



**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 20 April 2007

between

Applicant: Mrs Lynda Sebire and Respondent: B&Q plc

Tribunal Chairman: Mr P Woodward

Side Members: Mr S Jones and Mr A Vernon

Nature of Dispute:

During the period May 2003 to September 2003 Mrs Lynda Sebire was employed as a Customer Services Advisor, and then subsequently from October 2003 until the 13 October 2006 as a Pricing and Customer Advisor. Mrs Sebire claimed B&Q plc had breached an express term of her employment contract by asking her to work a new rota which was at complete variance with her established working hours. Further, Mrs Sebire alleged that she had been subjected to an unfair internal disciplinary process conducted in pursuit of this contractual change. Mrs Sebire considered these actions of B&Q to be harassment and on the 13 October 2006 resigned with immediate effect on the grounds of an alleged constructive dismissal, claiming that this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent contested this allegation and believed that they had acted as a reasonable employer, it was contended that the contract of employment with Mrs Sebire allowed for rota change and that they had pursued a fair process in seeking an agreed change.

Mrs Sebire also claimed that despite her request B&Q plc had failed to provide her with written reasons for her dismissal.

Tribunal 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 the circumstances of this case the Tribunal finds that there was no dismissal within the meaning of section 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998 as amended. Therefore the case is dismissed and no award is made.

The Tribunal finds no merit in the claim that written reasons for dismissal should have been provided by the Respondent and consequently dismisses this claim.

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 Chair:

Mr Peter Woodward

Date: 10 May 2007

REASONS FOR TRIBUNAL'S DECISION

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

1.0 The Claim

Nature of Dispute:

1.1 During the period May 2003 to September 2003 Mrs Lynda Sebire was employed as a Customer Services Advisor, and then subsequently from October 2003 until the 13 October 2006 as a Pricing and Customer Advisor. Mrs Sebire claimed B&Q plc had breached an express term of her employment contract by asking her to work a new rota which was at complete variance with her established working hours. Further, Mrs Sebire alleged that she had been subjected to an unfair internal disciplinary process conducted in pursuit of this contractual change. Mrs Sebire considered these actions of B&Q to be harassment and on the 13 October 2006 resigned with immediate effect on the grounds of an alleged constructive dismissal, claiming that this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent contested this allegation and believed that they had acted as a reasonable employer, it was contended that the contract of employment with Mrs Sebire allowed for rota change and that they had pursued a fair process in seeking an agreed change.

1.2 Mrs Sebire also claimed that despite her request B&Q plc had failed to provide her with written reasons for her dismissal.

2.0 Representatives

2.1 Advocate J Barclay represented B & Q plc

2.2 Mr P Sebire represented Mrs Sebire

3.0 Witnesses

3.1 For the Applicant

Mrs L Sebire

Mrs T Rudge

3.2 For the Respondent

Mr M Penney

Mr P Gregory

4.0 Documents

4.1 For the Applicant: Documents identified as EE1

4.2 For the Respondent: Document identified as ER1, ER2, and ER3

5.0 Findings of Fact

5.1 During the period May 2003 to September 2003 Mrs Lynda Sebire was employed as a Customer Services Advisor, and then subsequently from October 2003 until the 13 October

2006 as a Pricing and Customer Advisor.

5.2 Using payslips provided by the respondent the Tribunal determined that an award if made would amount to £8985.14

5.3 It was agreed by the parties that the 19 May 2003 could be assumed as the effective date of commencement of the employment contract

6.0 Opening Statement by Mr Sebire

6.1 Mr Sebire stated that by acting in the manner they did, and also with such rapidity, that the Respondent had broken the implied term of trust and confidence in the employment contract of Mrs Sebire.

6.2 Mr Sebire also expressed the view that the employer had breached an express term of Mrs Sebire's contract of employment as she had every right to believe that her hours of work had been agreed to a set pattern upon her change of role at the new store in October 2003; and that the employer was not entitled to make a unilateral change to these hours.

6.3 It was alleged by Mr Sebire that other employees working in the same team as Mrs Sebire had been treated differently and that a different process from that used with Mrs Sebire had been applied by B&Q in seeking to change their rota arrangements.

6.4 In summary this was a cumulative process which finally got "too much" for Mrs Sebire and she decided she had no alternative but to resign without giving notice.

6.5 Mr Sebire also stated that B&Q had failed in their legal duty to provide written reasons for the dismissal of Mrs Sebire.

7.0 Opening Statement by Advocate Barclay

7.1 Advocate Barclay stated that there had been no fundamental breach of contract by B&Q plc. The contract signed and agreed by Mrs Sebire was for a 39 hour working week with 5 working days out of 6 per week. It required her to work shifts that might end as late as 9pm.

7.2 B&Q had made clear its intent to impose a new shift rota on Mrs Sebire but in the event this was never actioned.

7.3 Mrs Sebire had not been subject to a disciplinary process, rather B&Q had applied a "People Change Process" to Mrs Sebire; this being a process designed to ensure full understanding of the employee of the need for change followed by a prescribed period and process of consultation.

7.4 Mrs Sebire had made known her objections to the proposed rota change but with insufficient clarity, therefore B&Q decided to extend the original 4 week period of consultation by a further 12 weeks; in accordance with their laid down company procedure. However Mrs Sebire seemed to misunderstand the intent of this further consultation and resigned before the first of a series of 12 weekly meetings was due to commence.

7.5 After her resignation Mrs Sebire was invited to return to discuss her problems, in the hope that she would reconsider her resignation, in the event she did not respond to this invitation.

8.0 Testimony from Mrs Sebire

8.1 Mrs Sebire agreed that she had signed the staff application form on 14 April 2003 (ER1 page 7

refers) indicating her preparedness to work up to 3 Saturdays per month and shifts that might end as late as 9pm; however she had been told that she would very rarely be asked to work in the evenings and only a maximum of 2 Saturdays per month. Mrs Sebire stated that she felt there was an implication that if she did not sign the application form, as completed, that B&Q would not offer her full time employment.

- 8.2 Referring to her written terms (EE1 pages 10 and 11 refer) Mrs Sebire thought the inclusion of the flexibility term did not relate to permanent changes in rota hours, rather her agreement to occasionally come in to work an hour early, or similar.
- 8.3 Mrs Sebire first became aware of the proposed change to her shift pattern when she attended an informal team meeting with her immediate manager Mr Paul Gregory in the middle of August 2006 (EE1 46.2 refers). Mr Gregory referred to the STS (“Service Through Scheduling”) review; it had become apparent from this review that staff would need to adopt new shift patterns including more coverage of the afternoon and evenings, and the frequency of Saturday shift working would need to increase. Mrs Sebire stated that all the team members had objected to these proposed changes, however Mr Gregory was adamant that these changes would be implemented after the expiry of 28 days notice. In response to a question by Mrs Sebire she was informed by Mr Gregory that if a team member would not comply with these changes then a further procedure of 12 weeks duration would be implemented. During this 12 week period the team member would be asked to attend a weekly meeting to review if any change was possible and if not then Mr Gregory stated that it would most likely end in a dismissal for gross misconduct.
- 8.4 Mrs Sebire subsequently met on an individual basis with Mr Gregory on 25 August 2006 (EE1 46.3 refers) and raised her concerns again with Mr Gregory and that such changes would affect the quality of her home life. She told Mr Gregory that she had agreed with the store Manager, Mr Penney, in 2003 that her role in Pricing would operate on a fixed shift of 7.30am to 4.30pm with an early finish once per week of 3.30pm. Mr Gregory responded by telling her that her contract of employment allowed for such changes and that her original application form indicated her willingness to change her rota if required. Mr Gregory provided her with copies of these documents and a copy of his meeting notes.
- 8.5 A further meeting was held between Mrs Sebire and Mr Gregory on 29 August 2006 (EE1 46.5 refers) and during this meeting he gave her a copy of an example rota. On examining this rota Mrs Sebire complained that it was unfair in comparison with the Rotas issued to other team members. In support of this opinion Mrs Sebire referred the Tribunal to EE1 45, this analyses a consecutive series of four weeks and compares the Rotas assigned to Mrs Sebire and other team members. Mr Gregory provided her with a copy of his meeting notes.
- 8.6 Following vacations by both Mrs Sebire and Mr Gregory, and a brief period of certified sickness absence by Mrs Sebire, they met again on 6 October 2006 (EE1 46.6 refers). Mrs Sebire testified that this meeting was more formal and both Mrs Sebire and Mr Gregory had a witness in attendance. Mrs Sebire again contested that the hours in her original written contract were not binding on her and that, whilst they had discussed the possibility of her working till 6pm on occasion, this had not been agreed. However Mrs Sebire conceded that she could increase her frequency of Saturday shifts. Mr Gregory gave her a copy of a proposed rota for weeks 37 to 40 and requested that Mrs Sebire work this rota, however in the event she declined. At the end of the meeting Mrs Sebire signed the minutes of the meeting which had been prepared by Mr Gregory.

- 8.7 Mrs Sebire then received a letter from Mr Matthew Tostevin dated 9 October 2006 which requested her to attend a further meeting with Mr Gregory on 10 October 2006, and again to discuss rota changes with him. This meeting took place on 10 October 2006 with Mr Norman attending as her witness to the events. (EE1 46.7 refers).
- 8.8 At this meeting Mrs Sebire read out brief prepared statement in which she indicated her concern as to having to rely on the notes prepared by Mr Gregory. (ER1 49 refers). Mrs Sebire felt that at this meeting she was being badgered and pressured by Mr Gregory; and again she made it evident to Mr Gregory that she would not change her rota. Mrs Sebire thought she was being singled out by having to attend these frequent meetings, and none of the other team members were being treated in this manner.
- 8.9 The final straw for Mrs Sebire was the letter of the 12 October 2006 from Mr Gregory requesting that she attend a formal meeting with him on the 16 October 2006. To Mrs Sebire it seemed that B&Q had commenced a disciplinary process and the allusion to "Step 2" in the document reinforced this perception. Mrs Sebire stated that by this stage she had lost trust and confidence in B&Q as a fair employer and decided she had no alternative but to resign. This she subsequently did on 13 October 2006 (ER1 58 refers) stating that she been subject to continuing harassment.

Cross examination by Advocate Barclay

- 8.10 Advocate Barclay drew the attention of Mrs Sebire to the notes that she had signed on the 10 October 2006 (ER1 50 refers) which had quite clearly stated that the meeting was in B&Q terminology "First Steps Enquiries" and not "Disciplinary". Turning to the letter of the 12 October 2006 (ER1 57 refers) Advocate Barclay noted that it explicitly stated that disciplinary action could be taken at the end of a 12 week period; it did not state that any disciplinary process had been started. Mrs Sebire responded by stating that the letter of the 12 October 2006 was ambiguous, that she had been pulled into unscheduled meetings and that she thought she was being formally disciplined.
- 8.11 Advocate Barclay referred Mrs Sebire to her original application form and her written statement of terms and conditions (ER1 7 & 11 refer) both of which indicated her written consent to possible rota / shift change. Mrs Sebire responded by stating that having agreed her shift hours with Mr Penney when she accepted the pricing role that she thought she had an entitlement to stay with these hours. Mrs Sebire reflected that with hindsight she should have obtained written confirmation of her changed hours from Mr Penney, but she had trusted his word and that those were her permanent hours for ever.
- 8.12 Referring to her colleagues Mrs Sebire stated that they had all objected to the new Rotas from the very first meeting in mid August 2006; and that along with them she was very concerned that Mr Gregory had stated it would be viewed as gross misconduct on their part if they did not comply.
- 8.13 Mrs Sebire agreed with Advocate Barclay that the intent of the meeting held on 10 October 2006 was to describe to her the 12 week consultation process, however she still thought this was harassment as no other member of the team was being treated in this manner. She stated that she was not aware what Rotas the other team members had agreed to.
- 8.14 Mrs Sebire stated that she had had informal meetings with the Store Personnel Officer Mr Norman, and the Store Manager in the period preceding 13 October 2006; indeed it was Mr Norman who had pointed out that her shift rota was subject to far greater change than for any

other team member; however she had not thought to invoke the formal B&Q Grievance Procedure as she did not think it would make any difference.

Testimony from Mrs T Rudge

- 8.15 Mrs Rudge also reported to Mr Gregory in 2006 and confirmed the testimony given by Mrs Sebire that disciplinary action had been threatened by Mr Gregory if team members did not agree to the new shift Rotas.
- 8.16 Mrs Rudge also agreed with Mrs Sebire that none of the team members had agreed on their first meeting with Mr Gregory to adopt the new Rotas, but when subsequently they realised that their Rotas would only have minor changes they agreed to accept them.
- 8.17 Mrs Rudge also testified that other team members were not sticking to their scheduled hours, were able to swap their days off and were apparently not being disciplined for non adherence to Rotas.
- 8.18 In response to a question from the Tribunal Mrs Rudge stated that due to the pricing process being streamlined in 2006 it required less hours per week to conduct required pricing changes.

Testimony from Mr M Penney

- 8.19 Mr Penney testified from his witness statement and described in some detail the role performed by Mrs Sebire. He complimented her on her attention to detail and believed she had been very effective in her role.
- 8.20 Mr Penney described the B&Q “STS” computerised system which provides a detailed summary of weekly sales history on an hour by hour basis. This data is then compared and contrasted with staff coverage during peak trading times. On the basis of this data Mr Penney stated that there was a clear business need to change staff Rotas in autumn 2006 in order to provide the highest quality customer service possible with existing staff levels.
- 8.21 Mr Penney was advised by B&Q head office to initiate what is termed as the “Company People Change Process” which is essentially a procedure which combines defined communication of required change(s) and appropriate consultation processes. The conduct of this process was delegated by Mr Penney to his subordinates such that he could reserve himself for any grievances or appeals that might arise from the process.
- 8.22 Throughout the consultation process Mr Penney had, via input from Mr Gregory, kept himself abreast of the reactions of Mrs Sebire to the proposed changes. Unlike other team members, some of whom had no problems with the proposed changes and others who had some reservations, Mrs Sebire was against any change to her rota.
- 8.23 Mr Penney enquired as to the concerns of Mrs Sebire and was informed by Mr Gregory that she was emphasising the impact on her family life, and that her required changes were more onerous than those being imposed on other team members. Mr Penney understood her only son to be in the UK and her daughter was old enough to look after herself; however setting this aside it seemed to Mr Penney the best way forward was for Mr Gregory to revisit the shift Rotas for all his team to ensure a fair distribution of the less socially acceptable shifts. The intention was that each team member would work one 9am to 6pm shift and one late shift ending at 8pm every week; this being combined with an increase in the frequency of Saturday working.

- 8.24 Mr Penney stated that they had tried to accommodate as far as possible the needs of Mrs Sebire. It was proposed that her late shift be normally on Thursdays as this was the day that prices were typically changed, and that as many of her previous shift hours were to be retained.
- 8.25 Mr Penney also stated that he had contacted 5 other stores to enquire as to how they deployed their Pricing employees, and 4 out of 5 told him that they only attempted such price changes during hours when their stores were closed to the public. Mr Penney realised that this would have been a totally unacceptable option to Mrs Sebire.
- 8.26 On her return to work on the 2 October 2006 it was clear that Mrs Sebire was still opposed to rota change and on advice from B&Q headquarters he decided to initiate a further three month consultation period with her. Mr Penney thought he did not have sufficient data on her family issues and hoped that he could gain more clarity on these whilst providing Mrs Sebire more time for reflection.
- 8.27 Mr Penney was in the UK on 13 October 2006 when Mrs Sebire resigned. Mr Tostevin phoned him and informed Mr Penney that Mrs Sebire had chosen to resign during a staff team briefing, had declared that she had loved working with “some of you” and had walked out of the store.
- 8.28 Mrs Sebire delivered her letter of resignation to Mr Tostevin and Mr Penney stated that to the best of his knowledge that neither he nor any of his staff had expected this resignation. Indeed Mrs Sebire had never formally complained to him about the proposed rota changes nor had she threatened to leave.
- 8.29 The following week a letter was sent to Mrs Sebire (ER1 60 refers) suggesting that perhaps her action had been too hasty and inviting her to return with the possibility of reinstatement with no loss of service.
- 8.30 Mrs Sebire responded with a letter dated 21 October 2006 alleging that B&Q had used a contrived procedure which had been used to harass her and that their intent was to terminate her employment without being exposed to a valid claim for compensation.
- 8.31 Mr Penney stated that the employee handbook provided for employee grievance and that as Store Manager (ER1 23 refers) he had promoted the use of this procedure on several occasions to achieve resolution of employee grievances. However Mrs Sebire had not chosen to invoke this procedure nor even raise the issue as an informal complaint. Despite this, and her letter of 21 October 2006, Mr Penney wrote to her on the 27 October 2006 inviting her to attend a “grievance meeting” on the 6 November 2006. This was not responded to and finally on the 20 November 2006 Mr Penney wrote a letter to her (ER1 72 refers) with the assumption that Mrs Sebire did not want to take advantage of the grievance procedure but left the door open for any informal further contact, in the event there was none.

Cross Examination by Mr Sebire

- 8.32 Mr Penney refuted the allegation that either the application form or the written statement of terms and conditions of employment (ER1 7 & 11 refer) lacked specificity. He also denied that he had guaranteed Mrs Sebire’s hours in 2003, indeed it was his practice with any guaranteed contractual change to raise a formal “change notice”, that was not so in this case.
- 8.33 Mr Penney confirmed the STS system provided store by store analysis and as the local Store

Manager he had the delegated flexibility to assign team members to shifts as required by the local business need.

- 8.34 Mr Penney thought that Mrs Sebire would have had access to the B&Q web site and consequently could have accessed ER1 32(1) which defines the approach taken by B&Q to effect contractual change in what he thought was a fair and measured way.
- 8.35 Mr Penney stated that he did not have any extra staff allocation, or spare resources, in autumn 2006 and consequently he had no choice but to reassign existing staff to the required shift patterns.
- 8.36 Mr Penney stated that he thought he was approachable and that it would have been sufficient for Mrs Sebire to raise any grievance verbally, it would have still have been dealt with seriously by him and his staff.

Testimony from Mr P Gregory

- 8.37 Mr Gregory has worked for B&Q since 1987 and currently holds the position of Stock Manager, he read from a prepared witness statement.
- 8.38 Mr Gregory interviewed and hired Mrs Sebire in 2003. Initially she had the role of a Customer Services Adviser in the store's lighting department; during the interview process, and prior to her appointment, Mr Gregory had gained confirmation from Mrs Sebire that she was able to work late shifts and Saturdays. Mr Gregory stated he would not have hired Mrs Sebire if she had not given this assurance.
- 8.39 When the store moved to its new premises Mrs Sebire took on a new role in the RF and Pricing Department. Mrs Sebire typically worked a total of 5 over 6 days each week including two Saturdays per calendar month; at the time of the proposed rota changes her hours of work were 7.30 a.m. to 4.30 p.m. Monday to Friday and 8.00 a.m. to 5.00 p.m. on Saturdays.
- 8.40 Mr Gregory confirmed much of the testimony given already by Mr Penney; he emphasised that whilst his initial briefing was to the team in a group session on the 19 August 2006 he was then responsible for holding individual consultation meetings with each of the team members to establish their ability to work the proposed new Rotas. Mr Gregory confirmed that in line with B&Q policy he had described in some detail the business need for the change.
- 8.41 Mr Gregory testified that the proposed new hours for Mrs Sebire were the same as those proposed for her colleagues. Each employee was being requested to work one late night a week (until 8p.m.) for 3 or more weeks in any given month; 9 a.m. to 6 p.m. on average once or twice per calendar month; and either 9 a.m. to 5 p.m. or 6 p.m. on Saturday twice in any given month.
- 8.42 Mr Gregory agreed with Mrs Sebire on the timing of the subsequent individual consultation meetings. These were conducted in line with B&Q company policy and became more formal as time progressed. Mrs Sebire took advantage of the company policy to be accompanied by an employee colleague in subsequent meetings. Mrs Sebire confirmed that there was no underlying medical or religious reason why she could not work the proposed new hours, however she consistently stated that the changes would disrupt her family life and prevent the family sitting down as a family to eat an evening meal together. Mrs Sebire also alluded to the extra stress that she thought such shift working would impose on her and that it would make her ill. Mr Gregory for his part emphasised that she would only be required to work until 6

p.m. once a week and till 8 p.m. two to three times per month.

- 8.43 Mrs Sebire told Mr Gregory that she would consider working from 9 a.m. to 6 p.m. and that she would not mind working up to two Saturdays in any calendar month so long as these Saturdays were alternated and not consecutive.
- 8.44 In the meeting of 6 October 2006 Mrs Sebire became very aggressive and withdrew any concession that she might work 9 a.m. to 6 p.m.; she would not agree to any changes to her current work hours.
- 8.45 Given this refusal to accept a new rota Mr Gregory consulted with the Store Manager Mr Penney who advised him that the best course of action was to implement an additional 12 week consultation period in line with B&Q company policy.

Cross Examination by Mr Sebire

- 8.46 Mr Gregory refuted any allegations that he had not made meeting notes available to Mrs Sebire and thought he had complied with company policy by inviting Mrs Sebire to sign his minuted notes each time a formal consultation was held. When Mrs Sebire requested in a later meeting that she be able to take her own notes Mr Gregory stated he had raised no objections to this request.
- 8.47 Mr Gregory testified that the purpose of the meeting on the 12 October 2006 (ER1 48 refers) was to explain to Mrs Sebire the process for the additional 12 week consultation process; there was no intent to harass Mrs Sebire by requiring her to attend this meeting.
- 8.48 During the meeting of 12 October 2006 Mr Gregory confirmed to Mrs Sebire that she was not being disciplined and that the purpose of the process was to give further opportunity to explore the basis of her objections to shift change. Mrs Sebire objected to the changes based on disruption to family life, the potential for the changes to make her ill and the increased food costs involved in working late shifts. Mr Gregory stated that whilst he had informed Mrs Sebire that if at the end of the 12 week period she would still not change that disciplinary action might be taken, but at no time did he tell her that she would be dismissed.
- 8.49 Mr Gregory wrote to Mrs Sebire on 12 October 2006 (ER1 57 refers) using a modified standard company letter. This letter indicated a weekly process of consultation would commence and stated that disciplinary action could result at the end of this period if there were no change.
- 8.50 Mr Gregory testified that there had been no need to invoke a further 12 week consultation process for any other of his team members as they had all agreed in writing to their proposed new hours (ER1 113 to 116 refer).
- 8.51 Mr Gregory met with his staff on 13 October 2006 at 11 a.m. for a team briefing and recalled Mrs Sebire walking past him and saying that she had given in her notice of resignation and simply said "bye I'm off". Mr Gregory subsequently became aware from work colleagues that Mrs Sebire commenced work with a new employer the following week.
- 8.52 Mr Gregory was aware of attempts by Mr Penney to invite Mrs Sebire back to discuss her issues further but had no further contact with Mrs Sebire.

Cross Examination by Mr Sebire

- 8.53 Mr Gregory refuted any allegation he had used strong language in his dealings with Mrs Sebire. However he agreed that B&Q had a generic flow chart on their HR web site relating to proposed contractual change, (ER1 32(1) refers), which indicates either “acceptance of change” or “dismissal plus offer of re-engagement” as the potential outcomes. In the event he had not discussed this document with Mrs Sebire, and the company was still hopeful on the 13 October, with the extended consultation period being offered, that a change agreeable to both parties could be achieved.
- 8.54 In relation to Paragraph 28 of his witness statement Mr Gregory refuted any allegation that this was not true; he recalled in that paragraph that Mrs Sebire had stated that all he would do at the end of the 12 week consultation process was sack her and if he was going to sack her why not do it immediately.

9.0 Closing Statements

Mr Sebire

- 9.1 On behalf of the Applicant Mr Sebire expressed the opinion that the whole process had been undertaken very hastily and that B&Q had attempted to impose a unilateral variation of the employment contract. In the opinion of the Applicant the B&Q “People Change Process” was a pretence; and that the real intention of the process was to achieve a dismissal.
- 9.2 The new Rotas were particularly unfair in relation to Mrs Sebire and she had not been treated in the same manner as her colleagues.
- 9.3 In simple terms Mrs Sebire was told that the new hours and Rotas would be imposed and if she did not comply she would be sacked

Advocate Barclay

- 9.4 On behalf of the Respondent Advocate Barclay stated that Mrs Sebire had agreed to an employment contract with a flexibility clause. In the opinion of the Respondent the proposed change of hours that had been put to Mrs Sebire was not sufficient to vary this express term of the contract and not a sufficient change for Mrs Sebire to treat it as a repudiation of her contract.
- 9.5 The alleged harassment by the respondent goes to an implied term of the employment contract and would need to have been of such a nature that it undermined the Applicant’s trust and confidence in her employer to such a degree that she could claim that her contract had been repudiated. In the event the Respondent has demonstrated that there was nothing inherently wrong with the procedure adopted by B&Q in seeking to change her working hours. Initially an informal approach was adopted however as time went by this became increasingly formal; but dismissal was never an automatic outcome.
- 9.6 The Respondent agrees that the letter sent to the Applicant on the 12 October 2006 (ER1 57 refers) was less than perfect however the main thrust of the letter is to describe the process of consultation to be adopted by the employer in a forthcoming period of 12 weeks; the letter advises Mrs Sebire of her right to be accompanied by a colleague of her choice and whilst it states that the outcome could result in disciplinary process no such process was ever invoked. Mrs Sebire could have approached the HR officer or Mr Penney to clarify any ambiguity she perceived in this letter, in the event she chose not to do so.
- 9.7 Mrs Sebire had alleged that the series of meetings held to discuss the proposed rota changes had amounted to harassment, however Mrs Sebire was always given notice of these meetings and, as the process became more formal, had the opportunity to have a work colleague of her

choice in attendance. Mrs Sebire was also given the opportunity to review the company minutes of each meeting and sign them as a true and fair reflection of the topics discussed.

- 9.8 Mrs Sebire failed to use the company grievance procedure even though such a procedure was available and apparently, according to testimony from Mr Penney, had been used by a number of B&Q employees with his support.

10.0 Conclusions

- 10.1 The Applicant has alleged that she was dismissed within the meaning of section 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998 as amended in as much as an employee shall be treated as dismissed by an employer if the employee terminates their employment contract, with or without notice, in circumstances such that she is entitled to terminate it without notice by reason of the employer's conduct. The Tribunal is charged to make a determination of the question whether such a dismissal did take place, and if so, was it fair or unfair in the circumstances (including the size and administrative resources of the employers undertaking). In considering this the Tribunal reviewed whether there had been either, or both, a sufficient breach of an express or an implied term of Mrs Sebire's employment contract such that she could justifiably claim a constructive dismissal.
- 10.2 In considering a possible breach of an express term of the employment contract the Tribunal has paid particular attention to the application form completed by Mrs Sebire and her written terms of employment dated 19th May 2003. The Tribunal has concluded that Mrs Sebire had positively agreed to the term "This job does require flexibility as far as hours and days are concerned" and that during her interview she had given her written agreement that she was willing to work as late as 9:00 pm. Mrs Sebire was also issued with a Staff Handbook (which was referenced from her written terms and conditions), and in this Handbook the Tribunal notes that at section 4.7 (ER1 page 23 refers) the employer specifically reserves the right to vary Rotas dependent on business need.
- 10.3 Mr Penney has persuaded the Tribunal that there was a well researched business reason for Rota changes needing to be implemented. Mr Penney referred to the "STS" (Service Through Scheduling) process which is apparently used by all B&Q stores in an effort to match staffing to peak sales periods. Given the "STS" analysis of the Guernsey store the RF/Pricing department, of which Mrs. Sebire was a member, was found to be well below the required benchmark. Consequently Mr Penney, via his subordinate Mr Gregory, initiated what B&Q terms as a "People Change Process" which requires managers to formally communicate the business issues, explain the need for change and then engage all affected staff in a process of consultation; this process and related documentation being described in ER1 32(i) to ER1 32 (xxxviii) . The Tribunal found both Mr Penney and Mr Gregory were both credible and convincing in describing the business need and the systematic process they had adopted with Mrs. Sebire and her work colleagues in dealing with this issue.
- 10.4 The Tribunal notes that Mrs Sebire objected to the proposed Rota changes as soon as she became aware of them. However the Tribunal is persuaded that Mrs Sebire knew that the process of consultation was being extended to 20 weeks in total and that she resigned some 8 weeks into that period, and without ever changing to the new Rota. The Tribunal has been persuaded that there was ample indication to Mrs Sebire that there was a further 12 weeks of consultation to go without B & Q imposing the new Rotas and before they would take the step of initiating their disciplinary process. The Tribunal notes that Mrs Sebire had been away from work on holiday and sickness for three of the weeks after the process was started with the collective meeting in August.
- 10.5 In her testimony Mrs Sebire stated that she felt harassed by the process, however she did not invoke the grievance procedure which is well set out in the staff handbook (ER1 pages 17 to

21). The Tribunal does not consider the casual conversation with Mr Penney in the store canteen as a notification of grievance. The Tribunal has formed the opinion that Mr Penney is an approachable Manager who would have taken seriously any formal grievance request made by Mrs Sebire during the period August to October 2006. The Tribunal formed the view from the Testimony given by Mr. Penney that he truly believed a sensible compromise could be achieved with Mrs Sebire and had consequently invoked the extra 12 weeks consultation period.

- 10.6 The Tribunal has formed the view that Mrs Sebire over-reacted to being asked to participate in the consultation process. Mrs. Sebire clearly believed that her colleagues were being given preferential treatment and she was being singled out for less favourable terms; however testimony from the Respondent does not seem to support this contention. Mr Gregory gave convincing testimony to the Tribunal that he had used the consultation process for all the team members, including Mrs Sebire. In the event her colleagues agreed new Rotas and gave their signed consent. The Tribunal agrees that Mrs Sebire had the opportunity to review the minutes of each meeting and sign them as a true and fair reflection of the topics discussed; if there was any ambiguity in these notes Mrs Sebire had the opportunity to challenge at the time.
- 10.7 The Tribunal considered whether the badly drafted letter calling the meeting on 16 October 2006 (ER1 57 refers) could have been construed as convening a formal disciplinary meeting but the Tribunal notes that the letter specifically says it is not a disciplinary meeting; notwithstanding this Mrs Sebire took this letter to be the final straw which in her opinion justified her resignation without notice. The Tribunal has not been persuaded that this letter, or the preceding process undertaken with Mrs Sebire, gave her sufficient justification to claim that her employer was harassing her or treating her differently from other affected employees.
- 10.8 The Tribunal notes the attempts by Mr Penney to invite Mrs Sebire back to the Store after her resignation and believes that this constituted a reasonable attempt by a reasonable employer to achieve a resolution to Mrs Sebire's issues.
- 10.9 In summary whilst the Tribunal has sympathy for any employee who is required to change working arrangements the Tribunal believes that the Respondent acted as a reasonable employer and applied a progressive procedure in a reasonable and systematic fashion. The Tribunal could not find a sufficient breach of either an express or an implied term of Mrs Sebire's contract which would justify her in resigning from her post and then claiming she had been constructively dismissed.
- 10.10 The Tribunal notes that Mrs Sebire had also made a claim against the Respondent for lack of provision of written reasons for dismissal. The Tribunal is guided by the experience of UK Tribunals when in similar circumstances it has been held that if the Employer had a genuine and well held belief that an employee had resigned, and had not been dismissed, it was reasonable that they would not provide such a written statement. The Tribunal believes that the Respondent did have such a genuine and well held belief and therefore dismisses the claim made by the Applicant.

11.0 Decision

- 11.1 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 the circumstances of this case the Tribunal finds that there was no dismissal within the meaning of section 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998 as amended. Therefore the case is dismissed and no award is made.
- 11.2 The Tribunal finds no merit in the claim that written reasons for dismissal should have been provided by the Respondent and consequently dismisses this claim.

Signature of Tribunal Chair:

Mr Peter Woodward

Date: 10 May 2007