

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mrs Jean Guilbert
Represented by: Mr Ken Morrison

RESPONDENT: St John Ambulance & Rescue Service
Represented by:

Decision of the Tribunal Hearing held on 26 January 2008.

Tribunal Members: Ms Georgette Scott (Chair)
Mrs Helen Martin
Mr John Guilbert

DECISION

Having due regard to all the circumstances presented, the Tribunal unanimously finds that Mrs Jean Guilbert was unfairly constructively dismissed from her employment as Personal Assistant to the Chief Ambulance Officer in relation to section 5(2)(c) of the Law when her employer, St John Ambulance and Rescue Service unilaterally transferred her employment to Personal Assistant to the Director of Finance and Administration; and, breached Mrs Guilbert's trust and confidence in her employer when it failed to respond adequately to her complaints regarding her working relationship with Mr Tucker and then her complaints and concerns regarding the transfer.

Amount of Award (if applicable): £13,579.02

Georgette Scott
Signature of the Chairman

24 February 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

1.0 Introduction

- 1.1 The Respondent had alerted the Tribunal Service ahead of the Tribunal date that it would not be appearing or responding to the complaint and by doing so meant no disrespect to the Applicant or the Tribunal Service.
- 1.2 The Applicant provided bundles EE1 – EE5.

2.0 Facts Found by the Tribunal

- 2.1 Mrs Jean Guilbert (The Applicant) was employed as Personal Assistant to the Chief Ambulance Officer by the St John Ambulance & Rescue Service from 1 June 1999 to 13 May 2008.

3.0 The Law

- 3.1 The relevant section of the Employment Protection (Guernsey) Law 1998 (as amended) is 5(2)(c). This is the section that refers to where “the employee terminates the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct”.
- 3.2 In order to prove constructive dismissal the Applicant must establish:
 - that there was a fundamental breach of contract on the part of the employer;
 - that the employer’s breach caused the employee to resign;
 - that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

4.0 Summary of Parties’ Main Submissions

The Applicant’s case

- 4.1 As part of his introduction Mr Ken Morrison, on behalf of Mrs Jean Guilbert, stated that he wished to make it clear that the case was being made against St John Ambulance and Rescue Service and not against the separately run voluntary unit called St John Ambulance.
- 4.2 Mrs Jean Guilbert began her employment with St John Ambulance and Rescue (hereafter referred to as “St John’s”) on 1 June 1999. Initially, her relationship with Mr Tucker the Chief Ambulance Officer was good, but it deteriorated substantially over the course of her employment.
- 4.3 The Applicant claimed that Mr Tucker lacked appropriate people skills and had an aggressive attitude and often spoke to her aggressively in front of officers, Directors and Chairman of the Board; was often moody and blamed her for matters that were not her fault.

- 4.4 Although frequently upset and distressed by Mr Tucker's behaviour, she persevered with her work because she enjoyed it and got on well with the rest of the staff. She also felt that Mr Tucker's behaviour was possibly aggravated by his going through personal relationship problems.
- 4.5 Mrs Guilbert received a letter, dated 26 October 2004, from Mr Neil Tucker, Chief Ambulance Officer (EE1 refers), in which he apologised for the "pressure and unpredictable moods which his personal problems may have indirectly imposed" on her. In the letter, Mr Tucker thanked her for her forbearance and willingness to assist while he went through a particularly difficult and protracted period in his life.
- 4.6 According to the Applicant, the apology did not change Mr Tucker's behaviour.
- 4.7 Following an incident on 17 January 2005, when Mr Tucker was particularly aggressive towards the Applicant, she telephoned the then Chairman, detailed Mr Tucker's behaviour and expressed her concerns that she could not take much more. Two days later Mr Tucker apologised to the Applicant.
- 4.8 During the summer of 2005, as part of an Employee Survey conducted by St John's, Mrs Guilbert submitted a detailed explanation of the problems she encountered in working for Mr Tucker (EE1 refers).
- 4.9 When, in August 2006, Mr Tom Casteldine was appointed as the new Chairman of the Board, the Applicant provided him a copy of her employee survey submission. Mr Casteldine promised he would read and consider the contents.
- 4.10 During various discussions that subsequently took place with, amongst others, Mr Casteldine, he requested that the Applicant be patient as the Board intended to deal with the problems that she was having with Mr Tucker. On the basis of this assurance the Applicant decided to continue in her employment.
- 4.11 Around Christmas 2006, the Applicant again discussed with Mr Casteldine the problems she was encountering with Mr Tucker, whereupon Mr Casteldine merely instructed the Applicant to "stand up" to him.
- 4.12 Asked by the Tribunal panel if she had considered taking up a grievance against Mr Tucker, Mrs Guilbert explained that the St John's Grievance Procedure had no separate procedure for complaints against the Chief Ambulance Officer and that he was the stated sole point of contact for grievances raised. Evidence in the form of bundle EE5 was produced to support this.
- 4.13 On 12 June 2007, at a meeting of the Ambulance Paramedic Steering Group attended by a Senior Officer of St John's and Doctors, together with the Applicant, Mr Tucker rebuked the Applicant over the intercom in front of the meeting's attendees about a matter that was not her fault.
- 4.14 Embarrassed by the incident the Applicant reported it to the recently appointed HR Manager, stating that she was unsure if she wanted to return to work and that she had had enough of Mr Tucker's behaviour.
- 4.15 After sending her home for the rest of the day the HR Manager asked the Applicant to attend a meeting with herself and Mr Tucker on 15 June 2007. During the meeting the Applicant explained that she found Mr Tucker's behaviour bullying, harassing and intimidating and that she had been very close to leaving following the incident on 12 June. The Applicant agreed at the meeting to give her working relationship with Mr Tucker one last attempt.

- 4.16 On 5 February 2008, Mr Tucker shouted at the Applicant because she had not provided him with certain information he required but had not clearly requested. Mr Tucker's shouting was so loud that it could be heard one floor below by other staff members and over the telephone when the Applicant answered a telephone call from the HR Manager. Later in the day, the Applicant told Mr Tucker that he should not have shouted at her, for which he apologised saying he had not meant to do so.
- 4.17 In early April 2008, Mr Casteldine telephoned the Applicant to advise her that a proposed restructuring of the St John's was due to take place resulting in the appointment of the then Deputy Chief Ambulance Officer, Mr Jon Beausire, as Chief Ambulance Officer and the then current Chief Ambulance Officer, Mr Tucker, becoming the Director of Finance and Administration, a new post. Mr Casteldine did not inform the Applicant that her position would change and she therefore became very optimistic about working for the new Chief Ambulance Officer.
- 4.18 The Applicant went on holiday between 16 and 21 April 2008. When she returned to the office on 22 April she was called to a meeting with Mr Tucker and the HR Manager. During the meeting she was advised that her job role was to change from Personal Assistant to Chief Ambulance Officer to Personal Assistant to the Director of Finance and Administration on the basis that Mr Tucker was to move to the position of Director of Finance and Administration.
- 4.19 The Applicant was also advised that this was in line with a memorandum she had received dated 16 April, which she had not received as she was on holiday. The memorandum entitled "Changes at the Top" explained the change of roles for Mr Tucker and Mr Beausire (EE4 refers).
- 4.20 Prior to the announcement, the Applicant had received no notification, consultation or discussion of the planned change to her employment. Specifically, she was never consulted about whether she would wish to transfer with Mr Tucker to his new role. The Applicant was shocked and distressed by the news and did not respond to the announcement at the time of the meeting.
- 4.21 However, on 25 April, in a telephone conversation with Mr Casteldine, the Chairman of the Board, she informed him that she was very unhappy with regard to the imposed change to her employment. She explained that she considered the change a demotion and was also concerned that there would be insufficient work to keep her employed in the new role. Mr Casteldine promised to speak to her at the office on 28 April 2008.
- 4.22 The Applicant wrote a letter to each member of the Board on 27 April 2008 (EE1 refers), which stated that she was very confused and upset by the changes to her employment and asking them for an explanation, particularly in relation to her past reported concerns regarding Mr Tucker's behaviour towards her, which she had been assured by members of the Board would be sorted out.
- 4.23 On 28 April, Mr Casteldine failed to meet with the Applicant as he had promised to do, despite visiting the premises and being reminded of the appointment by the HR Manager.
- 4.24 As she had received no response to her letters to the Board and Mr Casteldine had failed to meet with her, she penned another letter dated 30 April 2008, to the HR Manager (EE1 refers) and hand delivered it. In the letter she refers to her letter to the Board and asks for a response. She also states that her continued employment, as from 1 May 2008, was not to be taken as her acquiescence to the unilateral change in her job from Personal Assistant to the Chief Ambulance Officer to Personal Assistant to the Director of Finance and Administration.

- 4.25 On 2 and 3 May, while the Applicant was still employed as Personal Assistant to the Chief Ambulance Officer, and without any consultation with her, St John's placed adverts in the Guernsey Evening Press for a part time Personal Assistant to the new Chief Ambulance Officer. Shortly afterwards candidates for the job were shown around the offices while the Applicant was present for work.
- 4.26 Stunned by the advertisement, the Applicant had also to endure being introduced to prospective applicants for the job she had not agreed to vacate. She stated that she felt humiliated, embarrassed and upset.
- 4.27 In a letter dated 2 May 2008, Mr Casteldine replied to the Applicant's letter of 30 April 2008 (EE1 refers), stating that the Applicant would continue to be employed as Personal Assistant to Mr Tucker and that if she wished to apply for the position of "Secretary to Mr Beausire" she should be aware that it was a part time job with a reduced salary.
- 4.28 The Applicant then obtained a copy of the job description referred to by Mr Casteldine as "Secretary to Mr Beausire" and found that it was entitled Personal Assistant to the Chief Ambulance Officer, as the adverts in the Guernsey Evening Press had indicated.
- 4.29 Given the above circumstances, the Applicant resigned from her employment with the Respondent without notice in a letter dated 13 May 2008 on the basis that she had been constructively dismissed (EE1 refers).

The Respondent's case

- 4.30 The Respondent had alerted the Tribunal Service ahead of the Tribunal date that it would not be appearing or responding to the complaint and by doing so meant no disrespect to the Applicant or to the Tribunal Service.

5.0 Conclusions/Decision

- 5.1 It is clear from the Applicant's testimony that she had endured much in her role as Personal Assistant to the Chief Ambulance Officer, and not just in her working relationship with Mr Tucker.
- 5.2 The reported incidents of verbal abuse and humiliation at the hands of Mr Tucker, some of which he subsequently apologised for by letter, date back a number of years. The well detailed, articulate account made by the Applicant during an Employee Survey in 2005 was never adequately responded to either by the current or former Chairman of the Board.
- 5.3 There is no denying that the Board were well aware of the hurt and upset that Mr Tucker caused to the Applicant; she made Mr Casteldine aware on a number of occasions of the problems she faced, and he clearly intervened on one of the occasions when a few days later Mr Tucker provided the Applicant with an apology for his behaviour.
- 5.4 It is also clear that senior officers, the HR Manager and the Board were often witnesses to Mr Tucker's inappropriate behaviour towards the Applicant.
- 5.5 In belatedly restructuring the service it appears the Board chose to move Mr Tucker away from operational matters to a position where he had less day to day contact with staff, rather than deal with the issue of his poor people management skills in a more resolute and direct way. However, in doing so they chose to transfer with him a member of staff who, they knew, had frequently complained about her poor working relationship with him and who had frequently considered leaving the service. The Applicant had been persuaded to stay by members of the Board with the hope that something would be done. In the event when something was done her

complaints and concerns were ignored, and she was transferred with Mr Tucker to support him in his new role.

- 5.6 During the transitional phase of the restructuring, despite the Applicant making it clear that she was not happy with the transfer and did not accept the move, the Applicant had to endure the further insensitive and humiliating actions of the Board in seeing her job advertised and then being introduced to prospective applicants for the position.
- 5.7 The above actions and inactions by the Board show that they had fundamentally breached the Applicant's contract.
- 5.8 Given that she had raised her concerns repeatedly both of her poor working relationship with Mr Tucker and then of their insensitive restructuring which was introduced without consultation or discussion and which left her still working alongside and for Mr Tucker provide sufficient evidence that she had no alternative but to resign.
- 5.9 Finally, the Applicant did not delay too long in resigning and therefore she meets all three of the requirements for proving her case of constructive dismissal.
- 5.10 Having due regard to all the circumstances presented the Tribunal unanimously finds that Mrs Jean Guilbert was unfairly constructively dismissed from her employment as Personal Assistant to the Chief Ambulance Officer in relation to Section 5(2)(c) of the Law when her employer, St John Ambulance and Rescue Service unilaterally transferred her employment to Personal Assistant to the Director of Finance and Administration; and, breached Mrs Guilbert's trust and confidence in her employer when it failed to respond adequately to her complaints regarding her working relationship with Mr Tucker and then her complaints and concerns regarding the transfer.

6.0 Remedy

- 6.1 The Tribunal finds for the Applicant and awards **£13,579.02**.

Signature of the Chairman: **Georgette Scott**

Date: **24 February 2009**