

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Aaron Kinsey  
Represented by: Unrepresented

**RESPONDENT:** A J Troalic & Sons Limited  
Represented by: Advocate T Crawford

Decision of the Tribunal Hearing held on 23 and 29 April 2009.

**Tribunal Members:** Ms Caroline Latham  
Ms Tina Le Poidevin and Mr George Jennings

**DECISION**

The Applicant was claiming Constructive Unfair Dismissal, the Tribunal therefore had to consider if there had been a fundamental breach of Mr Kinsey's employment contract, which led to his resignation, and whether he took action within a reasonable timescale.

Having given due regard to all the circumstances presented, the Tribunal unanimously finds that the Applicant was unfairly constructively dismissed from his employment in relation to section 5(2)(c) of the Employment Protection (Guernsey) Law 1998 (as amended).

The Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed on the grounds that there was a failure to follow a proper procedure in accordance with The Discipline at Work Advisory booklet and the Code of Practice (Disciplinary Practice and Procedures in Employment).

**Amount of Award (if applicable): £10,920**

Ms Caroline Latham

12 June 2009

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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, Mr Aaron Kinsey, who represented himself, gave evidence which was also supported by documentary evidence (ET1).
- 1.2 The Respondent, A J Troalic & Sons Limited, was represented by Advocate T Crawford.
- 1.3 Advocate Crawford called Mr A Troalic to give evidence. The witness was supported by document bundle ER1.
- 1.4 The effective date of termination of employment was agreed by both parties as 25 September 2008.
- 1.5 The salary shown on form ET1 was agreed.

#### **2.0 The Law**

- 2.1 The relevant section of the Employment Protection (Guernsey) Law, 1998 (as amended) is 5(2)(c)). This section 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”.
- 2.2 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 employment 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.

#### **3.0 Findings of Fact**

- 3.1 The Applicant began his employment with A J Troalic and Sons Limited on 20 February 2007. He had been employed as a motor mechanic by Mr Mark Troalic who was the workshop manager. Initially his employment was for a trial period. Mr A J Troalic, the Managing Director of the Respondent, was away in America at the time.
- 3.2 The Applicant had previously been a vehicle motor mechanic and in his new role he was trained to work with motor mowers, rotavators, strimmers, hedge cutters etc. by Mr M Troalic.
- 3.3 On his return from America the Respondent’s Managing Director was notified of the Applicant’s employment.

- 3.4 The Respondent Company was established many years ago and Mr A Troalic had held the position of Managing Director since 1951. The Company employs three full-time employees, two part-time employees and three family members.
- 3.5 Later in 2007, the Applicant's employment was confirmed by his employer in an undated letter together with a contract of employment. The documents were signed by both parties on 30 October 2007, some four months prior to the expiry of the trial period.
- 3.6 On 3 September 2008, the Applicant attended his general medical practitioner and returned later in the day with a medical certificate stating that he would be incapable of work for two weeks. The certificate was given to Mr A Troalic by the Applicant.
- 3.7 The Applicant returned to work on 16 September.
- 3.8 On 18 September the Respondent spoke to the Applicant about his conduct and work capability.
- 3.9 At the meeting on 18 September the Respondent provided the Applicant with a letter that referred to the standard of his work, giving him two weeks to improve his work or "you will have terminated your own employment". No notes were made of this meeting by either party, neither was any other person present.
- 3.10 After the meeting on 18 September 2008, the Applicant returned to his work duties but left later after an argument.
- 3.11 On 19 September 2008 the Applicant reported by telephone to Mr A Troalic that he was ill and did not attend his place of work.
- 3.12 On 25 September 2008 Mr A Troalic received an unsigned and undated letter addressed to the Respondent stating that he was terminating his employment with immediate effect. A copy of that letter is shown in the document bundle ER1 at tab J.

#### **4.0 Summary of Parties' Main submissions**

- 4.1 Although all submissions and arguments put forward by both parties were considered by the Tribunal, whether they are mentioned specifically in this judgement or not, the Tribunal made the following key points:

##### **The Applicant**

- 4.2 In evidence, on cross examination by Advocate Crawford and through questions asked by the Tribunal, the Applicant:
- 4.3 Confirmed the details of his employment, commencement date and date of termination.
- 4.4 Described his duties and previous work experience as a motor mechanic.

- 4.5 Stated that whilst working for the Respondent there were frequent disagreements between family members, namely Mr A Troalic and his sons, Mr N Troalic and Mr M Troalic.
- 4.6 Stated that there were “constant arguments” which sometimes resulted in physical fights. On one occasion, the police were called to escort Mr M Troalic away. There had also been fights involving a co-worker, Mr A Norman and a mechanic, previously employed by the Respondent.
- 4.7 Described the atmosphere as “not a good working environment” and “like being back at school”. He stated he was bullied on many occasions by Mr A Troalic and his sons.
- 4.8 Stated that just before the summer of 2008, there was a fight between Mr A Troalic and his son Mark, also witnessed by a co-worker who had drawn his attention to the incident. Mr A Troalic’s wife, called out to the Applicant “can you do something here”. The Applicant then pulled the son off his father and returned to his work. He was unable to give a date of this occurrence but believed it was summer 2008. It had not occurred to him to record a date.
- 4.9 Stated that, on another occasion, when he had been helping in the showroom, he had sold a machine and a tag on a machine was accidentally torn by him. In front of the customer, Mr A Troalic swore at the Applicant who then went back to the workshop.
- 4.10 Stated that he was given conflicting instructions from Mr M Troalic and Mr A Troalic which resulted in the Applicant’s work having to be undone and restarted.
- 4.11 Stated that there were occasions when parts from the machine of one customer were used to repair another’s, causing him concern which he expressed to Mr M Troalic.
- 4.12 Stated that in the summer of 2008 the Respondent became aware that the Applicant had spina bifida and requested that the Applicant obtain a letter from his doctor. The Applicant had never made anything of his condition. Despite more than one verbal request by the Applicant to his GP’s surgery, a medical report was not sent to the Respondent.
- 4.13 Stated that Mr A Troalic had sworn at him on several occasions. In the summer of 2008 he had sat down at lunch time when Mr A Troalic “started to abuse me”. This was in relation to work that he had undertaken. The Applicant had reacted by walking back to the workshop, when Mr A Troalic raised his fists at him again; the Applicant continued back to the workshop saying “please leave me alone”. The Applicant stated he left the workshop and was followed by the Respondent who was still waving his fists. A further exchange took place between them and the Applicant stated that Mr A Troalic laughed and said “you’ve got spina bifida, you spastic”.
- 4.14 Stated that he liked working with machines and had tried to work for the Respondent for as long as possible.
- 4.15 Went to his doctor on 3 September 2008 and was given a certificate stating that he was not fit to work due to depression.

- 4.16 Returned to work on 16 September 2008 following his period of sickness absence.
- 4.17 Was called to a meeting on 18 September 2008 with Mr A Troalic. He was given a letter informing him that his work had not reached the required standards and was given two weeks to improve or his employment would be terminated.
- 4.18 Stated that he had tried to work for the Respondent for as long as possible, particularly as he liked working with machines. The atmosphere at work made him ill to the point where he had to go to the doctor for depression on 3 September 2008. He stated that he was surprised that after two weeks away on sick leave he was given a final warning so soon after his return to work. He thought that the Respondent had already reached the decision that they did not want him to work for the company any more.
- 4.19 Was stressed by the situation.
- 4.20 Sent a letter to the Respondent terminating his employment on 25 September 2008 (ER tab J refers) on the grounds of “constant verbal abuse and total lack of any form of respect” which had left him “with no other option but to resign”.
- 4.21 Gave the following responses in relation to the Respondent’s written responses to Section 7 of Form ET2, cross examination and questions from the Tribunal:
- (1) He denied that he lacked experience. He was an experienced mechanic and had worked for several employers on the Island. He said that undertaking mower mechanics was simpler than car mechanics.
  - (2) He had to wait six months after commencing work to receive his contract of employment.
  - (3) In an incident where he was accused of spitting chewing gum into a co-worker’s toolbox, he said it was an accident although he had not picked up the gum.
  - (4) He accepted that on occasion when Mr A Troalic was away he did take longer breaks along with co-workers including Mr M Troalic. He was usually punctual for work and if he was ever late to arrive he was never more than one minute late. He said there were clocks everywhere.
  - (5) He denied putting penetrating oil in the burning barrel stating that he had “stood by and watched a co-worker do it”.
  - (6) In an incident relating to a tea machine, he denied that he had damaged it deliberately, stating that he had simply moved it and it was an accident.
  - (7) He said that he had not damaged an overhead hoist and had no knowledge that it was condemned as a result.
  - (8) He said he knew that Mr A Troalic would have been concerned about his medical condition and understood why he had asked for the medical report. He said that Mr A Troalic had no sympathy for his condition and the reason a hydraulic lift had been installed was to speed up his work rather than provide

him with assistance due to his medical condition. It had taken six months for it to be installed after his initial request.

- (9) In an incident where he had been accused of breaking a sign, it was not true. He had simply picked up the broken pieces and placed them in the bin.
- (10) He said he had not answered the telephone saying “A J Bollocks” as claimed by the Respondent.
- (11) He had been asked to comply with Health and Safety rules with regard to wearing protective clothing and had asked Mr A Troalic for financial assistance to buy boots at a cost of £70. He did finally offer to help. He said that Mr A Troalic and other co-workers did not wear safety boots.
- (12) He explained that he had been told not to burn wet grass after complaints were received from neighbours. However, a few weeks later burning resumed after Mr A Troalic had told him that it was “okay now” to do so.
- (13) He said that he was told what to write on his work sheets by Mr M Troalic and if Mr M Troalic was not there he had to leave them blank.
- (14) He said that he had been accused by Mr A Troalic of bending a tea strainer. Mr A Troalic informed him at the time that his co-worker, Mr Finnigan, had said that he had seen the Applicant bend the spoon. The Applicant said the accusation was unfounded.
- (15) In an incident where Mr A Troalic thought that the Applicant was showing pornography on a mobile telephone to co-workers, he said it was not the case. He and co-workers had been looking at “Facebook”.
- (16) In an incident where a co-worker’s trousers had been pulled down by the Applicant, he said that he had given the jeans a gentle tug and, because of the style in which the co-worker wore his trousers, they fell down. It had not been his intention to pull them down and when this had occurred, he and his co-workers had laughed and “that was that”. He said he was not aware that the co-worker concerned, a Mr Finnigan, had been distressed by the incident.
- (17) He stated that he did his share of Saturday working and had not telephoned to say he was ill on a Saturday. Several times a co-worker had asked if he could do his rota turn in order to earn extra money. This arrangement suited him because he would prefer to see his children on Saturdays although, on occasions, he did extra Saturdays to cover for others.
- (18) In response to an accusation that he had stolen petrol from his employer, he said that this was not the case. He explained how new and contaminated petrol was stored in different coloured cans. He stated that he had been given permission by Messrs M and N Troalic to use the contaminated petrol. Mr A Troalic’s assertion that he had used good petrol without permission was incorrect.

- (19) He stated that Mr A Troalic had sworn at him on several occasions in the presence of his co-worker, Mr Finnigan, Mr A Troalic's nephew and customers.
- (20) He stated that Mr A Troalic had never shown him how to work on a machine. It was usually Messrs M and N Troalic who showed him.
- (21) He said that he had never received a letter on 3 September 2008 and that Mr A Troalic had not given him notice of a meeting on 3 September 2008. When questioned by Advocate Crawford he replied "We never had a meeting. There was no meeting". He said he had never seen the undated letter shown at ER1 tab F.
- (22) He stated that he had left work on 3 September 2008 having "mentioned it" to Mr M Troalic. He said he had walked off because there had been an argument about a machine not because of a letter.
- (23) He stated that a meeting had taken place with Mr A Troalic on 18 September. The Respondent had approached him and handed him the letter shown at ER1 tab I. He said he did not respond to Mr A Troalic at that meeting because he did not want to have an argument.
- (24) When asked whether Mr A Troalic had reminded him at the meeting on 18 September 2008 that he was to work on that Saturday, he said "I didn't refuse and it wasn't my turn".
- (25) He said he had not telephoned the Respondent to say he was sick on 19 September 2008. He stated that his reason for not going to work was because he was ill. He confirmed that he did not get a sick note, he resigned and did not return to work.
- (26) He stated in cross examination that he had resigned because he was fearful and this caused him anxiety.
- (27) He said he did not take any action as a result of the previous bullying. He had shut himself away and tried not to take any notice of it.
- (28) His medical condition, spina bifida, had not prevented him from doing his job. There were some things he could not do but he had not been prevented from doing physical work. He had not mentioned the condition to his employer for some time because the complaint did not cause him concern although he did understand Mr A Troalic's concern when he found out about it.
- (29) He stated that he was bullied by Mr A Troalic and his sons. He got on well with most people and usually went "with the flow". He said he was picked on more and more throughout his employment.
- (30) On occasion he accepted that his work was below standard and that, when pointed out to him, it ended up in an argument. He said that Mr M Troalic told him to do work one way and Mr A Troalic told him to do it in another way. This caused problems.

- (31) He had not received complaints about the standard of his work from previous employers. He had worked for five employers in a six year period. He changed jobs as a result of redundancy and low pay.
- (32) When he started working for the Respondent he was told he had to be trained from scratch, even though he was an experienced mechanic. He said he had no experience of garden machines but there were similarities to other vehicles he had worked on.
- (33) His employment was on a three month trial basis. He stated that the trial period had not been extended, he was a good learner and good at following instructions. He said he knew how to do his job and was capable but had Messrs A and M Troalic telling him different things. He believed he followed instructions from Mr M Troalic but these were then contradicted by Mr A Troalic.
- (34) He was not a slow learner and was more than capable. He stated he was quite happy to follow orders.
- (35) He stated he did not know how many machines had been returned to the workshop but he was aware that some had. He did not accept that machines had been returned to the workshop because he had failed to reassemble the brakes, get tyre pressures correct, fit a petrol tank correctly or have the correct alignment for a mower.
- (36) He said that when work was not done correctly Mr A Troalic would tell him off and leave it to Mr M Troalic to show him how to repair the machine.
- (37) He stated that he was well behaved, obedient, punctual, and followed the Respondent's rules. He believed he set a good example to younger employees, but did not have much interaction with them.

### **The Respondent**

- 4.22 Mr Andrew Joseph Troalic was called as a witness for the Respondent. He confirmed that he was the Managing Director of A J Troalic and Sons Limited and had overall responsibility for the operation of the business including employment issues. He had been in the business since 1951.
- 4.23 Mr A Troalic had been in America in early 2007 and when he returned, his son had employed the Applicant on a trial basis. Whilst Mr M Troalic was the Applicant's supervisor, both Mr A J Troalic and one of the other experienced mechanics were available to assist him.
- 4.24 He described the Applicant as someone 'who would often not do as he was told' and that the standard of his work fell short of the employer's requirements. He said that a number of capability issues came to light during his employment. Examples given by Mr A Troalic related to the quality of his workmanship in relation to repairs and the fact that machines were returned to the workshop by customers for second repair.



4.25 Mr A Troalic gave evidence that there were conduct issues relating to the Applicant. He described a number of incidents, all of which are referred to in his witness statement at bundle ER1 including:

- (1) In or around February 2008 the Applicant spat chewing gum onto a co-worker's tool box resulting in a complaint being made by the co-worker.
- (2) Between February and June 2008 the Applicant had taken increasingly longer breaks.
- (3) In or around June 2008 the Applicant threw empty cans of penetrating oil into a burning barrel despite being given instructions to the contrary. When questioned, he did not accept the Applicant's evidence that he had witnessed a co-worker do this.
- (4) In June 2008, Mr A Troalic stated that the Applicant had damaged a tea machine by taking hot water from the top, contrary to instructions. He did not accept the Applicant's explanation that it had been an accident.
- (5) In June and July 2008 Mr A Troalic stated that the Applicant had damaged an overhead hoist by twisting the hook around the cable wire. On each occasion this happened the Applicant was instructed not to do this again. The machine was condemned and had to be replaced. He disputed the Applicant's evidence.
- (6) In July and August 2008, there had been an incident relating to a broken sign in the workshop. He had challenged the Applicant as to whether he had been responsible for the damage. The Applicant's explanation had been that it had fallen. Mr A Troalic did not believe this and said he was later informed by another employee that the Applicant had been responsible.
- (7) Around July/August 2008 Mr A Troalic became aware that the Applicant had a health problem with his back and requested that he obtain a report on his condition from his doctor. In spite of reminders the report was not forthcoming.
- (8) In or around September 2008 and on other occasions, the Applicant had referred to the Respondent as "A J Bollocks" when answering the 'phone.
- (9) Around September 2008 the Applicant refused to wear safety boots. When the Applicant asked if the Respondent would pay for the boots, the request was originally refused by Mr A Troalic, who later relented. The Applicant never purchased the boots.
- (10) On numerous occasions in 2008, the Applicant had placed wet grass into burning barrels contrary to instructions. The resultant smoke had led to complaints from neighbours.
- (11) The Applicant had failed to record his work on time sheets correctly.

- (12) The Applicant had bent a tea strainer and when Mr A Troalic questioned him, he had denied it even though one of his colleagues had witnessed the act.
- (13) The Applicant had shown pornography on a mobile telephone to co-workers aged 17 and 20. Mr A Troalic said he had sworn at the Applicant in the heat of the moment and that he now apologised. He had not seen the actual screen on the telephone and had relied on what his grandson and one of his other employees, Mr Finnigan, had told him.
- (14) An incident had been reported to him whereby the Applicant had pulled down a co-worker's trousers.
- (15) The Applicant would frequently telephone Mr A Troalic on Friday evening to say he would be unable to work the following day and he believed the Applicant was malingering.
- (16) In other incidents, Mr A Troalic observed the Applicant pouring recycled petrol that had been emptied from mower tanks into his car for his personal use, contrary to instructions. When questioned, the Applicant told him that he had been given permission by Mr M Troalic. Mr A Troalic believed that the Applicant had stolen £6.00 - £7.00 of petrol but decided not to pursue it with the police.
- (17) The Applicant's work was checked by Mr M Troalic who discovered that not all work purported to have been undertaken by the Applicant had actually been done.

4.26 Mr A Troalic gave evidence that there were also issues relating to the Applicant's capability. He described a number of incidents, including:

- (1) The Applicant was a slow learner and had to be shown how to do things time and time again.
- (2) A number of machines were returned to the workshop due to the Applicant's poor workmanship. He used as examples incorrect tyre pressures used on a machine, incorrect fitting of a petrol tank and alignment of a mower. In particular he referred to returned machines during the period 3 – 16 September 2008 whilst the Applicant was absent from work.
- (3) That after some time, Mr A Troalic no longer trusted the Applicant's work and stated that the Applicant argued with him, would walk away and would not listen to instructions.

4.27 When asked by the Tribunal whether he had recorded any of these incidents he said he had not but his wife may have done. No evidence noting dates of the incidents was produced.

4.28 Mr A Troalic stated that he had contacted the Department of Commerce and Employment for advice. He understood from this advice that he should speak to the

Applicant informally and if that did not work he would need to take formal action in writing, giving him a chance to improve.

- 4.29 By September 2008 Mr A Troalic decided that he had given the Applicant sufficient informal opportunities to improve and that it was necessary to take formal disciplinary action.
- 4.30 On 3 September Mr A Troalic stated that he gave verbal notice to the Applicant of a meeting, to take place with him later that day. At the meeting he stated that he handed the Applicant a letter (Appendix G of ER1 refers) which the Applicant tore up, put in his mouth and swallowed. He stated he was spellbound by the event. Later Mr A Troalic said he had given the Applicant a further copy of the letter.
- 4.31 When asked by the Tribunal whether he had given written notice of the meeting held on 3 September or had given the Applicant the opportunity to bring a colleague with him, he accepted that he had not. He was also unable to explain why the letter was undated. He was sure that it was 3 September because it had happened on the same day as the doctor's certificate was dated and that had been 3 September 2008.
- 4.32 Mr A Troalic's evidence was that later on 3 September 2008 the Applicant walked out of work without telling anyone. The same evening, the Applicant returned with a certificate from the doctor stating that he was incapable of working on the grounds of depression.
- 4.33 When the Applicant returned to work on 16 September 2008, Mr A Troalic did not speak to him about his illness and the Applicant did not raise the subject.
- 4.34 Mr A Troalic said that whilst the Applicant was absent due to sickness, at least five machines that had been repaired by the Applicant were returned by customers as they had not been repaired correctly.
- 4.35 On 18 September 2008 Mr A Troalic spoke to the Applicant about his absence and his poor workmanship on the machines that had been returned whilst he had been off work.
- 4.36 Later in the day on 18 September 2008 Mr A Troalic spoke to the Applicant in relation to him walking out of work on 3 September without explanation and his poor workmanship. He later gave the Applicant a letter shown at Appendix I of ER1). The Applicant took the letter, did not say anything in response and returned to his work.
- 4.37 Later the same day, Mr A Troalic reminded the Applicant that he was due to work that Saturday, but the Applicant refused saying he had other things to do.
- 4.38 On 19 September 2008 the Applicant telephoned Mr A Troalic saying he was ill. The Applicant did not turn up for work the following week.
- 4.39 On 25 September 2008 Mr A Troalic received a hand delivered, unsigned and undated letter stating that the Applicant had resigned from his employment with immediate effect.

- 4.40 Mr A Troalic stated that the Applicant's accusations of verbal abuse and insults were untrue and rather that it was Mr Kinsey who had lack of respect for the Respondent.
- 4.41 Mr A Troalic stated that he dealt with disciplinary matters himself. There was no written policy or procedure.
- 4.42 He confirmed there was also no grievance procedure.
- 4.43 When asked whether notes were kept of the various incidents that he had referred to, he stated that he thought they were written in a special book which his wife held.

## **5. Conclusion**

- 5.1 The Tribunal had to consider whether there were grounds that justified the Applicant's resignation. In order to succeed, the Applicant had to demonstrate that, on the balance of probabilities, a fundamental breach of either an express or implied term of his employment contract had occurred, and that this breach could be found to be unfair.
- 5.2 The Applicant's evidence detailed a number of issues that he believed 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.
- 5.3 The Tribunal has considered all the evidence and has concluded that it prefers the evidence of the Applicant. In the workplace there was clearly an environment of conflict between the Troalic family members and other employees. The Applicant was subjected to bullying and harassment which, in his own evidence, he said he tried to ignore until the summer of 2008. By 3 September 2008 his health had deteriorated as a result of these activities at work and he was absent from work for two weeks as a result of this.
- 5.4 Mr A Troalic's actions on 18 September 2008 occurred on only the second day of the Applicant's return to work. Even if the previous meeting had taken place on 3 September, which the Tribunal is inclined to believe that it did not, Mr A Troalic's actions were premature in that he had not given the Applicant an opportunity to improve his performance in the time he had returned after his illness. Mr A Troalic was aware that the Applicant had been absent due to depression, had not made enquiries about his health and chose to proceed with a meeting.
- 5.5 The Tribunal considers that any reasonable employer would have had particular regard to the health of an employee who had only just returned to work after an absence due to mental health. The Tribunal concluded that this meeting was a 'final straw' event for the Applicant who perceived that it was a further act of bullying that he could not tolerate.
- 5.6 It is the duty of an employer to treat everyone with dignity and respect at work. In this case, the Respondent had a duty of care to ensure that the Applicant worked in a safe environment, which includes freedom from bullying. The Tribunal concluded that this protection was not adequately afforded to the Applicant and, as a result, there was a fundamental breach of contract on the part of the Respondent. In these circumstances,

the Applicant was entitled to terminate his employment without notice by reason of the Respondent's conduct.

- 5.7 The Applicant had acted immediately after the events of 18 September 2008 by not returning to work on 19 September 2008. The receipt of his letter of resignation by the Respondent on 25 September 2008 was also deemed to be reasonable, particularly in view of his health problems. The Applicant had, therefore, not delayed too long in his actions.
- 5.8 The Tribunal also considered the reasonableness of the Respondent's actions with regard to the procedures followed in relation to the process of dealing with the Applicant's alleged conduct and capability issues. Although the Respondent Company is not a large organisation, it is a substantial small business with nine employees. Mr A Troalic has nearly sixty years of experience of business. It is reasonable, therefore, to expect a fair process for dealing with such matters. Mr A Troalic was aware that there were expectations under the Law and, to this end, he gave evidence that he had sought advice on the subject.
- 5.9 Even though Mr A Troalic stated that he had contacted the Department of Commerce and Employment to seek guidance he had failed to act upon it.
- 5.10 The Tribunal accepts that, in this situation, certain formalities that would apply to a large employer cannot be used as a comparison.
- 5.11 However, the Tribunal has compared the processes of the Applicant's dismissal with the Code of Practice and has concluded that even the most fundamental procedures to ensure natural justice for the Applicant were not followed. At the very least, the Applicant should have been given proper and explicit reasons for the meeting that eventually took place on 18 September 2008. He should also have been afforded the opportunity to be accompanied and given the ability to appeal the decision of that meeting. None of these were made available to the Applicant.

## **6.0 Decision**

- 6.1 The decision takes into account the relevant Law and the Code of Disciplinary Practice (Disciplinary Practice and Procedures in Employment).
- 6.2 Having given due regard to all the circumstances presented, the Tribunal unanimously finds that the Applicant was unfairly constructively dismissed from his employment in relation to section 5 (2)(c) of the Employment Protection (Guernsey) Law, 1998 (as amended).
- 6.3 The Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed on the grounds that there was a failure to follow a proper procedure in accordance with The Discipline at Work Advisory booklet and the Code of Practice (Disciplinary Practice and Procedures in Employment).

6.4 In accordance with Section 22 (1)(a) of the Law, an award of £10,920 (Ten Thousand Nine Hundred and Twenty Pounds) is made.

**Signature of Chairman:** Ms Caroline Latham

**Date:** 12 June 2009