

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Trevor Burns
Represented by: Advocate Abby Lund

RESPONDENT: Electrical Installations (Guernsey) Limited
Represented by: Mr Mark Le Mesurier

Decision of the Tribunal Hearing held on 17 September 2009.

Tribunal Members: Ms Kathy Tracey
Ms Georgette Scott
Mr Roger Brookfield

DECISION

The Tribunal unanimously found that, under the provisions of the Employment Protection (Guernsey) Law 1998, as amended, Mr Trevor Burns was dismissed under Section 6 (2) (b).

Due to a failure of the employer to follow a substantially fair and reasonable procedure under the Law, the dismissal was found to be unfair.

In making an Award the Tribunal considered it just and equitable to use its discretion under Section 23(2)(b) of the Employment Protection (Guernsey) Law, as amended, as Mr Burns was found to have significantly contributed to his dismissal through his gross misconduct.

In these circumstances the Tribunal considered that a 90% reduction in the Award was appropriate.

Amount of Award (if applicable): £1,827.87

Ms K Tracey
.....
Signature of the Chairman

5 October 2009
.....
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

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 Martin's, 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 appeared in person and gave witness testimony under oath on his own behalf. He was represented by Advocate Lund of Carey Olsen. A bundle of documents was presented to the Tribunal, including timesheets, wage slips, a letter of dismissal and Building Federation Regulations and Standard Terms and Conditions, together with a disciplinary and grievance procedure.
- 1.2 The Respondent was Mr Mark Le Mesurier, owner and director of Electrical Installations (Guernsey) Limited. He provided witness testimony under affirmation on his own behalf. Mr Le Mesurier also entered into testimony a bundle of documents, which included witness statements (all witnesses except one were available to attend the hearing – however there was no disagreement over these statements therefore their attendance was unnecessary). The bundle also included copies of text messages sent by the Applicant to members of staff, and copies of correspondence between the Applicant and Respondent.
- 1.3 At the outset of the hearing, the date of termination had not been agreed, nor had the amount of Mr Burns' salary.
- 1.4 After discussion and reference to the wage slips provided in evidence, it was agreed by both parties that Mr Burns' annual gross salary was equivalent to £36,557.50.
- 1.5 It was agreed between the parties that the effective date of termination was Tuesday 5 May 2009.
- 1.6 It was alleged by Mr Burns that his dismissal had been unfair on the basis that it breached his right to a fair and reasonable procedure and/or the dismissal was not based on any of the potentially fair reasons as in Sections 31(a) and 6(2) of the Law.
- 1.7 It was alleged by the Respondent that Mr Burns committed acts that would be reasonably deemed to be gross misconduct, by falsifying timesheets, sending abusive text messages to other staff members, and not turning up to work.

2.0 Facts as Found by the Tribunal

- 2.1 Electrical Installations (Guernsey) Limited has a fluctuating workforce dependant on demand for services.
- 2.2 Mr Burns had worked as a subcontractor previously for Electrical Installations (Guernsey) Limited and was employed full-time on this occasion, as of 25 July 2007. His length of service was agreed to be approximately six years.

- 2.3 Up until the last six to eight months Mr Le Mesurier had no problems with Mr Burns' conduct or attitude and had never had concerns with his work.
- 2.4 In July 2008 Mr Burns sent a series of text messages to an apprentice at Electrical Installations (Guernsey) Limited, which the apprentice considered abusive. The apprentice was upset and told his mother who then rang Mr Le Mesurier to complain. Mr Le Mesurier spoke to Mr Burns about the text messages and told him that he must stop sending them. Mr Burns agreed to stop.
- 2.5 Mr Burns approached the apprentice and admonished him for telling his mother.
- 2.6 Mr Le Mesurier discovered that the text messaging had resumed during a conversation with his foreman Mr Le Pelley.
- 2.7 Mr Burns submitted a number of timesheets which made claim for hours he had not worked. He admitted he did not keep accurate records of his time worked even though this was a clear and regular weekly procedure.
- 2.8 Mr Burns' explanation for the irregularities in his time sheet was that he was very tired as his son was ill and, therefore, he was not getting any sleep. This was making it difficult for him to concentrate.
- 2.9 On Thursday 30 April 2009 Mr Le Mesurier asked Mr Burns to check his timesheets as they were not correct. Mr Burns wrote "Just pay 40 hours" on the timesheets and put them in Mr Le Mesurier's vehicle.
- 2.10 Mr Burns left the site on Thursday afternoon and did not return on Friday 1 May. No contact was made by Mr Burns to his employer to explain his absence. Mr Burns, however, sent text messages to Mr Le Pelley on Friday at 11.00 am threatening to "knock his block off."
- 2.11 Mr Le Mesurier telephoned Mr Burns on Saturday 2 May and asked him to come into the office on Tuesday 5 May. Mr Le Mesurier was not explicit about the purpose of the meeting, but it was clear that both parties knew the subject of the meeting would be Mr Burns' performance, in particular the anomalies of his timesheets.
- 2.12 Mr Burns attended the office of the Respondent on Tuesday 5 May, and met with Mr Le Mesurier.
- 2.13 Mr Le Mesurier told Mr Burns "I'm going to have to let you go". Mr Burns asked "Why?" Mr Le Mesurier said "because of your abusive texts and your dishonesty on your timesheets."
- 2.14 Mr Le Mesurier was prepared to offer redundancy to assist Mr Burns to get re-employment and to protect his work reputation, Mr Burns however turned down the offer and said he would rather be sacked.

3.0 **Conclusions**

- 3.1 The Tribunal concluded that Mr Le Mesurier omitted to follow a completely fair and reasonable procedure, as laid out in the Disciplinary & Grievance Procedures provided by the Building Federation conditions, or as detailed in the Commerce and Employment 'Guidance for Employers'.

- 3.2 From his own evidence it is clear that Mr Burns knew the meeting on Tuesday 5 May was to discuss his absence from work on the Thursday afternoon and Friday, as well as falsifying his timesheets.
- 3.3 Mr Le Mesurier did not offer Mr Burns the right to be accompanied by anyone to the meeting, he did not tell him what the possible outcome of the meeting could be, and by his own evidence had already made up his mind what the outcome would be, he also failed to allow Mr Burns to respond to allegations.
- 3.4 Mr Burns was not given any right of appeal.
- 3.5 The Tribunal was in agreement that Mr Burns' conduct and behaviour constituted gross misconduct and, therefore, the reasons for dismissal were concluded to be fair. However, even under circumstances of gross misconduct an employer must follow reasonable procedures.
- 3.6 The Tribunal noted that in using the guidance provided by the Building Federation specifically in relation to gross misconduct, Mr Le Mesurier was misled by its ambiguity and wrongly assumed that instant dismissal meant that no disciplinary procedures needed to be observed.
- 3.7 The Tribunal concluded that in consideration of all the circumstances, the onus of acting in accordance with the Employment Protection Law is on the employer even when the employee has acted in the way that Mr Burns had. However, Mr Burns was responsible for his acts of gross misconduct and, therefore, although his claim is upheld, the Tribunal agreed that the amount of the award should be significantly reduced in relation to Mr Burns' considerable contribution to his dismissal.

4.0 Decision

- 4.1 Having considered all the evidence presented and 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, the Respondent did not comply with the Law and, therefore, the Applicant was unfairly dismissed. Due to the significant contribution of the Applicant to his own dismissal, and using the discretion given under Section 23(2) the Tribunal decided to reduce the Award by 90%.
- 4.2 The amount of the Award is, therefore, £1,827.87

Ms K Tracey

.....
Signature of the Chairman

5 October 2009

.....
Date