

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Matthew Banton

Represented by: Mr Martyn Banton

RESPONDENT: Electrical Installations (Guernsey) Limited

Represented by: Mr Mark Le Mesurier, Managing Director

Decision of the Tribunal Hearing held on 16 October 2009.

Tribunal Members: Ms Helen Martin (Chairman)

Mr Andrew Vernon

Mr Peter Woodward

DECISION

Based on the evidence presented, the Tribunal found:

- The Applicant to be an employee of Electrical Installations (Guernsey) Limited.
- The Applicant's effective date of termination to be 19 June 2009.
- Having considered all the evidence presented and the representations of both parties, and having due regard to all the circumstances, that, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, Mr Matthew Banton was unfairly dismissed by reason of redundancy.

Amount of Award (if applicable): £9,910.27

Ms Helen Martin

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Signature of the Chairman

27 November 2009

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Date

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

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, who was represented by his father, Mr Martyn Banton, gave witness testimony, which was also supported by documentary evidence (EE1 refers).
- 1.2 The Respondent was represented by Mr Mark Le Mesurier, Managing Director of Electrical Installations (Guernsey) Limited, he also gave witness testimony which was supported by documentary evidence (ER1 and ER2 refer).
- 1.4 At the outset of the hearing it was confirmed that:
 - i) The effective date of termination was 19 June 2009.
 - ii) The salary figures as detailed in a letter from the Applicant to the Respondent (attached to ET1) were agreed to be accurate.
- 1.5 The Applicant claimed he had been unfairly dismissed by reason of redundancy. He claimed that Mr Le Mesurier, the Managing Director of Electrical Installations (Guernsey) Limited, had dismissed him with one week's notice on Friday 5 June, 2009. The Applicant claimed that the Respondent had not communicated to him that a pool of employees had been selected for consideration for redundancy. Further to this, the Applicant claimed that he was not informed why he had been selected for redundancy on 5 June, 2009. In addition, Mr Matthew Banton stated that he was not told that he could appeal against his dismissal and that he had not been considered for alternative employment within the Company.
- 1.6 The Respondent stated that employees of Electrical Installations (Guernsey) Limited had been informed at the end of May 2009 that redundancies may occur due to a reduction in the work available. The Respondent claimed that he had made four electricians redundant as a result of the downturn in business and that a pool of selection comprising the apprentice electricians employed by the Company had also been considered for redundancy. The Respondent claimed that reports produced by the College of Further Education, in conjunction with the performance appraisals by Electrical Installations (Guernsey) Limited, concerning the apprentice electricians, were used in the selection process. Mr Mark Le Mesurier claimed that the Applicant's college report stated that greater commitment in all aspects of his college work was required. The Respondent claimed that he discussed this alleged lack of commitment with the Applicant on site and informed him that an improvement in his work was required. Mr Le Mesurier claimed that the Applicant's work did not improve during 2009 and that the three other apprentices in the pool for selection had progressed well. As a result the Respondent claimed that he selected the Applicant, from the pool of apprentice electricians, for redundancy.

2.0 Facts Found

2.1 The Applicant was employed by the Respondent from 11 December 2006 to 19 June 2009, as an apprentice electrician.

2.2 The Applicant had a written contract of employment (ER 2).

3.0 Mr Mark Le Mesurier

3.1 The witness told the Tribunal that he had spoken to the Applicant about his concern regarding his performance in March 2009 and that the Foreman had also spoken separately to the Applicant about the requirement to improve his performance.

3.2 Mr Le Mesurier told the Tribunal that he employed apprentice electricians straight from school and that by the second or third year he expected them to work autonomously without the need for close supervision.

3.3 The Respondent advised the Tribunal that the informal conversations with Mr Banton concerning his performance were confirmed in the grades shown in his performance appraisal. Mr Le Mesurier told the Tribunal that the Company appraisal report was completed mid year and that the College of Further Education also prepared a report concerning the progress of the apprentice electricians in early July of each year of their apprenticeship.

3.4 The Respondent told the Tribunal that he was more interested in how the apprentices applied themselves to their work on site and not in the delivery of their course work for the College of Further Education.

3.5 The Respondent told the Tribunal that he had to reduce the number of employees from twenty six to eleven as a result of the downturn in business and ultimately four qualified electricians had been made redundant.

3.6 The Respondent informed the Tribunal that he had discussed the need for potential redundancies with Trevor Burns, an electrician who was employed by Electrical Installations (Guernsey) Limited at the time. The Respondent advised the Tribunal that it was his understanding that Mr Burns had informed employees of the Company that redundancies may occur as a result of the downturn in business. Mr Le Mesurier told the Tribunal that it was two to three weeks after this communication that the redundancies were confirmed.

3.7 Following his research on the Commerce and Employment website, the Respondent told the Tribunal that he followed the guidelines within the Code of Practice relating to redundancies. He told the Tribunal that he made two selection pools: one involving the qualified electricians and one involving the apprentice electricians. Mr Le Mesurier told the Tribunal that there had been other redundancies involving apprentices previously but these had not been a problem because normally there were other jobs in the industry for them to move to.

3.8 Mr Le Mesurier told the Tribunal that he was solely responsible for the selection of employees for redundancy at Electrical Installations (Guernsey) Limited.

- 3.9 The Respondent said that he did not communicate to the apprentice electricians that they were in a pool for selection for potential redundancy. In addition, the Respondent advised the Tribunal that he did not discuss the method or reason for selecting the Applicant with the Applicant at the time of communicating to him that his role was redundant.
- 3.10 Mr Le Mesurier stated that he had given the Applicant one week's notice and told him that his position was redundant on 5 June, 2009.
- 3.11 Mr Le Mesurier confirmed to the Tribunal that the Applicant had received a letter confirming that he had been made redundant with his last payslip.
- 3.12 Mr Le Mesurier stated that he did not consider allowing the Applicant to have an opportunity to challenge the decision to make him redundant. He advised the Tribunal that he was not unapproachable and that it would have been unfair to the other apprentices to select them in the circumstances. The Respondent told the Tribunal that he could not recall the reaction of the Applicant to the communication of his redundancy.
- 3.13 In response to cross examination by Mr Martyn Banton, the Respondent confirmed that he had been responsible for the Company appraisal report concerning the Applicant. The Respondent told the Tribunal that the selection had been objective and that he could not apply the principle of 'last in and first out' to the apprentices.
- 3.14 The Respondent confirmed that he did not consider reducing the hours of employees as an alternative to redundancy and stated that this was not possible.
- 3.15 Mr Le Mesurier told the Tribunal that a junior employee hired in March 2009, David Cussack, had not been included in the pool for selection because he was still under probation.
- 3.16 The Respondent confirmed that the College of Further Education had not provided a progress report for the Applicant relating to the academic year of 2008/2009.

4.0 Mr Matthew Banton

- 4.1 The Applicant told the Tribunal that he had successfully completed the third year of his apprenticeship. He stated that during the time of his employment at Electrical Installations (Guernsey) Limited he had not received any written warnings about the standard of his work.
- 4.2 The Applicant told the Tribunal that he was generally happy at work although some of the jobs that he was given affected his health as he suffered from eczema and asthma. The Applicant told the Tribunal that he did not believe that he received a balanced apprenticeship as he was rarely placed with qualified electricians for any significant amount of time.
- 4.3 Mr Matthew Banton confirmed to the Tribunal that he became aware that there may be redundancies in the spring 2009, having been told by an electrician called Mr

Trevor Burns. The Applicant had worked closely with Mr Burns although he also moved around and worked alongside the other electricians. The Applicant told the Tribunal that he believed that he 'moved around' more than the other apprentice electricians and that he did not know why this was the case.

- 4.4 Mr Banton advised the Tribunal that he was not told that he was at risk of losing his job prior to 5 June 2009.
- 4.5 The Applicant was absent from work due to illness, which was certified by his GP, from 25 May 2009 until 1 June 2009 although he still attended evening school at the College of Further Education during this time. He said that on the morning of 5 June 2009 Mr Le Mark Le Mesurier approached him and said: "there is not enough work. I've got to let you go. I'm giving you a week's notice." The Applicant stated that he was not told he was in of a pool for selection for redundancy and that he was not told that he could appeal against his dismissal.
- 4.6 Mr Banton told the Tribunal that he was 'in shock' and did not know what to say when Mr Mark Le Mesurier told him that he was redundant and that he had not believed that apprentices would be considered for redundancy.
- 4.7 In response to a question from Mr Banton Snr, the Applicant confirmed that all apprentices on site had been asked to sign their appraisal forms in the office and that there had been no discussion about their performance at the College of Further Education.
- 4.8 The Applicant told the Tribunal that he suffered from a condition known as dyspraxia and that this had been diagnosed in May 2007. Mr Banton told the Tribunal that he had told the site foreman about this but had not directly communicated this to Mr Mark Le Mesurier. Arising from this condition, the Applicant told the Tribunal that he did not always have a full attention span and that the foreman had picked up on this. The College of Further Education had offered learning assistance and techniques to assist working effectively with the condition. The Applicant stated that he did not have the opportunity to discuss the impact of his diagnosis of dyspraxia with Mr Le Mesurier. In response to a question from the Respondent, the Applicant told the Tribunal that he had assumed that Mr Le Pelley, the foreman, would inform Mr Le Mesurier that he was suffering from this condition.

5.0 Closing statements

- 5.1 In his closing statement, the Respondent told the Tribunal that as a small firm it was not possible to apply the detailed redundancy procedures employed by larger organisations. He told the Tribunal that he did not know that the Applicant suffered from dyspraxia but that this would not have made any difference to his selection for redundancy.
- 5.2 Mr Martyn Banton, in closing on behalf of the Applicant, told the Tribunal that the recruitment of a new apprentice in March 2009 was not consistent with the Applicant being informed that the Company was short of work and that his role was redundant. Mr Banton Snr told the Tribunal that none of the recommendations or principles in the redundancy Code of Practice issued by Commerce and Employment

had been followed and that by making the Applicant redundant he had deprived him of completing his apprenticeship.

6.0 Conclusions

- 6.1 The Applicant stated that he was unfairly dismissed within the meaning of Section 5 (2) (a) of The Employment Protection (Guernsey), Law, 1998 as amended and that the dismissal fell under the general provisions relating to fairness of dismissal and the principal reason being that of Section 6 (2) (c) that he was made redundant.
- 6.2 In relation to the allegation of the redundancy being unfair within the meaning of The Employment Protection (Guernsey) Law, 1998, as amended, an employer must first demonstrate that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish. The Tribunal concluded that there had been a reduction in work sufficient to lead to redundancies being necessary.
- 6.3 The next test for the Tribunal is to establish that the employer made all reasonable attempts to minimise or avoid redundancies and that a pool of employees for selection were clearly identified. The Tribunal concluded that the Respondent had fulfilled this recommendation in part by identifying a pool for selection although the existence of the pool had not been communicated to the employee in question. However, the Tribunal concluded that the selection criteria applied to the pool of apprentice electricians was not objective, fair and consistently applied. In concluding this, the Tribunal gave weight to the evidence that the most junior and recent recruit, David Cussack, was not included in the pool for selection of apprentices.
- 6.4 The Tribunal then had to establish whether or not the employees were consulted with, concerning the risk of redundancy, well before final decisions were reached. The Tribunal concluded that there was no evidence of a redundancy related consultation having taken place.
- 6.5 In summary and mindful of the principles that should be adopted by small firms in the Commerce and Employment Code of Practice for Handling Redundancy, the Tribunal is persuaded that the overall process followed by the Respondent did not fall into a range of reasonable actions taken by a reasonable employer of their size and with their resources.

7.0 Decision

- 7.1 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, that the Applicant was unfairly dismissed.
- 7.2 The Tribunal therefore makes an Award of £9,910.27.

Ms Helen Martin

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Signature of the Chairman

27 November 2009

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Date