

## States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL****APPLICANT: Mr Richard Mark Carter****RESPONDENT: P Trant Civil Engineering**

Represented by: Mr Michael Collins, Human Resources Manager

**Decision of the Tribunal Hearing held on 16<sup>th</sup> December 2008****Tribunal Members: Mr John Guilbert  
Ms Georgette Scott  
Ms Caroline Latham****UNANIMOUS DECISION**

Based on the evidence presented, the Tribunal finds:

- That the Applicant made a claim of unfair dismissal on Health and Safety grounds as defined in Part 2, Section 11 of **The Employment Protection (Guernsey) Law, 1998, as amended**; which claim fell on the Applicant's own admission, that the Respondent had not dismissed him on Health and Safety grounds.
- That the Respondent took all reasonable action to address the Applicant's claim that he was in danger of being assaulted by a fellow employee. The Applicant's dismissal was unconnected to his Health and Safety complaint to management.
- That The Tribunal therefore dismisses the unfair dismissal claim and accordingly makes no award.

**Mr John Guilbert**  
Signature of the Chairperson**7 January 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 Martins, Guernsey, GY1 6AF

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

**Extended Reasons**

**1. Introduction**

- 1.1 The Applicant claims that the Respondent unfairly dismissed him on the 23rd June 2008 on Health and Safety grounds. As Health and Safety is one of the reasons for which dismissal is automatically unfair, the Applicant did not need the usual twelve months employment to register a claim of unfair dismissal.
- 1.2 The Respondent disputed the claim on the grounds that:
  - The Applicant was guilty of repeated bad time-keeping and unauthorised absence from work.
  - The Applicant had been given a series of verbal warnings and a written warning about his conduct, prior to his dismissal.
  - That the Applicant's dismissal was unconnected to his Health and Safety grievance.
- 1.3 The Applicant appeared in person and gave witness testimony under oath, on his own behalf.
- 1.4 The Applicant did not produce any witnesses or documents on his own behalf.
- 1.5 The Respondent's Representative appeared in person and gave witness testimony under oath, on the Respondent's behalf.
- 1.6 The Respondent's Representative did not produce any witnesses on the Respondent's behalf, but entered the Company Rules and Policies Booklet as ER1.
- 1.7 Attached to form ET2, were copies of signed witness statements from Company employees who were on site, when the alleged altercation took place, the dismissal letter and written warning letters to the Applicant about damage to his lorry and absence from work.
- 1.8 Both parties agreed that the Applicant's dismissal date was the 23<sup>rd</sup> June 2008.

**2. Facts Found by the Tribunal**

- 2.1 The Applicant was employed by the Respondent as a lorry driver, working 45 hours a week, between 21<sup>st</sup> January 2008 and 23<sup>rd</sup> June 2008.
- 2.2 On the 18<sup>th</sup> June 2008 the Applicant was engaged in loading rubble on his lorry from the Company's St Pierre du Bois yard and carting it to the Longue Hougue, St Sampson site. He then went to the Ronez yard to pick up a load of shingle to take to the St Pierre du Bois yard.
- 2.3 At about 11am he was unloading his lorry in the St Pierre du Bois yard, when he overheard Mr A, a fellow lorry driver talking to the Company Secretary about the Applicant's lorry having been overloaded. There followed a verbal exchange between the Applicant and Mr A, which the Applicant claims culminated with Mr A striking him.

- 2.4 The Applicant notified his foreman by telephone of the incident, who promised to contact the other driver, to ascertain his side of the story. About an hour later he rang the Applicant to advise him that the other driver had denied any assault and as there weren't any witnesses to an assault, it came down to one man's word against another.
- 2.5 The Applicant made a formal complaint to the police of the incident.
- 2.6 On the 19<sup>th</sup> June, at the end of the day's work in the St Pierre du Bois yard, the Applicant's foreman requested the Applicant to withdraw his police complaint against the other driver, so that he could sort the matter out himself. While the foreman was making this request the Applicant felt intimidated by Mr A, because of the threatening remarks that he kept making, while the foreman was speaking.
- 2.7 Before going home it was agreed that they would sleep on the request and that the Applicant would see the foreman the next morning, to sort out the problem.
- 2.8 The Applicant did not turn up for work the next day because he felt under a lot of pressure. He did not telephone his employer to advise them of his absence, because his mobile telephone was being held by the police as evidence of the assault. (The Applicant had recorded Mr A's words with the Applicant, on his mobile telephone). He did not use a public telephone.
- 2.9 At 7.00am on the 23<sup>rd</sup> June the Applicant was informed by a Respondent employee that he was dismissed. He received a letter from the Project Manager, dated 20<sup>th</sup> June 2008 in which his unauthorised absence from work, without explanation, was given as the reason for the dismissal.
- 2.10 Undated witness statements appended to the ET2 form, gave no evidence to support that an assault had taken place before any of them.
- 2.11 The Tribunal Chairman read out the relevant part of Part 2, Section 11 of the Law, to ensure that the Applicant was aware of the requirements of the Law to successfully claim unfair dismissals on Health and Safety grounds.
- 2.12 Under questioning the Applicant stated that he was not claiming that his employer had dismissed him on Health and Safety grounds, but rather that the employer had not taken any action to resolve his Health and Safety concerns.
- 2.13 The Tribunal Chairman stated that as the Applicant was unrepresented he would like the Applicant to explain the details of his claim again. The Chair explained the difference between his claim as defined in the ET1 form and his verbal statement to the Tribunal. The Applicant again repeated his statement as outlined in 2.12.
- 2.14 The Respondent's Representative stated that the Company had done all it could reasonable be expected to do to resolve the Applicant's concerns over the alleged assault. The foreman had questioned the driver concerned and had tried to resolve the problem by speaking to the Applicant. The Applicant had not turned up for work as arranged, when the matter could have been fully discussed and perhaps resolved. The Company had obtained witness statements where possible. He also pointed out that the Applicant was advised in his dismissal letter that he could appeal against the decision, but declined to do so. Also, at the commencement of his employment the Applicant was given a copy of the Company Booklet, marked ER1 in which his Health and Safety rights were defined and detailed the Company Grievance procedure.

**3. Case summaries.**

- 3.1 The Applicant ran briefly through his case and reiterated his concerns that apparently no action had been taken by his employer to resolve his concern that he may be assaulted again by Mr A.
- 3.2 The Respondent's Representative declined to make any further submission as he believed he had covered all the points required.

**4. Conclusions**

- 4.1 The Tribunal finds that the Applicant was not unfairly dismissed on Health and Safety grounds and that the dismissal was for poor time keeping and unauthorised absence from work.
- 4.3 The Tribunal is satisfied that the Company had done all it could reasonably be expected to do about the Applicant's Health and Safety concerns. If the Applicant had turned up to work on the 20th June, the foreman might have been able to resolve the matter.
- 4.4 However, the Tribunal was concerned by how close the dismissal was to the time the Applicant made his Health and Safety complaint, but no evidence was presented to support unfair dismissal on Health and Safety grounds.
- 4.5 The Tribunal believes that the Applicant had confused his right to claim unfair dismissal on Health and Safety grounds, with his right to have his Health and Safety at work concerns investigated and resolved by his employer, even where those investigations did not lead to his dismissal.

**5. Award**

- 5.1 The Tribunal dismisses the unfair dismissal claim and makes no award.
- 5.2 The Tribunal directs that each party shall bear their own costs for the preparation and presentation of their own cases before the Tribunal.
- 5.3 The Tribunal directs that the States of Guernsey shall bear the costs of preparing and holding the Tribunal hearing.

**Signature of the Chairman: J S Guilbert**

**Date: 7 January 2009**