of the Directors who had held on to this report and placed it on the Applicant’s file. He added that after discussing the document at the time the Applicant had offered to resign his post. Mr Guilbert stated he had declined the offered resignation, requesting that the Applicant continue his employment.
- 7.9 Mr Guilbert was of the opinion that there was a requirement for the Applicant to inform Mr Looijenga in the event of a “swapped shift”, it was not Mr Looijenga’s role to discover this.
- 7.10 In summary Mr Guilbert thought that Mr Looijenga was a fair Manager and had rarely seen him angered.

8.0 Testimony from Mr Andrew Mathews

- 8.1 Mr Mathews read from his witness statement (ER1 Tab 3 refers), and of significance is his statement that Mr Lesbirel and Mr Brown had discussed swapping shifts before 20 April 2007.
- 8.2 On the 20 April Mr Lesbirel had made a formal request to Mr Mathews not to work on the following day and had been referred to Mr Looijenga for a decision. Mr Brown was also advised by Mr Mathews to confirm the plan to “swap” shifts with Mr Looijenga as he was their Line Manager. Mr Mathews reconfirmed this point under cross examination by the Applicant, he stated that whilst as supervisor he should be informed of such requests he did not have the authority to approve them
- 8.3 Mr Mathews had no clear recollection of the heated discussion between Mr Looijenga and the Applicant that then ensued. However he did recall Mr Brown smirking after the exchange and he thought this might have been due to the Applicant’s success in annoying Mr Looijenga
- 8.4 Following the heated discussion Mr Looijenga returned to his office and the Applicant said to Mr Mathews “I am off” and went off to change his boots, however in the event he stayed and completed his normal working hours.
- 8.5 Mr Mathews confirmed that the company trained its employees according to business need.
- 8.6 Mr Mathews did not offer any other significant testimony.

9.0 Testimony from Ms Laura Wishart, Human Resources & Training Coordinator

- 9.1 In response to questioning from the Tribunal Ms Wishart confirmed that the document of the 22 June 2006 (EE1 Document 13 refers) had not been on the Applicant’s personnel file but had been submitted to her after she had requested in recent weeks that all the concerned parties ensured they sent her any document relating to the Applicant.
- 9.2 Ms Wishart confirmed that she had been aware of a personality clash between Mr Looijenga and the Applicant but not thought it necessary to intervene.
- 9.3 Ms Wishart confirmed that at no time had Mr Brown approached her to discuss the relationship issues whilst in his employment and that he had not elevated his concerns via the company grievance procedure.

10.0 Closing Statement Respondent

The Tribunal noted the following key points from the oral and written testimony:-

- 10.1 Mr Bell referred to his “skeleton argument” (ER1 tab 1 refers) and to the working environment in which the alleged events occurred. This was a shop operating within the building trade and the use of questionable expressions and language was “part and parcel” of the environment.
- 10.2 An employer is entitled to “chastise” an employee provided it is done in an appropriate manner and the tribunal was referred in the “skeleton argument” to a case heard in the UK in 1979, namely *Courtalds V Andrew*. A primary difference between

this and the current case is that any alleged criticism of the Applicant by Mr Looijenga was in the context of his failure to inform a superior of a change of shifts.

- 10.3 The Respondent denies any breach of an implied term of the Applicant's employment contract and that even if the Tribunal was to accept that such a breach occurred it was not of sufficient gravity to amount to a repudiatory breach entitling the Applicant to resign and claim Constructive Dismissal.
- 10.4 The Respondent does not accept that the Applicant was humiliated and upset by Mr Looijenga's alleged comments rather that the Applicant wanted to provoke a reaction from his Manager and was seen to smirk when this was achieved.

11.0 Closing Statement Applicant

Mr Brown submitted a written "skeleton closing" (EE4 Refers) and the Tribunal held an adjournment to read the document in its entirety.

The Tribunal noted the following key points from the oral and written testimony.

- 11.1 Mr Brown claimed that the Respondent had committed a fundamental breach of his contract of employment; that he resigned in response to that breach and for no other reason and he did not "affirm" his contract of employment by delaying his resignation too long.
- 11.2 Mr Brown held that the breach of his contract was in the implied term of trust and confidence, and that this had occurred over a period of time. The initial event which demonstrated this intent to breach the contract was the Respondent's reaction to his list of work related problems dated 22 June 2006 and the final "last straw" event was the "unreasonable behaviour" by the Respondent in dealing with the proposed change of work shifts on the 20 April 2007.
- 11.3 Mr Brown had demonstrated with his testimony that the Company had been prejudiced towards him by singling him out for criticism for poor timekeeping, that they had ignored his requests to attend formal training programmes related to his employment and Mr Looijenga had often used a manner and tone towards him that was arrogant and condescending.
- 11.4 The intemperate language used by Mr Looijenga on 20 April 2007 was totally uncalled for and was not the required behaviour of a manager addressing "grown up men" in the middle of a shop. The specific language used by Mr Looijenga towards him was intended to humiliate him, particularly when in offering to change his weekend shifts he was demonstrating flexibility and cooperation with his employer.
- 11.5 Mr Brown drew the attention of the Tribunal to a number of UK cases that he believed had relevance including *Western Excavating (ECC) Ltd. V Sharp 1977*, *Grange Furnishing Ltd. V A Garner 1977*, *Hilton International Hotels (UK) Ltd. V Protopapa 1990* and *Isle of Wight Tourist Board V JJ Combes 1976*.

12.0 Conclusions

- 12.1 In coming to a conclusion the Tribunal did give consideration to the UK judgments submitted by both parties and also considered some, possibly, relevant Guernsey judgments. However none of these judgments are binding on our decision and the outcome should turn on the specific events and allegations described to the Tribunal in this Hearing.

- 12.2 The Applicant argued that the Tribunal should not rely solely on the events of the weekend of the 20 April 2007, rather that they should consider events from mid way through 2006 and produced the document of the 22 June 2006 (EE1 13 Refers) which listed a number of grievances. The Tribunal is persuaded that Mr Brown genuinely believed these grievances to have substance; however the Tribunal notes that Mr Brown either withdrew this document or at least decided not to pursue the issues. Indeed there was a significant passage of time between June 2006 and April 2007 when Mr Brown could have sought further meetings with Mr Guilbert, approached his HR representative or have lodged a formal grievance; in the event he did none of these. Whether the Respondent should have been more pro-active in consulting further with Mr Brown can only be left as an open question.
- 12.3 Mr Brown listed “other contributing factors” to his alleged constructive dismissal in Document 6 EE1, however after considering testimony it seemed to the Tribunal that he was reluctant to accept the boundaries of his defined role and wanted more access to the computer system, more freedom to make financial deals with clients and more training than could be justified on a strict basis of “business need”, however laudable that ambition. The Tribunal does accept that communication between him and Mr Looijenga might not always have been of the first order, but these are frustrations that the Tribunal would believe to occur in many workplaces which otherwise function well. The Tribunal is not persuaded that Mr Looijenga required the “Tilling Up” to be done after hours, although this may have been the Applicant’s habit.
- 12.4 In considering whether the above constituted a series of events leading up to a “final straw” the Tribunal has not been persuaded to give them any major weight.
- 12.5 As to the appraisal record of the Applicant, and his allegations that it had been altered, the Tribunal is minded to believe this was not a deliberate act; rather it might have been an error in filing documents. It would also seem that the Applicant was not aware of the issue at the time of his resignation therefore, presumably, it could not have formed part of his considerations in his decision to resign.
- 12.6 This still leaves the altercation of the 20 April 2007 and it is a regrettable fact that Mr Looijenga, by his own admission, did lose his temper in the presence of the Counter Staff including Mr Brown; Mr Looijenga was embarrassed enough by his lack of control to speak to his Managing Director the same day. An additional complication, in the opinion of the Tribunal, is that Mr Mathews could shed very little light on the events he witnessed that day; we are therefore dependent on the word of one employee versus another.
- 12.7 After considerable deliberation the Tribunal has concluded that it prefers the evidence of Mr Looijenga as to the language used by him on the 20 April 2007. The Tribunal also has some sympathy with testimony of Mr Guilbert, who suggested that the Applicant might have sought to provoke Mr Looijenga during their discussion. The Tribunal has in addition given some consideration to the context of the Applicant’s role, and is conscious that expressions which would not be deemed acceptable in some sectors may be in more common use in the building trades.
- 12.8 Thus on the balance of probabilities the Tribunal does not believe that the incident was sufficiently grave to prove a repudiatory breach by the employer of the implied term of trust and confidence.
- 12.9 Given this view the Tribunal does not need to consider whether the Applicant acted within a reasonable timescale in leaving the company.

13.0 Decision

- 13.1 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Anthony Brown was not, as alleged, constructively dismissed.

Signature of the Chairman:

Mr Peter Woodward

Date:

8/NOVEMBER/2007