Case No: ED0030/08

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Neil Forman Represented by: Self represented

RESPONDENT: Spellbound Holdings Limited, T/A Bougourd Ford

Represented by: Advocate Jessica Roland

Witnesses:

Called by the Applicant:

Mr Roy Vidamour
Mr Roy Bougourd.
Mr Christopher Starr
Mr Anthony Poynder
Mr Ron Le Cras

Called by the Respondent:

Mrs June Summers-Shaw Mr Iain Carse Mrs Julie Gallon Mr Neil Newberry Mr Mervyn Chester

Decision of the Tribunal Hearing held on 14 & 15 January 2009

Tribunal Members: Mr Peter Woodward

Mr Roger Brookfield Ms Carol Harvey

UNANIMOUS DECISION

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 Neil Forman was not, as alleged, constructively unfairly dismissed.

Mr Peter Woodward 6 February 2009
Signature of the Chairman 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

1.0 Introduction

- 1.1 The Applicant, who represented himself, gave witness testimony, which was also supported by documentary evidence. (EE1 Refers).
- 1.2 The Applicant called the following witnesses:-

Mr Roy Vidamour Mr Roy Bougourd Mr Christopher Starr Mr Anthony Poynder Mr Ron le Cras

- 1.3 The Respondent was represented by Advocate Jessica Roland.
- 1.4 Advocate Roland called the following witnesses:-

Mrs June Summers-Shaw Mr Iain Carse Mrs Julie Gallon Mr Neil Newberry Mr Mervyn Chester

These witnesses were supported by documentary evidence (ER1-4 Refers).

- 1.5. At the outset of the hearing the parties confirmed that:-
 - 1.5.1. It was agreed that the effective date of termination was 13 June 2008.
 - 1.5.2 The salary figures as detailed in the Applicant's ET1 were agreed by the Respondent.
- 1.6 The Applicant claimed he had been constructively dismissed. He stated that during the introduction of a new company-wide handbook he had been bullied and harassed by members of the management and by June Summers-Shaw. He also stated that his company tool allowance had been suspended and the Respondent had not observed Data Protection principles when handling his company medical report. His 2008 pay review had been delayed by his refusal to sign the revised contract and the new handbook. The "last straw" event which caused him to resign was that his request to use a company van for personal use over a short period had been unreasonably declined.
- 1.7 The Respondent admitted an error in the handling of the medical report however in regard to the revised contract of employment and the new handbook the company had undertaken an extensive and time consuming process to ensure that employees were properly consulted prior to introduction. The Respondent had placed no obligation on the Applicant to sign either the revised contract or the new handbook and the Applicant was not singled out for a delayed pay review. The tool allowance was suspended company wide due to perceived irregularities in the application of this policy; again this

was not a specific action taken against Mr Forman. The provision to loan company vehicles to employees was a discretionary benefit and required signed authorisation at a senior level, which was not possible on 2 May 2008.

1.8 Mr Forman did not lodge any formal grievance in relation to any of the above issues and had resigned in the knowledge that he had already secured a better paid job. In summary none of the actions taken by the employer could be judged as sufficient to entitle the Applicant to resign and in fact the employer had acted reasonably. It was the view of the Respondent that there had been no dismissal.

2.0 Facts Found

- 2.1 The Applicant commenced employment with the Respondent on 29 September 1993 and at the time of his resignation was employed as a Technician.
- 2.2 The Applicant's discontent with his management and the alleged unfair treatment to which he was subjected stemmed from the introduction by the Respondent of a new company handbook and an updated contract of employment. It was the belief of the Applicant that his concerns over this document had been disregarded and that he had been bullied during the briefing and acceptance phase of the documents. The "last straw" event which led to his resignation was a company decision to decline his request for the loan of a company vehicle.
- 2.3 The decision in principle to introduce a new handbook and a revised employment contract was taken in summer 2006 by the Respondent and by late 2006 work had commenced on this project with the assistance of an external HR consultant June Summers-Shaw.
- 2.4 The Respondent had employed a Compliance Manager, Norman Dixon, in early 2007 and he also undertook a significant role in the preparation of the handbook; by 10 July 2007 he indicated that a final draft had been prepared. ER1 108 refers.
- 2.5 During the summer of 2007 Mr Dixon consulted Commerce and Employment in Guernsey and "JACs" in Jersey to check the handbook was compliant with legislation in both islands. In addition the draft was reviewed by Ford UK to ensure that it met corporate standards. ER1 109 / 111 / 112 / 113 /114 refer.
- 2.6 The draft handbook was issued to Ron Le Cras the Unite Regional Industrial Organiser in July 2007 and his initial feedback to the respondent was critical. Mr Le Cras had stated there were many errors in it. ER1 114 refers.
- 2.7 A meeting took place on 26 September 2007 in Guernsey to review the union critique of the handbook with Mr Le Cras and Roy Bougourd, a Unite shop steward in the employment of the Respondent attending for the Union. Attending for the Respondent were Mr Carse, the Managing Director, Julie Gallon in her HR role, June Summers-Shaw and Norman Dixon. The meeting had been scheduled over 2 days however Mr Le Cras chose to leave the meeting after some 30 minutes, amongst his concerns were that the Respondent would not reveal the name of the Ford UK official who had vetted the draft handbook. ER1 114 refers.
- 2.8 Shortly after this meeting Mr Bougourd sent an email to all the union members in the Guernsey company stating that this meeting had not gone well and to anticipate "rough times" in the 2008 negotiations between the Respondent and Unite.

- 2.9 On 1 October 2007, the Respondent notified Mr Le Cras in writing that the employee Handbook would form part of the 2008 negotiations between the Union and the Respondent.
- 2.10 On 4 October 2007, Mr Norman Dixon sent the Applicant an email apologising on behalf of the Respondent for the erroneous handling of a private and confidential "Health Check" document.
- 2.11 On 12 December 2007, a meeting took place to address the unresolved issues from the 26 September meeting. Attendance was as before, but with the addition of a Mr Colin Lumber, a member of the Union from its UK South West division. It was minuted that Mr Lumber had expressed satisfaction that the handbook was good and with the agreed changes would be very good. ER1 128 to 130 refer.
- 2.12 On 15 January 2008, Mr Roy Bougourd emailed the collective feedback from himself and Mr Le Cras to Julie Gallon ER1 156 refers. Subsequently she confirmed receipt of their recommendations and explained that all staff would be consulted directly and that, if their feedback required it, then further changes would be made. ER1 159 refers.
- 2.13 Mr Norman Dixon replied to the Union on 22 January 2008, on behalf of the Respondent, either confirming the requested changes or explaining why a particular element of the Handbook could not be changed. ER 166 refers.
- 2.14 With the assistance of Mrs Summers-Shaw company-wide briefings commenced on 31 January 2008. ER1 176 / 178 / 179 to 199 refer.
- 2.15 In February 2008 all Guernsey based employees attended four "Rollout Training" sessions during which the handbook was explained section by section. Employees were encouraged to respond via questionnaires at the end of each session to ensure they had gained a clear understanding of key items in the handbook. Mr Forman attended all four sessions. ER1 206 to 240 refer.
- 2.16 On February 28 2008, Mr Iain Carse wrote to Mr Le Cras responding to his pay claim enquiry of 11 February 2008. He stated that the issue of pay would be deferred until all issues with the handbook had been resolved and the handbook had been issued. ER1 241 refers.
- 2.17 On 12 March 2008, Mr Carse conducted "Wrap Up" meetings with all employees with the purpose of communicating all final changes to the handbook. His intent was to gain reassurance that employees had been fully consulted. Mr Forman attended one of these meetings. ER1 258 to 287 refer.
- 2.18 On 18 March 2008, Mr Carse sent Roy Bougourd a copy of the PowerPoint presentation used during the "Wrap Up" sessions.
- 2.19 On 27 March 2008 Mr Bougourd emailed Mr Carse informing him that the Union still had issues with the new contract, consequently his members had been instructed not to sign for acceptance. Mr Forman was one of these Union members. ER1 315 refers.
- 2.20 On 3 April 2008 the Respondent was notified by the Industrial Disputes Officer (Mr M. Fooks) that Unite had registered an industrial dispute in relation to their concerns over the introduction of the new Handbook. The two issues which formed the basis of the

dispute were the non-inclusion of any specific mention of the Unite union and the potential for deduction of company funded external training costs in certain specific situations. ER1 321 to 324 refer.

- 2.21 On 8 April 2008, Mr Carse sent a memorandum to all staff in Guernsey advising them that some 63% of the staff had given signed acceptance to the Handbook, however a minority of employees on advice from Unite had not signed. In this document the Respondent stated that due to this issue it was unable to proceed with a pay review for any employees at that point in time. ER1 325 refers.
- 2.22 On 30 April 2008, Mr Forman requested the loan of a company van for the period from 15.00 on 2 May 2008 to 17.00 on 3 May 2008, in order that he could assist his son moving furniture into an apartment. His request form was given initial approval by his immediate manager, Mervyn Chester, and faxed on the same day to Julie Gallon requesting she obtain senior management approval for this loan.
- 2.23 On 2 May 2008, Roy Bougourd emailed Julie Gallon on behalf of the Applicant requesting clarification on the vehicle loan procedure.
- 2.24 The approval for the loan was declined on 2 May 2008, and this decision was communicated by email from Julie Gallon to Roy Bougourd stating that the loan could not be authorised that day as Mr Carse was out of the office and he would not permit Mrs Gallon to sign for the loan in his absence. ER1 330 refers.
- 2.25 The Applicant tendered his resignation in writing to Mervyn Chester on 12 May 2008 and worked his notice until 13 June 2008.

3.0 Mr Roy Bougourd

- 3.1 The witness had been the resident shop steward for Unite since 2001 and confirmed his role on behalf of the Union in reviewing the handbook, ER1 156 159, 162 -164 and 166 refer. However, Mr Bougourd had concerns that the Union agreement might disappear or be subordinated to the revised contract and the new handbook, ER1 123 refers.
- 3.2 The witness confirmed he had attended the employee briefing sessions along with the Applicant. He stated that during these sessions that employees had asked both Mr Carse and Mrs Summers-Shaw what would happen if an employee did not sign. He heard Mr Carse state that if employees did not sign they knew where the door was, and Mrs Summers-Shaw said that it was a "blessing" that there were alternative jobs on the island. Mr Bougourd could not remember the Applicant specifically asking this question.
- 3.3 In the opinion of the witness there was management coercion to sign and recalled, for example, a non-union employee canvassing his union colleagues on a certain day where this employee told them that Mr Carse was on the premises if they wanted to sign.
- 3.4 The witness said that in his opinion the briefing sessions were too short given the complexity of the documents. However, he confirmed that at each session there was time to ask questions, and he was allowed to take copies away of the draft material from each briefing session.

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- 3.5 Mr Bougourd agreed with Advocate Roland that the "Company Vehicle Use Authorisation" was clear in terms of required signatures. EE1 Page 45 refers. However, he could recall exceptional circumstances when Mrs Gallon had approved such an authorisation without apparent approval from senior management. Advocate Roland drew his attention to two examples in May 2008, where company employees based in Jersey had also been declined authorisation for lack of a senior management signature. ER2 33 / 334 refer.
- 3.6 Mr Bougourd explained to the Tribunal that the suspension of the tool allowance was due to Mervyn Chester being new to the company and he had not realised that it was an automatic entitlement. In response to a question from Mr Forman he confirmed, that to his knowledge, the company had not taken any disciplinary against the manager who had mishandled his medical record.

4.0 Mr Anthony Poynder

4.1 The witness who was in the employment of the Respondent had borrowed a van on 12 June 2008, EE1 47 refers. He could not recall exactly at what time he had driven the van and whether he had received approval prior to his loan of the vehicle or retrospectively.

5.0 Mr Christopher Starr

- 5.1 The witness who was in the employment of the Respondent had also loaned a company van with the correct authorisation.
- 5.2 Mr Starr did not recall canvassing for employees to meet with Mr Carse and sign for the new documentation. However, he had been asked by the Service Manager to obtain an idea of which of his colleagues might sign the new documents and he had acted on this request. He stated that he placed no pressure on anybody when he asked and he was not coerced into making these enquiries.
- 5.3 In response to a question from Advocate Roland he was not bullied by Mr Carse into signing the new documents nor did he know of any other employee who had been bullied.

6.0 Mr Roy Vidamour

- 6.1 The witness confirmed that Mr Forman seemed content in his role prior to the introduction of the revised contract and the new handbook.
- 6.2 Mr Vidamour recalled that on 2 May 2008 Mr Forman had told him that his request for the loan of a company vehicle had been declined but could not recall any other details of what Mr Forman might have said.
- 6.3 In response to questions from Advocate Roland he confirmed he was satisfied with the process that the company had adopted for the introduction of the new documentation and could not recall any threats from management in the event of failure to sign.

7.0 Mr Ronald Le Cras

7.1 The witness is the Regional Officer for the Unite Union and gave the Tribunal a detailed account of his role in relation to the revised employment contract and new

handbook. He stated that the handbook was close to meeting Union requirements by the middle of February 2008, however subsequent changes following the employee consultation process complicated the situation; there was a major concern that the Union agreement might not retain precedence over this new documentation.

- 7.2 Given the delayed pay negotiations it was the opinion of Unite that the members were being held to ransom due to their unwillingness to sign without resolution of disputed issues.
- 7.3 In response to a question from Advocate Roland he could not recall Mr Forman raising any issues with him relating to his employment, either formally or informally.

8.0 Mr Neil Forman

- 8.1 The witness was requested by the Tribunal to summarise why he had gone from being a long serving employee, seemingly content with his role, to one that felt he had no option but to resign, he responded as follows:-
- 8.2 During the "Wrap Up" session on 12 March 2008 he had been told by Mr Carse that if did he not sign the new documentation that he knew where the door was and this sentiment was reinforced by comments from Mrs Summers-Shaw.
- 8.3 The briefing sessions were too short for him, and in the case of the first briefing session he was not permitted to see the documentation in advance of the workshop and not permitted to take away the documents afterwards.
- 8.4 He was upset when the company put pay rises on hold and he along with others were not told until April, the delaying of the pay increase for 2008 was a coercive act by the employer.
- 8.5 He was concerned that the new alcohol abuse rules might be used against him solely because he used an alcohol based mouthwash, but having raised this concern it was not answered.
- 8.6 He was concerned about the "negligence clause" and the potential for pay deductions, which in his opinion had become more punitive, if he was held culpable. This concern had been also been raised with the company but he had not been given any adequate response.
- 8.7 His immediate manager, Mervyn Chester, had harassed and harried him over the non-signing of the documents, frequently calling him into his office and asking why he would not sign.
- 8.8 The refusal to loan him a van on 2 May 2008 was the final straw event. It had been a routine benefit to him and his colleagues which had never been declined before. He attributed this action by management as a punishment for his refusal to sign the new documentation.
- 8.9 In response to a question from the Tribunal, Mr Forman confirmed he had secured a firm offer of alternative employment prior to his resignation on 12 May 2008.
- 8.10 Under questioning from Advocate Roland Mr Forman conceded that an apology had been made as to the "Data Protection" issue on behalf of the company and the issue had

been resolved. However, in addition to the points he had made in prior testimony he also stated that he had concerns that his union (Unite) had not been specifically referenced in the handbook and the lack of a redundancy provision in the new documentation. Advocate Roland commented that the Unite issue had not been referenced on his ET1 and was a union / employer issue. EE1 20 refers. Mr Forman disagreed, he had a concern that if the Unite union was not referenced that Ford might de-recognise them.

- 8.11 Advocate Roland put it to Mr Forman that his concerns over pay were misguided. She informed the Hearing that his old contract had no review date for pay, neither did it make a contractual obligation to give pay rises; however the company had habitually raised pay each year and backdated increases to February each time. Mr Forman did not contest these points.
- 8.12 Mr Forman conceded that whilst he had known on 28 April 2008 that he would need a van for the following weekend that he did not put in a request till 30 April 2008. He also conceded that whilst he had assumed that the refusal of the company van loan was due to his non-signing of the new documents that he did not explicitly challenge this view by speaking with either Mervyn Chester of Julie Gallon.
- 8.13 In response to further questions from Advocate Roland as to the alleged lying and bullying by Mr Carse toward him Mr Forman stated that this was evidenced during the workshops where he was told the alternative to signing for the new documents was to find alternative employment. Mr Forman told the Hearing he had no other contact with Mr Carse until after his formal resignation.
- 8.14 Mr Forman stated that Mr Chester had called him into his office some 2 to 3 times a week over a period of approximately a month to ask why he would not sign. Mr Forman believed this was harassment and not normal management behaviour. It seemed to him that Mr Chester was advising him that his inputs would be disregarded. When challenged as to why he did not raise his concerns formally he stated that it was his opinion that this would have no effect. In response to the question from the Tribunal Mr Forman conceded that he had made no use of the formal grievance procedure. He also agreed with Advocate Roland that the 2008 pay rise was put on hold for all employees regardless of union membership.

9.0 Mrs June Summers-Shaw

- 9.1 The witness provided consultancy support to the Respondent in the formulation of the revised employment contract and the new handbook, this taking place in latter 2006 and early 2007. Subsequently, she designed and delivered briefing workshops to employees in both Jersey and Guernsey in early 2008. ER1 110 / 133 to 155 refer.
- 9.2 It was the opinion of the witness that the preparation of the new documentation had been a very rigorous process combined with reference to external employment specialists and Ford UK to ensure not only compliance to legal requirements but also use of best practice wherever possible. ER1 111 to 113 refer.
- 9.3 The witness expressed her concern that Unite had an adverse reaction in September 2007 when the Respondents would not disclose the name of the Ford UK employee who had vetted the documentation on behalf of the UK entity. The net result was that substantive discussions between the Union and the Respondent did not take place until

December 2007; however at that meeting the Respondent thought that the Union would be supportive to the future process. ER1 116 to132 refer.

- 9.4 The witness believed that the company had gone to considerable lengths to consult with employees and provide opportunities for their feedback both at and outside the briefing sessions. The intent was to ensure 100% attendance of all staff to all sessions. When questioned on the policy for dissemination of materials the witness stated that for the first session materials were only made available on the day, but for subsequent sessions materials were issued in advance. Employees were, contrary to the evidence from Mr Forman, entitled to take the materials away from each session and make subsequent comment to management for their consideration. Another part of the communication strategy was to give managers additional briefings and materials to assist them in responding to employee concerns.
- 9.5 The witness had no recollection of Mr Forman complaining that the sessions were too brief and it was her practice to encourage employees to stay behind if they wanted to give a fuller feedback on specific issues. Neither did she recall Mr Forman raising any issues arising from the new documentation nor did she recall him specifically asking about the likely consequences if he did not sign.
- 9.6 The witness stated that nobody was under any pressure to sign, although in response to a question from the Tribunal she confirmed that in replying to repeated questions from the employees re the signature issue she told them that it was a "blessing" that there were alternative jobs on the island. A member of the Tribunal put it to the witness that such a response might be construed as coercion to sign; she did not agree. Finally, the Tribunal put it to the witness that, as a senior HR specialist, she would have presumably known that a legally compliant alternative was to inform staff that there was no legal requirement for them to sign. Her response to this question implied she was unaware of this.
- 9.7 The witness confirmed her understanding that the company agreement with Unite had precedence over the revised contract or the terms in the handbook.
- 9.8 The witness could not recall Mr Carse telling employees in the "Wrap Up" session that if they did not sign they knew where the door was, nor did she recall that he had made any similar statement. It was also her opinion that Mr Carse was entitled to withhold the name of the Ford UK employee who had reviewed the handbook from Mr Forman and his colleagues.
- 9.9 In responses to a question from the Tribunal Mrs Summers-Shaw confirmed that a review of the company "Grievance Procedure" had been included in the employee briefing in February 2008.

10.0 Mrs Julie Gallon

- 10.1 Mrs Gallon had been employed by the Respondent for some 23 years, initially as a PA to Mr Carse and subsequently was given responsibility for HR matters in addition to this role.
- 10.2 Her role in relation to the introduction of the revised contract and the new handbook was to advise senior management as to how such materials should be introduced and subsequently she worked with June Summers-Shaw and Norman Dixon in the implementation phase.

- 10.3 A primary responsibility was to organise the logistics of the briefing sessions and to act as a recorder of all "open issues" raised by employees, and not capable of being dealt with during the sessions, and then to assist in their resolution by the "Wrap Up" session. She could not recall Mr Forman specifically raising any of the issues during his briefing sessions. She stated that in addition to the briefing sessions all managers had been supplied with electronic copies of the materials to assist them with employee queries.
- 10.4 The witness could not recall any employee complaining that the briefing sessions were too short, however she did recall that Mrs Summers-Shaw had repeatedly informed employees that they had freedom to sign, or not. She stated that when the issue was raised by employees there seemed to be no clarity as to why they had concerns over signatures. In response to a question from the Tribunal the witness stated that it was her understanding that if an employee chose not to sign for their documents that this was legally acceptable. In that event the company would have replaced the old contract with the revised one and if the employee continued to work for the Respondent that this would have amounted to acceptance of any revised terms or conditions.
- 10.5 In relation to the request made by Mr Forman for the loan of a company vehicle Mrs Gallon told the Hearing that this was a discretionary benefit. It was correct that in the past she had signed the authorisation form on behalf of Mr Carse however a compliance audit, instigated in 2007, had concluded that this practice had to cease. Despite this tightening of procedures it was normally possible to obtain one of the two designated signatures and authorise temporary vehicle loans.
- 10.6 Mrs Gallon recalled that the authorisation form from Mr Forman was received by her on Wednesday 30 April 2008. Due to other priorities and Mr Carse not being in the office on Friday 2 May, there was no opportunity to obtain his signature; unfortunately the other designated signatory was also out of the office. On further prompting from Guernsey Mrs Gallon did call Mr Carse on May 2 on his mobile telephone however Mr Carse did not consider the request so exceptional that he would allow the use of the van without his signature, hence the request was declined. Mrs Gallon denied that the refusal to authorise Mr Forman's request was in any was connected with his continuing refusal to sign for the new documentation.

11.0 Mr Neil Newbury

- 11.1 Mr Newbury is a member of the employers "Management Board". He confirmed the testimony given by Mrs Summers-Shaw and Mrs Gallon as to the extent and thoroughness of the briefing and consultation process.
- 11.2 He attended an employee briefing session in Guernsey and could not recall any criticism by the attendees that the session was too short or rushed. It was his opinion that the Management briefings were of significant assistance to individual line managers. With this support they were well placed to help individual employees with their requests outside of the briefing sessions.
- 11.3 Mr Newbury was aware of union concerns in Guernsey and their advice to members that they should not sign until these concerns were resolved. The two issues formally registered by the Union with the Industrial Disputes Officer were a) the exclusion of any reference to Unite in the new documentation and b) the potential recovery of company funded external training costs under certain conditions. It was the opinion of

the witness that these were not the issues of any one individual employee but in his words "purely collective issues".

11.4 The witness could not recall Mr Carse telling any employee that if they did not sign their employment contract they would be terminated.

12.0 Mr Mervyn Chester

- 12.1 Mr Chester was the immediate line manager of Mr Forman. He stated that as the process progressed with the new documentation that he had been given training such that he might assist his staff with queries and issues arising from it.
- 12.2 It was his opinion that the process adopted by the company had been thorough and comprehensive. He stated that he was present with Mr Forman at the "Wrap Up" session and he did not hear Mr Carse making any statement directly to Mr Forman during this session.
- 12.3 The witness confirmed that Mr Forman had stated his concerns with the "negligence clause" in the revised employee contract ER1 30 refers. He seemed concerned that he would be penalised by pay deductions for accidental damage and Mr Chester advised him that he was taking this issue too literally and it only applied to a proven case of gross negligence. Mr Forman did not seem to accept this feedback.
- 12.4 Mr Chester could not recall Mr Forman raising his concerns over alcoholic mouth washes and their potential to give him an adverse workplace alcohol test. He did recall however frequently discussing the need to sign for the revised employee contract and the new handbook but he believed he never used a bullying approach and it was his intent to assist Mr Forman with any queries he might have. In the outcome Mr Forman seemed reluctant to discuss his issues with him. He recalled, that a Union colleague of Mr Forman told him that the Union members had been instructed by their leadership not to talk about these issues with management. Mr Chester was adamant that at no time had he threatened Mr Forman with dismissal if he did not sign his new employment documentation. He also confirmed testimony given by other witnesses from the Respondent side that at no time did the management treat non-signers" differently from those who had signed.
- 12.5 As to the request by Mr Forman to have the loan of a company vehicle on 2 May 2008 he recalled that he received the request on 30 April and approved it in first instance and then faxed it on the same day to Julie Gallon. He subsequently contacted Jersey on Friday 2 May and spoke to Julie Gallon; she informed him that with both senior signatories out of the office that approval could not be authorised, Mr Chester believed he could do no more to assist Mr Forman. When Mr Forman subsequently said he would resign Mr Chester counselled him not to rush into this decision, he would have preferred Mr Forman stay in their employment.
- 12.6 Mr Chester admitted that he did say to Mr Forman at the time of his resignation that if he put Mr Carse and Mr Forman together that Mr Forman would punch Mr Carse; however Mr Chester told the Hearing that this was more in jest than a serious comment.
- 12.7 Mr Chester commented on the clock cards and vehicle loan authorisation forms for Christopher Starr and Anthony Poynder. Whilst he could not be certain he believed that prior authorisation was given even if it was just verbally via phone calls with Julie Gallon; after she had obtained written authorisations from an authorised signatory.

12.8 Mr Forman had alleged that other employees such as Paul Jones had also resigned due to coercion over the revised contract and handbook. In the opinion of Mr Chester this was not so and Mr Jones left the company on amicable terms to seek another career path. ER2 331 refers.

13.0 Mr Iain Carse

- 13.1 Mr Carse is the Managing Director of both the Respondents' Jersey and Guernsey companies and he confirmed the evidence of prior witnesses as to the overall timing and logistics for the introduction of the revised employee contract and the new handbook. He denied that he ever threatened dismissal for non signature or told employees "they knew where the door was" if they did not sign.
- 13.2 He told the Hearing that the planned timing for the introduction of this new documentation was delayed initially by new compliance standards coming out of Ford UK in 2007 and then the subsequent lack of progress with obtaining Unite agreement on the new materials. He was disappointed that given the opportunity for detailed discussions between the Respondent and Unite in September 2007 the Union had walked out of a scheduled meeting after only 30 minutes had elapsed. However, the reconvened meeting with Unite on 12 December 2007 made excellent progress ER1 130 refers.
- 13.3 Mr Carse participated in all the initial briefing sessions and he committed to all employees that any issue raised would have a response; either a modification in line with employee input or an explanation why such recommendations would not be actioned. ER1 245 254 and 267 287 refer. At no time did employees make him aware that the briefing sessions were too short or rushed.
- 13.4 Responding to Mr Forman's concerns over the "Negligence" clause the witness compared the finally agreed clause with extra safeguards ER1 30 with an earlier version of the clause contained in Mr Forman's bundle EE1 26 refers. Mr Carse stated that a deduction would only take place after a full and fair disciplinary process and was ultimately subject under the employment contract to employee agreement. The clause was reserved for serious breaches and it was never intended to use this clause for understandable error and accidents.
- 13.5 In relation to the 2 May 2008 non-authorisation of the loan of a company vehicle to Mr Forman, the witness confirmed that it was a discretionary benefit, not a contractual right. He had been under pressure by Ford UK to discontinue the practice as it was not offered in the UK, however he had persuaded Ford UK that it was appropriate for the workforces in the Channel Islands with their proviso that authorisation be strictly limited to himself and one other senior colleague. The practice of other employees such as Julie Gallon to sign on his behalf had to cease. In response to questions from the Tribunal, Mr Carse conceded that this tightening of procedure had not been communicated to the workforce. Mr Carse emphasised that the signing or non-signing of the new documentation was not a consideration when it came to vehicle loan authorisation and this was not a criteria applied to the application from Mr Forman on 2 May 2008. Mr Carse thought the rapid positive response to a similar request from Anthony Poynder was simply a function of a senior authorising manager being available; he referred the Hearing to two other examples of declined requests in May 2008 due to his non-availability. ER2 333 / 334 refer.

- 13.6 On the issue of yearly pay reviews, Mr Carse told the Hearing that it was normal practice to negotiate with the union and then with the agreement of his Board of Directors typically communicate a pay increase in March / April backdated to 1 February. If the negotiations with the Union had not been so difficult in autumn 2007 it was probable that this timing would have been repeated in 2008. In the event so much management time and effort was spent on the contract and handbook issues that he decided that the pay negotiations would be put on hold until the communication and update processes were completed with employees all signed up. This delay had been communicated to all staff via a memo issued on 8 April 2008 EE1 20 refers. No distinction was made in the Guernsey workforce between those who had signed and those who had not; any potential pay increase was on hold for all employees.
- 13.7 In relation to the industrial dispute instigated by Unite it was the opinion of Mr Carse that it was not possible to refer specifically to the name of the Union in the new documentation, one of the primary issues disputed, as this would contravene the 1998 Employment Law.
- 13.8 Mr Carse had no idea as to why he was accused of being a bully and liar by Mr Forman. He only spoke with him some days after his resignation on 12 May 2008 and then Mr Forman had addressed him in such harsh terms that he decided "not to engage any of the issues, shook his hand and wished him well".

14.0 The Law

- 14.1 The Employment Protection (Guernsey) Law, 1998, as amended, in Section 5 (2) (c) states that a dismissal shall be construed if "the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct".
- 14.2 For the Applicant to succeed with his complaint he must demonstrate that, on the balance of probabilities, a fundamental breach of either an express term or an implied term of his employment contract had occurred, and this breach could be found to be unfair.

15.0 Closing statements

Mr Forman

- 15.1 Mr Forman stated that he had been happy in his employment until the introduction of the revised employee contract and the new handbook. He was particularly concerned that both Mrs Summers-Shaw and Mr Carse had told him that if he did not sign that the alternative was to seek other employment. Mr Chester had also harassed and harried him to sign. His significant concerns over the "negligence" clause and the use of alcohol mouthwash had been ignored or brushed aside.
- 15.2 The withholding of the 2008 pay increase until signatures were obtained was a coercive act by management which was unreasonable.
- 15.3 He remained, to his knowledge, the only employee in Guernsey whose request for a company vehicle loan had been refused. He alleged that this action was taken to punish him for withholding his signature for the new documentation.

Advocate Roland

- 15.4 Advocate Roland was of the opinion that Mr Forman had not been dismissed constructively; he chose to resign.
- 15.5 His issues over the rushed introduction of the revised employment contract and the new handbook were without substance; the Respondent had produced ample evidence of a fair and thorough consultation process and Mr Forman was given ample opportunity to make his issues known to a number of the management team. His inputs could have been made anonymously if he had wished, however he appeared not have done this.
- 15.6 The concerns raised by Mr Forman over the "negligence" clause were greatly exaggerated. The Respondent could only deduct monies following a disciplinary hearing and most importantly only with the agreement of the employee.
- 15.7 The "alcohol mouthwash" issue was also an exaggerated fear, and was not a particular term or substantial part of his employment contract.
- 15.8 The vehicle loan authorisation form clearly indicated the authorisation levels required and Mr Forman only submitted his application on Wednesday 30 April 2008 for a loan on the following Friday. The declined authorisation was solely due to both signatories being out of the office, there was no intention to give slight or persecute Mr Forman.
- 15.9 The collective dispute by the Union with the Respondent was dominated by the Union request that the name of "Unite" be specifically referenced in the new documentation. This runs counter to legal requirements in Guernsey which do not allow the existence of "closed shop" agreements or practices.
- 15.10 Mr Forman gave evidence that he did not resign until he had sought and secured a better paid job; he subsequently worked his notice. This undermines his argument that he had no choice to resign due to the actions of the Respondent.
- 15.11 The Respondent had acted fairly and reasonably towards the employee, within a range of reasonableness, and none of their actions toward him could justify the claim that they constituted a repudiation of his employment contract.

16.0 Conclusions

- On the witness stand Mr Forman detailed a number of issues which he believed, in summary, justified his resignation and were of such a nature that he could persuade the Tribunal that, on the balance of probabilities, they constituted a fundamental breach of the implied term of trust and confidence.
 - Each of these issues was considered by the Tribunal as follows:-
- 16. 2 His concern over the personal health form and an alleged breach of data protection was by his own admission to the Tribunal settled with an apology by the management, thus this item is set aside.
- 16.3 The dispute with the Union was a collective issue and Mr Forman was requested by Roy Bougourd, his shop steward, not to sign any new contractually related documents until the Union had resolution over its concerns. Mr Forman's evidence did not persuade the Tribunal that he had personally taken a key role in this dispute. Arguably

pressure built on union members as their non-union colleagues seemed content to sign, however pay increases were withheld from all Guernsey based employees, not just those who chose not to sign. The Applicant was part of a collective action against the Respondent; he was not on his own. In the opinion of the Tribunal the responses of the Respondent to the collective issues did not breach the implied term of trust and confidence between Mr Forman and the Respondent.

- 16.4 Mrs Gallon, alone of the Respondent's witnesses, seemed to have a clear understanding that it was not a legal requirement under "The Conditions of Employment (Guernsey) Law, 1985" that an employee signature should be obtained at the time as the introduction of revised terms of employment. In the event the Respondent made it a strict requirement that signatures should be obtained from all employees. This created a somewhat pressurised situation; however the Tribunal has concluded that it was within a reasonable range of actions by a reasonable employer in pressing for a signature. In coming to this conclusion the Tribunal took into account a number of factors including the complexity of such a change with both union and non-union employees being involved, the interaction of the revised employment contract and new handbook with any union agreement, and the depth and the rigour with which the Respondent approached the process of employee consultation.
- 16.5 Mrs Summers-Shaw admitted that she had responded to employee concerns over signatures by telling employees that it was a "blessing" that there were alternative jobs on the island. The Tribunal had some difficulty with this response to employees. It might have been, given her senior role in the employee briefing process, that this was seen as an ultimatum or even a threat and does not seem to fit with a "best practice" approach in briefing employees on such a contentious issue. The Tribunal was persuaded however that this response by Mrs Summers-Shaw was made generally to a number of workshop attendees not solely to Mr Forman. The Tribunal also considered the hotly contested issue as to whether Mr Carse told employees they knew where the door was if they did not sign. The evidence from the parties is fundamentally in conflict. On balance the Tribunal believe that Mr Carse may have used an expression which was understood as this. However, the Tribunal was not persuaded that any such comment, if it was made, was directed solely or specifically to Mr Forman. The Tribunal notes that whilst Mr Bougourd, the shop steward, confirmed that he had heard these remarks he took no formal action on his own behalf or on behalf of his colleagues in relation to this issue. Tribunal has concluded from the evidence that even if the expressions used by the Respondent were robust they were not addressed specifically to Mr Forman and could not reasonably be viewed as a fundamental breach of his employment contract.
- 16.6 The Tribunal was not persuaded by the evidence that Mr Chester bullied or harassed Mr Forman over the signature issue. The Tribunal also notes that, despite the company "Grievance Procedure" having been included in the employee briefings attended by Mr Forman, he took no action to submit either an informal or formal grievance under this procedure. Similarly he did not raise a grievance via his union.
- 16.7 The suspension of the "tool allowance" was attributed by Roy Bougourd to Mr Chester being new to the company; he did not understand how this benefit was administered. The allowance was reinstated and the Tribunal puts little weight on this issue.
- 16.8 The Tribunal has taken the view that it might have been helpful if the Respondent had communicated to employees that the discretionary company car loan policy had been subject to tightened compliance requirements. However, the Tribunal prefers the

evidence of the Respondent that the decision to decline authorisation on 2 May 2008 was simply a result of the non-availability of authorised signatories. It did not appear to the Tribunal to be a vindictive act against Mr Forman due to his withholding of his signature to the new documentation.

16. 9 The Tribunal, on the balance of probabilities, could not establish that either a breach of an express or implied term of the Applicant's employment contract had been breached by the conduct of the Respondent.

17.0 Decision

17.1 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 not constructively dismissed.

Signature of the Chairman:	Mr Peter Woodward	Date: 6 February 2009