

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Benjamin Le Page
Represented by: Mr Stephen Ozanne

RESPONDENT: GMR Holdings Limited T/A L'Islet Motors
Represented by: Advocate T Crawford

Witnesses

For the Applicant:

Miss Tracie O'Regan, Girlfriend
Mrs Patricia Le Page, Mother

For the Respondent:

Mr Lee Renouf, Director
Mr Ian Marquis, Director

Decision of the Tribunal Hearing held on 17 July 2007.

Tribunal Members: Ms Carol Harvey
Mr Stephen Jones
Mr Andrew Vernon

UNANIMOUS DECISION

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 Benjamin Le Page was unfairly dismissed by the Respondent.

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

2. The Respondent requested that, in the event that an award is made to Mr Le Page, consideration be given to the reduction of this award in light of contributory factors. The Tribunal has given this significant consideration, bearing in mind the size, available resources and actions of the Respondent and those of the Applicant. As a result of this deliberation the Tribunal is not minded to make any reduction in the award.

Under section 22(1)(a) of the Employment Protection (Guernsey) Law, 1998, as amended the Respondent shall pay the Applicant an award of £11,442.18, this being the amount equal to six month's pay.

Mrs Carol Harvey

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Signature of the Chairman

Date

13/08/07
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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

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

1.0 Introduction

- 1.1 The Applicant was represented by Mr Stephen Ozanne and gave witness testimony under oath on his own behalf, which was also supported by documentary evidence, as guided by his representative.
- 1.2 Miss Tracie O'Regan and Mrs Patricia Le Page gave witness testimony under oath on behalf of Mr Le Page.
- 1.3 The Respondent was represented by Advocate Tom Crawford. Mr Lee Renouf, Director, gave witness testimony under oath on behalf of GMR Holdings Limited, T/A L'Islet Motors.
- 1.4 At the outset of the hearing the parties confirmed that:
 - (a) It was agreed there was a dismissal
 - (b) It was agreed that the effective date of termination was the 4 January 2007
 - (c) It was agreed that the salary figures as detailed in the Respondent's form ET2 were correct and not those as detailed on the Applicant's form ET1
 - (d) It was disputed by the Respondent that the dismissal was unfair on the grounds that a fair and reasonable process had been followed and that the dismissal had been the result of redundancy

2.0 Facts as found by the Tribunal

- 2.1 The Applicant, Mr Benjamin Le Page was employed by GMR Holdings Limited, T/A L'Islet Motors from 18 March 2005 to 4 January 2007, when he was dismissed.
- 2.2 The Applicant was employed primarily as a technician to prepare and service motor cycles and scooters. It was also part of his duties to cover the servicing of motor cars when required.
- 2.3 The role was a new one created in an effort to build the business and it was one of Mr Le Page's responsibilities to make efforts to build the motor cycle/scooter maintenance side of the business.
- 2.4 In addition to Mr Le Page and three directors, the Company employed a total of three other members of staff. Mr John Sealley, within used car preparation and assisting with car sales and forecourt duties; Mr Martyn Lowe, primarily responsible for car servicing; Mr Paul Dodd, in maintaining the forecourt and offering attendant service.
- 2.5 Efforts were made to build the business through the use of media advertising and 'word of mouth'. This continued to be undertaken until December 2006 and investment was made into the purchase of new equipment.
- 2.6 A meeting was held with the staff on 2 May 2006 during which concerns regarding the shortfall in the level of business being sold were discussed, along with what the

potential consequences might be should business not improve. It was also agreed at this meeting that weekly reports would be produced by Ian Marquis which would let both Martyn and Ben know how the business was performing over the month.

- 2.7 A second meeting was held on 7 July 2006 in order to discuss the underperformance during June. At this time concerns were also raised that the Car Sales area was also showing a downturn in business, which was making subsidising the service department increasingly difficult.
- 2.8 During this meeting the employees were asked for suggestions on ways in which costs could be saved and were advised that unless 100 hours was achieved per month then it would be necessary to make someone redundant.
- 2.9 Mr Le Page made a suggestion at this meeting that hours were reduced and that the bonus system was cut out. It was agreed that the bonus would only be paid if 100 hours were achieved. The bonus consisted of £10 per car and £5 per bike being paid for each car or bike sold. This did not include the work carried out for new bike preparation.
- 2.10 The Directors took a 10% reduction in pay at this time in order to reduce costs.
- 2.11 A meeting was held at the end of July to inform the staff that a new franchise was being acquired, which would hopefully increase sales and service. In response to a question from Mr Le Page it was confirmed that jobs would be safe provided 100 hours were sold for the service department each month.
- 2.12 At this meeting the employees were also asked if anyone had any intention of leaving the Company, it was confirmed that no-one was planning on leaving.
- 2.13 The pay increase normally awarded in September 2006 was not given and it was confirmed that a further review would take place in April 2007. At a meeting on 11 September the Directors notified the staff of this decision.
- 2.14 In September 2006 Mr Le Page and Mr Renouf attended a three day Peugeot course in the UK as a direct result of the Company obtaining the franchise. There were no discussions regarding potential redundancies during this time.
- 2.15 In November a meeting was held by the three Directors in order to discuss continuing concerns regarding the business and the overall performance, as the car sales side of the business had also seen another down turn. This in turn affected the overall position of the Company.
- 2.16 As a result of this meeting the Directors agreed that they would not take a salary for November (and if necessary December) and only paid themselves the minimum required to cover the social insurance stamp. This was not communicated to the staff.
- 2.17 Other cost savings were also looked at and implemented including stopping the window cleaner and reviewing insurance policies, such as critical illness cover.
- 2.18 As business had not improved, the decision was made on 12 December that, as all other routes were exhausted, a member of staff would need to be made redundant. The

Directors also did not take a salary payment in December and again only paid themselves the minimum required to cover the social insurance stamp. This decision was again not communicated to the staff.

- 2.19 A redundancy selection process was implemented (as documented within the submitted bundle) which looked at all those employed by the Company. The staff were not advised that they were being formally considered for redundancy. The conclusion was made that Mr Le Page's role could be completed by Mr Lee Renouf with Mr Martyn Lowe as backup.
- 2.20 Having come to the conclusion that it was Mr Le Page that would be made redundant the decision was taken to not do so until after Christmas.
- 2.21 Over the Christmas period Mr Le Page injured his wrist and was signed off work.
- 2.22 A further conversation was held with Mr Mike Mahy in order to clarify that this would not affect the decision to make Mr Le Page redundant. As a result of this conversation the Company were satisfied that they should not be concerned as the decision had nothing to do with him being signed off sick. They were also of the opinion that it had followed a fair procedure.
- 2.23 A redundancy letter was prepared, which explained the reason for making the redundancy, and offered a redundancy package of one month's pay and a reference if required.
- 2.24 On the 4 January Mr Le Page was requested to attend the Company premises where he was informed that he was being made redundant, with immediate effect, by Mr Ian Marquis.

3.0 Respondent's Submission

- 3.1 Mr Lee Renouf made the following submission, in response to questions put to him by Advocate Tom Crawford and cross-questioning from Mr Stephen Ozanne and members of the Tribunal.
- 3.2 The Respondent submitted that the reason for the Applicant's dismissal was redundancy, by way of fair selection process.
- 3.3 That they had made every effort to follow a fair and reasonable procedure and had consulted the Commerce & Employment web site, as well as contacting Mr Mike Mahy, Senior Industrial Relations Advisory Officer, in order to establish what procedure should be followed.
- 3.4 In order for all costs to be met the Service Department, as a whole, needed to be selling a minimum of 100 hours per month. The Directors were concerned that the required levels of business were not being met, in order to meet the technician's wages.
- 3.5 They were also particularly concerned that the motorbike side of the business was not meeting the necessary targets.

- 3.6 Mr Le Page had been employed in the new position of motorbike/scooter technician from April 2005 and was aware that he would need to be in the position of covering his costs within a year.
- 3.7 It was agreed that it would take some time to achieve the required target levels so initially these were set slightly lower at 20 per month, however, in order to cover the costs of employing Mr Le Page he had to achieve 46.5 hours per month. There was also an expectation that the business would increase from May onwards, partly due to the improvement in the weather and as a result of Mr Le Page's efforts.
- 3.8 The Tribunal's attention was drawn to worksheets, contained within the submitted bundle, indicating all chargeable hours for the period April 2005 to May 2007. It was stated that during this period the targets had only been met during the period June and March.
- 3.9 A meeting was held with the employees on 2 May 2006 during which the directors concern regarding the amount of business being sold was discussed. It was stated that during this meeting it was explained that the motorbike sold labour hours in April 2006 was below the target of 46.5 hours which need to be reached in order to break even. It was also discussed that whilst it was realised there would be a cost to develop the motorbike side of the business, this underperformance could not continue. It was agreed that in addition to the Company continuing to promote this side of the business, weekly financial reports would be provided.
- 3.10 It was stated that the employees left the meeting well aware of the situation and the possible consequences and that minutes of the meeting were offered.
- 3.11 On the 7 July a second meeting was called as the underperformance had continued during June. It was stated that both Mr Lowe and Mr Le Page were warned that unless 100 hours per month of labour sales were achieved, the Company would need to make one of them redundant. It was stated by the Respondent that minutes were taken of this meeting but not requested by any member of staff.
- 3.12 At the end of July a further meeting was called during which the Directors informed the staff that they had secured the Peugeot Scooters franchise and that they were hopeful that this would increase sales and labour sales.
- 3.13 Mr Renouf stated that in response to a question from Mr Le Page he was advised that his job would be safe only if the 100 hours of labour sales was met each month.
- 3.14 Mr Renouf confirmed that the pay review had not taken place in September and that it had been agreed to review the situation in April 2007. It was also confirmed that he and Mr Le Page attended a training course in the UK during September, as it would be normal practice for two members of staff to attend such a course.
- 3.15 It was confirmed that as there were still ongoing concerns regarding the performance of the business a meeting of the Directors was held in November during which it was agreed that they would not receive pay for that month. Mr Renouf confirmed that this was not communicated to the employees nor was the specific issue of possible redundancies.

- 3.16 A further meeting of the Directors was held in the middle of December and again the decision was taken not to take any salary. It was also decided by the Directors that it would be necessary to make a member of staff redundant. Mr Renouf again confirmed that this was not specifically communicated to the employees.
- 3.17 Having considered all the members of the staff, the decision was taken that the redundancy would occur within the Service Department as it was considered no longer sustainable or financially viable to continue to employ two technicians. Consideration was therefore given to making either Mr Le Page or Mr Lowe redundant. It was confirmed that at this time the employees had not be notified that they were being considered for redundancy.
- 3.18 The conclusion was that Mr Le Page would be made redundant. As it was nearly Christmas the decision was made not to notify him until after the break.
- 3.19 As Mr Le Page injured his wrist over the Christmas break he was absent from work and was therefore contacted by phone and requested to attend the office. It was at this time that Mr Le Page was advised that he was being made redundant and the reasons for this.
- 3.20 Mr Renouf stated that when efforts were made to explain the redundancy Mr Le Page angrily left the meeting. However, the following week, following a telephone call from him, it was agreed by the Directors that they would meet with him during which it was stated that Mr Le Page apologised for his previous behaviour.
- 3.21 Mr Renouf stated that when the reasons for the redundancy were explained he admitted that he was not the best employee or technician. Mr Renouf also confirmed that any issues relating to Mr Le Page's performance and timekeeping, as mentioned in the 'process for selection' had never formally been raised and when there had been some discussions, no notes were made of these discussions.

4.0 Applicant's Submission

- 4.1 Mr Benjamin Le Page made the following submission in response to a question put by Mr Stephen Ozanne and cross-questions by Advocate Tom Crawford and members of the Tribunal.
- 4.2 The Applicant submitted that he had been unfairly dismissed and that the main reason for the dismissal was unfair selection for redundancy.
- 4.3 He confirmed that he had been employed by the Company from 30 March 2005 and that initially his work focused on setting up a new workshop and properly equipping it in order to begin servicing motorbikes and scooters.
- 4.4 At the beginning of May 2006 he confirmed that he was advised during a meeting with two of the Directors that not sufficient chargeable hours were being achieved and that if this did not increase then the inference was that a member of staff may be made redundant.

- 4.5 He stated that he did not see anyone taking notes nor did he request a copy of any notes at the end of the meeting.
- 4.6 As a result of the meeting at the beginning of July Mr Le Page stated he became very concerned about his job and believed that the Company may still be looking to make someone redundant. When asked for suggestions on how to make improvements he confirmed that he suggested reducing the number of hours worked and the ceasing of the monthly bonus.
- 4.7 Although the Company did not want to reduce the hours the bonus was only paid when 100 chargeable hours was achieved. This was achieved each month.
- 4.8 At the end of July Mr Le Page stated he was told at a further meeting that the Company had secured the Peugeot franchise and on asking if this meant this his job was now safe, was told that it was. He also asked questions regarding the achieving of the chargeable hours when covering for holiday and sickness and stated that he was advised that this would not be a problem as it would be taken into consideration.
- 4.9 He again stated that he was not aware of any notes being taken and that he was not offered copies, nor did he request any copies.
- 4.10 It was also agreed that Mr Renouf would complete all the paperwork for the Servicing Workshop in order that both he and Mr Lowe could concentrate on the servicing and repair work.
- 4.11 As a result of the Company obtaining the Peugeot franchise Mr Le Page confirmed that he and Lee Renouf attended a three day course in the UK, at the expense of the Company. He stated that he found this course relatively easy as he was a trained mechanic, however he was of the opinion that Lee Renouf found it more difficult as he was only trained as a panel beater.
- 4.12 As the Servicing Workshop was now busy along with the conversation regarding his job and attending the Peugeot Course Mr Le Page stated that he believed that redundancies were no longer being considered.
- 4.13 Over Christmas he confirmed that he injured his wrist and that although he attended work on the 27 December as it was painful decided to visit his doctor. As a result of x-rays it was confirmed that the wrist was broken. He confirmed that this resulted in him being signed off work for two weeks.
- 4.14 Mr Le Page went on to state that he had advised the Company of his situation but that, as he was aware that Paul Dodd, the forecourt attendant, was due to go on a cruise holiday in January, offered to come into work and carry out his duties. This offer was not taken up.
- 4.15 He then stated that Lee Renouf telephoned him on 3 January and requested that he attend the offices the following day. Mr Le Page was of the opinion that this was in order to discuss what parts and other equipment need ordering for the Service Workshop, along with what work he could do whilst recovering.

- 4.16 When he went to the offices on 4 January he stated that he was advised by Mr Ian Marquis that he was being made redundant and was given a letter confirming this. The letter gave the reason for the redundancy as being that the target 100 chargeable hours had only been achieved for three months between July to the end of December and that only 59.29 hours had been sold in December.
- 4.17 Mr Le Page stated that he found this surprising as he was of the opinion that achieving nearly 60 chargeable during December was good especially considering that Mr Lowe had been on holiday, the Christmas holidays and the injury to his wrist. He was further of the opinion the Company had taken advantage of the situation in making their decision and that no consultation had taken place.
- 4.18 When he requested that the redundancy package be increased Mr Le Page stated that he was asked by Lee Renouf why he thought he deserved more than one month's notice. He stated that he wanted what he was entitled to. After consideration he was advised that no further payment would be made.
- 4.19 With regard to the selection process Mr Le Page stated that he had only received a copy of this following him submitting his claim for unfair dismissal. Mr Le Page expressed surprise that the process for selection stated he had only completed the minimum required amount of work and that his time keeping was disappointing, along with the claim that he had not developed the new area of business. Mr Le Page stated that he had never received any verbal or written warnings concerning any of these issues.
- 4.20 Mr Le Page concluded that the Company had not fairly dismissed him by reason of redundancy but had used this as the reasons as they had concerns regarding the time he would miss at work due to the injury to his wrist.

5.0 Testimony from Miss Tracie O'Regan

- 5.1 Miss O'Regan read a prepared witness statement. In the statement it was confirmed that she and Ben had discussed a meeting that had taken place in May 2006 which had left him with the impression that a redundancy might be made.
- 5.2 At the end of July her statement went on to say that Ben had told her that during another meeting he had been told by the directors that the Company was taking on a new franchise, Peugeot Motors, leaving him with the impression that his job would be secure.
- 5.3 It was also confirmed that Ben had attended a Peugeot Course a couple of months later in the UK.
- 5.4 Between the 26 & 27 December Ben injured his wrist, which was later confirmed as being broken, resulting in him being signed off work for two weeks.
- 5.5 As a result of a phone call from Mr Lee Renouf, Ben returned to work on 4 January in order to discuss what work needed to be done and what parts need to be ordered.

- 5.6 During a conversation following his return to work Miss O'Regan stated that Ben had told her he had been made redundant by Mr Ian Marquis and that it had come as a shock as Ben had mentioned nothing about redundancy since July the previous year.

6.0 Testimony from Mrs Patricia Le Page

- 6.1 Mrs Le Page read a prepared witness statement. In this statement it was confirmed that Ben had first discussed his concerns regarding possible redundancy during May 2006, following a meeting. The subject of redundancy continued to be discussed quite a lot and Mrs Le Page was under the impression that he was concerned about the possibility.
- 6.2 At the beginning of July 2006 Ben discussed a further meeting which had taken place as the business was no better and he had been informed that somebody had to be made redundant. Despite making suggestions of how things might be improved Mrs Le Page did not believe these suggestions were acted upon.
- 6.3 In the statement she went on to state that Ben continued to be worried about the state of the business because it was the topic of conversation every evening when he came home from work.
- 6.4 This was normal for Ben when he was worried about a situation. It was also stated that when worried Ben he would talk to get it out of his system, and not bottle things up. When matters improve then she would stop hearing about them.
- 6.5 At the end of July Mrs Le Page stated that Ben had told her that he had been informed that he and Martyn no longer had to worry about their jobs. He told her that he had also been asked if he intended to carry on working at the Company, which he confirmed.
- 6.6 Mrs Le Page confirmed that she and his father had asked Ben if he had been given any notes of the meeting. He told her he hadn't and had not seen any of the directors making any notes.
- 6.7 On returning from the course in the UK Mrs Le Page stated Ben made no further reference to redundancies or problems at work. He appeared to be happy and under the impression that everything was fine.
- 6.8 The wrist injury was confirmed as happening over the Christmas period and that despite being in pain Ben returned to work on 27 December but went to the doctor, then an x-ray. This resulted in his wrist being put in plaster and Ben being signed off work for two weeks.
- 6.9 Mrs Le Page stated she received a telephone call at work from Ben on 4 January who was upset and informed her that he had been made redundant.

7.0 Conclusions

Reasons for Dismissal

- 7.1 The first issue for determination is whether or not the Respondent's reason for the Applicant's dismissal was redundancy, either on the grounds of there no longer being a requirement for the role or on financial grounds.
- 7.2 The Applicant argued that whilst he was initially aware of the financial difficulties of the Company he was of the opinion that these had been alleviated through the obtaining of the Peugeot franchise and that his job was no longer at risk. He maintained that redundancy had been used as an excuse and that the Company wished to terminate his employment as they were concerned about the amount of time he would need to take off work due to the injury to his wrist.
- 7.3 In this matter the Tribunal prefers the evidence of the Respondent and accepts that the Respondent had a significant financial rationale for having to make cost savings and that various options had been explored prior to the decision being taken to make a member of staff redundant.
- 7.4 As these had not been effective the Tribunal is satisfied that there was proof of an economic need to reduce the number of staff and that the primary reason for the Applicant's dismissal was one of redundancy.

Fairness of the Dismissal

- 8.0 The next issue for determination is whether a fair process was followed with regard to the Applicant's dismissal.
- 8.1 The Respondent had initially made efforts to undertake a fair and reasonable approach. In addition to reviewing the Code of Conduct as issued by Commerce and Employment, they had also sought the advice of the Industrial Relations Service.
- 8.2 An initial meeting was held with the staff on 6 May 2006 during which it was made clear what might be the consequences should there not be an improvement in business.
- 8.3 A further meeting was held on 7 July during which it was confirmed to the staff that things had not improved. The staff were asked for suggestions on how cost savings could be made.
- 8.4 Reducing the number of hours worked and ceasing the bonus were put forward. The decision was taken that the working hours would not be cut, as the maximum was required in order to generate income. It was though agreed that monthly bonus would only be paid if the chargeable hours reached the target of 100. This payment continued to be made.
- 8.5 Following the meeting of 7 July the reports were continued to be issued but the Company gave no further indication that redundancies were a possibility or that Mr Le Page's job was at risk.
- 8.6 As a result of obtaining the Peugeot franchise a third meeting was called at the end of July, during this meeting the Company indicated that the jobs were secure, providing 100 hours was achieved per month.

- 8.7 A heavy reliance was placed on the worksheets indicating the total chargeable hours for the period April 2005 to May 2007. During this time it was stated that the Service Department as a whole only met the target of 100 hours labour sales per month seven times during the period.
- 8.8 On further review of these worksheets and the Company profit and loss account for the period, whilst it was evident that the Company was experiencing severe financial difficulty the evidence indicated that this was not exclusively due to the motorbike area and that the total amount of chargeable hours required by the whole department had been met. There was evidence that indicated the level of work within the motorbike side of the business was increasing.
- 8.9 It is accepted that on the 11 September the staff were advised that the normal pay review would not take place and that this, added to the previous discussions, may have indicated to them that there were still financial difficulties. However, as the indication was given that this would be reviewed in April 2007 along with the previous discussion at the end of July, the possibility of redundancy may reasonably have been viewed to have diminished to the extent that it was no longer being considered as an option.
- 8.10 This was further added to by the attendance of Mr Renouf and Mr Le Page at a training course for the new Peugeot franchise in the UK and which was funded by the Company.
- 8.11 In November the Directors held a meeting and the decision was taken not to take pay for that month (and subsequently December) due to the financial state of the business. However, no further communication was made to the staff that their jobs were still potentially at risk of redundancy.
- 8.12 During this meeting the decision was also made that it would be necessary for a member of staff to be made redundant. Whilst selection criteria were drawn up and consideration given to each member of staff 's role it was not communicated to the staff that they were in the selection pool.
- 8.13 Given the size and nature of the Company it is surprising that no further discussion in relation to the finances of the Company or consultation regarding the impending possibility of redundancy took place, either formally or informally.
- 8.14 Having selected Mr Le Page for redundancy the Tribunal accepted the Respondent's rationale for not advising him prior to the Christmas break. It is also accepted that the injury sustained by Mr Le Page over the Christmas break did not form part of the selection process.
- 8.15 In coming to its findings and reviewing both the verbal and written testimony the Tribunal considered what is generally relied upon as the primary tests of a fair and reasonable dismissal by reasons of redundancy. The Tribunal considered the guidelines as set out in the Commerce and Employment Code of Practice "Handling Redundancy".
- 8.16 These tests being:

- (a) **A genuine economic need to reduce** – the Tribunal was satisfied that this was established
- (b) **A procedure suitable to the size of the organisation was considered** – there was evidence submitted that led the Tribunal to believe efforts had been made initially in this respect
- (c) **Efforts were made to minimise or avoid the need for redundancy** – there was evidence that indicated that the Respondent had looked at a number of ways of avoiding the need for redundancy, including the Directors not taking a salary for two months
- (d) **There was a clearly established pool of employees for selection for redundancy** – evidence was submitted that would suggest that all employees had been considered as part of the pool, although it is questionable as to whether or not this was communicated properly to the employees
- (e) **An objective and fair selection criteria was established** – It is not the role of the Tribunal to impose specific selection criteria. However, the pool for selection encompassed all the employees and it is not clear exactly what criteria were used and how these were then fairly applied in establishing the final pool and in coming to the final decision as to whom should be made redundant
- (f) **Appropriate consultation suitable to the situation and the size of the organisation took place** – The Tribunal found that whilst there had been some consultation and that employees were initially aware of the possibility of redundancy this was not continued. The Tribunal is of the opinion that the Respondent ceased to communicate effectively the impending possibility of redundancy from the end of July, to the point where it was reasonable for the Applicant to believe that this was no longer a possibility
- (g) **Appeal Process** – As this is a small business the Tribunal does not have the expectation that an overly onerous appeal process should be in place it therefore places less weight on the issue. However, it was apparent that there was a total lack of any appeal process and the applicant was therefore informed of his redundancy as a ‘fait accompli’.

Reduction of Award

- 9.0 It was argued on behalf of the Respondent that should the dismissal be found to be fair, consideration should be given to reducing the award in line with the “Clarke v Hockey” case.
- 9.1 The Tribunal considered this authority and noted the apparent similarities. These particularly being in relation to the size of the Company, the nature of the work undertaken and elements of a fair procedure apparently being in place.
- 9.2 In coming to its decision to reduce the award in “Clark v Hockey” case the Tribunal also found that it would seem to be the act of a fair and reasonable employer to take into consideration the “past reliability” as one of the factors.

- 9.3 No evidence was submitted during testimony by the Respondent regarding any issues relating to the “past reliability” or conduct of the Applicant which would have indicated that it would be fair and reasonable to take such actions into consideration.
- 9.4 The Tribunal also considered the provisions for the reduction of award under Section 23 (2) of the Law, but found that it would not be just and equitable to reduce the amount of the award.

Signature of the Chairman:

Mrs Carol Harvey

Date:

13/08/07