

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Miss Lynn Robert  
Represented by: Mr Martyn Smith

**RESPONDENT:** Polar Instruments Limited  
Represented by: Mr Martyn Mann

**Witnesses:**

**Called by the Applicant:**  
The Applicant gave evidence

**Called by the Respondent:**  
Mr Martyn Mann  
Mr Nigel Mann  
Mr Martyn Gaudion  
Mrs Gwen Merchant

**Decision of the Tribunal Hearing held on 1 July 2009**

**Tribunal Members:** Mr Peter Woodward  
Ms Katie Vidamour  
Ms Paula Brierley

**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, Miss Lynn Robert was not, as alleged, unfairly dismissed.

Further the Tribunal has found no grounds on which a complaint of indirect Sex discrimination as defined in the Sex Discrimination (Employment) (Guernsey), Ordinance 2005 can be upheld.

Both complaints are dismissed.

**Mr Peter Woodward**

.....  
Signature of the Chairman

**24 July 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 and the Sex Discrimination (Employment) (Guernsey), Ordinance 2005**

### **Extended Reasons**

#### **1.0 Introduction**

- 1.1 The Applicant Miss Lynn Robert was represented by Martyn Smith and gave evidence to the Tribunal.
- 1.2 The Applicant submitted documents in a bundle marked EE1.
- 1.3 The Respondent was represented by Mr Martyn Mann.
- 1.4 In addition to himself, Mr Martyn Mann called the following witnesses to give evidence: -  
Mr Nigel Mann  
Mr Martyn Gaudion  
Mrs Gwen Merchant
- 1.5 These witnesses were supported by documentary evidence (ER1 and 2 refer).
- 1.6 At the outset of the hearing the Chairman clarified with the Respondent that a dismissal by reason of redundancy was admitted, and the Applicant stated that it was the alleged unfairness of this redundancy which formed the basis of her complaints before the Tribunal.
- 1.7 The Chairman noted that two separate ET1 complaints had been submitted with reference to this complaint, the first alleging unfair dismissal under the Employment Protection (Guernsey) Law, 1998, as amended, the second further alleging that the dismissal was also an act of indirect discrimination as defined in the Sex Discrimination (Employment) (Guernsey), Ordinance 2005.
- 1.8 The Tribunal expressed the view to the parties that there was only one event of alleged unfair dismissal; no other complaint had been alleged; and this was not disputed by the parties. In the event that the dismissal was found to be unfair under either the Employment Protection (Guernsey) Law, 1998, as amended or under the Sex Discrimination (Employment) (Guernsey), Ordinance 2005 only a single award of 6 months pay would be awarded.
- 1.9 However, in the event that unfair indirect discrimination was found that the Tribunal would have no power to consider a reduction to the award.
- 1.10 Further that as no other complaint was alleged under the Sex Discrimination (Employment) (Guernsey), Ordinance 2005 that no other award would be considered.
- 1.11 Both parties agreed the Effective Date of Termination was 28 February 2009.

#### **2.0 Facts Found**

- 2.1 The Tribunal determined the following in relation to this complaint.
- 2.2 The Applicant commenced employment with the Respondent in November 1993 and for the last 10 years had been employed primarily as an Export Administrator.

- 2.3 The Respondent, which is headquartered in Guernsey, manufactures both hardware and software for electronic equipment testing. Prior to the redundancy of the Applicant some 11 staff were employed locally comprising 5 females, 3 of whom were part-time and 3 males, 1 of whom was part-time; and in addition the 3 male managers/directors.
- 2.4 In the summer of 2008 there was a significant downturn in hardware sales, which accounted for approximately 65% of total revenues and as the year progressed it became clear to the Respondent that they were faced with an indeterminate period of lower future sales.
- 2.5 The Directors of the company met on 10 November 2008 and decided it was necessary to warn all staff of the need to make substantial savings in their operating costs, including reductions in the hours worked by their employees.
- 2.6 Meetings were held with all employees on 13 November 2008, including the Applicant, and they were advised that the company would be reviewing all budgets and costs; and this may result in redundancies. An e-mail confirming these issues was sent on the same day to all employees (ER1 Page 18 refers). In this e-mail the Respondent also confirmed that the company would be unable to pay any discretionary bonuses for the year ending 2008 and that there would be no salary increases in the year 2009.
- 2.7 Following this communication on 13 November 2008 the company proceeded to analyse the workload of the "Front Office" team of which the Applicant was a member. The team consisted of Marketing and Accounts Administrators both who were on full-time hours of 36 per week, and the Applicant who was the Export Administrator working 26.5 hours per week. The Respondent came to the conclusion that only two people or the hourly equivalent of two people were required to deal with the administrative support provided by the Front Office for the foreseeable future. The Respondent designated these three administrators as a single pool from the viewpoint of their redundancy process.
- 2.8 A meeting took place on 6 January 2009 with the 3 front office staff; this meeting being conducted by Martyn Mann in the presence of Nigel Mann. During this meeting the 3 employees were advised that the company could only justify continuing to employ 2 "Front Office" staff in the future. The Respondent presented two alternative options which were short of making a compulsory redundancy. Option one was to establish whether two or more of the team were willing to work fewer hours than at present and would provide a reduction of at least 36 hours per week or whether an employee would take the option of voluntary redundancy.
- 2.9 The Applicant subsequently received a letter on 6 January 2009 confirming these options and indicating that in the event that she opted for a voluntary redundancy that her employment could continue until the end of February 2009. At the end of her employment she would receive three months salary as a redundancy payment (ER1 Page 19 refers).
- 2.10 The Applicant, as with the other members of the Front Office team, was asked to advise management no later than Friday, January 16 2009 if she was willing to agree to one of these two options.
- 2.11 Meetings were also held with other members of staff on 6 January 2009 and subsequent to these meetings some of these employees voluntarily offered reductions in hours, including the company stores person.
- 2.12 The Respondent provided to employees on 6 January 2009 a further clarification of how a reduction in hours would be implemented. In this written explanation (ER 1 page 20 refers) the employer made it clear that they could not force a change to employees working hours

without their agreement. The Respondent also indicated that any reduction in hours was likely to be of a long-term nature and that anybody opting for reduced hours was not likely to see their previous hours reinstated.

- 2.13 On 16 January 2009 the Respondent noted that none of the 3 team members had opted for voluntary redundancy. Some discussion had occurred on the issue of hours reductions between the Applicant and the Respondent however without any firm offer of a reduction of hours by the other administrators this option was not seen as viable by the Respondent.
- 2.14 On 18 January 2009 a meeting took place between Martyn Mann, Nigel Mann and Martin Gaudion. They concluded that as cutbacks had been made in every department it was not possible to offer alternative work to anyone in the Front Office and so it was decided to select one person from the Front Office team for redundancy. The first consideration was whether any one of the team could be differentiated on the basis of length of service, attendance, timekeeping, current job performance, or disciplinary records. It was concluded that as all 3 employees had more than 5 years service and that as they all scored maximum points on the other parameters that no determination could be made based on these considerations.
- 2.15 The Respondent chose to analyse the three Front Office employees on the basis of skills/qualifications/training and future potential/flexibility. They developed a matrix (ER2 refers) including items such as competence with accounting packages, website updates, customer relationship databases and an overall assessment of future potential/flexibility. The scoring was in a range of 1 to 4 for each area of competence or, alternatively, a score was not assigned if it was noted that no skill / minimal skill was evident.
- 2.16 The outcome of this analysis yielded a score of 25, with two minimal skills areas for one colleague, and 23, with two minimal skills areas for the other; by comparison the Applicant was determined as having a score of 12, with four minimal skill areas.

Following further discussions between these Managers the decision was taken to make the Applicant redundant.

- 2.17 On 19 January 2009 Martyn Mann and Nigel Mann met with the Applicant to communicate this decision and the terms on which her employment would cease. A letter dated 19 January 2009 was given to the Applicant summarising these terms and confirming that a sum of £7549.68 would be made along with other accrued holiday pay (ER1 Page 26 refers).
- 2.18 In mid February the Applicant was released from her formal duties and her obligation to attend her place of employment, this being some 2 weeks prior to the EDT. The Applicant continued to be paid in this period.

### **3.0 Evidence from Mr Martyn Mann**

- 3.1 The Applicant read from a prepared statement (ER1 Pages 13-16 refer).
- 3.2 Martyn Mann asserted that the reduction in hardware sales during 2008 was some 26% in relation to the previous year, 2007. He also informed the Tribunal that in his opinion the downturn in Hardware sales had a greater reductive effect on the Applicant's workload than on that of the workload of the other 2 Administrators.
- 3.3 The Respondent had sought advice from Commerce and Employment prior to commencing the redundancy process and it was his view that they had done their best as a small firm to

apply a fair procedure in accordance with the provisions of their current code of practice on handling redundancy.

- 3.4 It was his view that the selection of Miss Robert was made on a fair and objective process and that her gender played no role in the selection process. It was also his view that if the Applicant had been defined as in a pool of one rather than included in a pool of three she would still have been selected for redundancy. There was a high probability she would have been made redundant on the basis of her primary tasks being linked to hardware sales. He told the Tribunal that his company was shifting from hardware to software products and that Miss Robert's manufacturing experience was probably of little relevance to the future of the company.
- 3.5 Mr Mann was asked why the Applicant was not considered for the role of stores person. He responded by stating that whilst the Applicant had some knowledge of stores this had been gained quite a few years ago and the nature of the stores activity had changed, there was for example a need to handle heavy manual fork lift equipment, and the person currently assigned to stores was also in charge of purchasing. It was important for the Tribunal to note that the current stores person had made a voluntary reduction of hours and there is no requirement for any additional staff in this area. Finally in relation to retirement whilst the current job holder was in his 60s the company had no policy on the final retirement age and was not prepared to impose such a policy.
- 3.6 The witness was asked to give examples of actions the company had taken in attempts to avoid compulsory redundancies. In his response he informed the Tribunal that as a small company, salaries composed a large proportion of costs. Reduced hours were required across a number of roles to achieve savings; and a number of employees had voluntarily reduced hours. In addition the company had cancelled a major conference and very significantly reduced their marketing expenses; reductions in manufacturing costs had also been sought but these were hard to achieve with lower volumes driving up unit costs. Another example of cost control was the abandonment of a product line because of high input costs. Finally all the directors had taken a pay cut.
- 3.7 The witness was questioned on the skills matrix, particularly in relation to the Applicant having the potential to gain new skills with training. He stated that certain skills such as website updates might be obtained in a few months but it was his view and that of his fellow managers that for the Applicant to gain competence in the accounts package would be quite a demanding task and would require extensive training.
- 3.8 The witness was challenged as to the apparent inconsistency that in the event of accepting the voluntary redundancy of either the marketing or the accounts administrator the company would give itself a skills gap. The witness stated that they were prepared to accommodate these issues by having other employees take on these tasks such as the Finance Manager given that such a course of action would have avoided compulsory redundancy.
- 3.9 Mr Mann confirmed that Polar Instruments was not a subsidiary of some large organisation and that outside of Guernsey the organisation consisted of small sales offices typically manned by 2 to 3 employees.
- 3.10 When asked why the matrix did not include customer returns, the witness stated that the matrix had the category of customer facing queries and returns becoming less of the key activity was included in the overall category of customer facing queries.
- 3.11 In response to further questions on the matrix from the Tribunal Mr Mann thought that the management team had arrived at the assessments in a consensual manner and after an open

debate. The Tribunal should note that all of the management team had been exposed to the Front Office team over many years and has had ample time to make judgements as to their capabilities. As to transferable skills it was his opinion that he and his colleagues could make well-informed decisions as to which areas of new expertise each of the team members could become capable if given appropriate training. Where an assessment of “not applicable” or “minimal skill” was made for any of the employees there were serious concerns as to whether they could have been brought up to the level of competence required in the time available and within the resources of the company.

- 3.12 The witness emphasised their commitment to assist the Applicant in any way possible once the decision to make her redundant had been communicated. For example the Applicant was told that if she needed time off for interviews or for any similar related activities she was perfectly free to take that time during her normal working hours.
- 3.13 The witness confirmed that there had not been provision for an appeal process against the decision to select the Applicant for redundancy. Mr Mann thought the Tribunal should take into account the overall fairness of the procedure adopted by the company even though an appeal process was not offered.

#### **4.0 Evidence from Nigel Mann**

- 4.1 The witness read a prepared witness statement (ER1 page 34 refers).
- 4.2 As with Martyn Mann the witness had familiarised himself with the Commerce and Employment guidelines on redundancy.
- 4.3 His statement corroborated much of what has been evidenced by Martyn Mann. The Tribunal noted that it was his view that there was no major debate or division between the managers as to the scoring of the matrix and that they had a similar view of the capabilities of the three employees in the pool.
- 4.4 The witness confirmed the opinion of Martyn Mann that to pick up new skills and competencies would have taken the Applicant time, and that for example a minimum of three months would have been needed to have the Applicant competent with website updates. He also emphasised the fact that he had worked with the Applicant over several years and therefore could make a well-informed opinion as to her capabilities and future potential.

#### **5.0 Evidence from Martyn Gaudion**

- 5.1 The witness read a prepared witness statement (ER 1 refers Page 36 refers).
- 5.2 The witness confirmed the slowdown of orders and their gravity in relation to the company's future.
- 5.3 The witness corroborated the process as described by Martyn Mann and Nigel Mann and confirmed his agreement with the outcome of the matrix exercise.
- 5.4 The witness also confirmed the opinion expressed by Martyn Mann that hardware orders, when they did resume, would be at a much reduced level and that the future for the company was in software products. This had a major bearing on the continued requirement for the Applicant to perform a function.

## **6.0 Evidence from Gwen Merchant**

- 6.1 The witness read from a prepared witness statement (ER 1 page 38 refers).
- 6.2 The witness confirmed that she did not offer to take voluntary redundancy or offer to reduce her working hours.
- 6.3 Mrs Merchant confirmed the opinion already expressed by previous witnesses that it would take at least three months to gain competence in website updates, formal training was required on the Microsoft FrontPage product and it was her opinion that there was also a significant amount of learned experience that would only come with time.

## **7.0 Evidence from Lynn Robert**

- 7.1 The witness read from a prepared witness statement (EE1 Pages K1 to K3 refers).
- 7.2 The Applicant did not dispute the events leading up to 6 January 2009.
- 7.3 The Applicant confirmed she had met Nigel Mann and Martyn Mann on 6 January 2009 together with her 2 other Front Office colleagues.
- 7.4 The Applicant, and her colleagues, were advised of 2 options; either one of the three Front Office employees to offer voluntary redundancy or between the three employees a cutback of 36 hours per week. These options were confirmed in writing the same day by an individual letter to each of the three employees (EE1 B (1) refers).
- 7.5 Following this meeting the Applicant approached her colleagues to see whether either of them was prepared to offer a reduction of hours. Neither was prepared to make such an offer.
- 7.6 Miss Robert approached Martyn Mann some day or two later and communicated to him that she would be prepared to cut her hours. She asked if she did agree to this would her two colleagues be required or requested to make a pro rata offer in line with her own reduction. Mr Mann responded by telling Miss Robert that it would be whoever offered whatever hours, as long as it totalled 36.
- 7.7 During the same meeting Miss Robert suggested various cost savings such as ceasing to buy newspapers, staff to provide own tea and coffee, and the lowering of the benefit levels of the WPA scheme. Miss Robert also suggested that the cleaning contract with Securicor could be terminated and that cleaning could be done by her and 3 other women employees. Mr Mann responded by stating that the management team had thought about cutting the cleaning contract but was not in favour of the other cuts that she was proposing.
- 7.8 Subsequent to this meeting the Applicant gained the agreement of one other employee to undertake cleaning duties however their offer of such services was not taken up by Mr Mann.
- 7.9 On 13 January 2009 the Applicant together with the two other Front Office colleagues were called to the second meeting with Martyn Mann and Nigel Mann and along with one of her colleagues the Applicant was offered an increase in her potential voluntary redundancy payment. It was explained to her and her colleagues that this change was due to management wishing the redundancy payments to mirror the statutory formula used in the UK and that the initial calculations had not comprehended recent changes in that formula.

- 7.10 Despite this change neither the Applicant nor her colleagues accepted the option of voluntary redundancy, nor was any offer of reduced hours made by them.
- 7.11 The Applicant observed that as one of her colleagues was due to retire in July 2010 she thought she would have been the obvious and ideal person to be made redundant. She had discussions with this colleague as to the possibility of taking voluntary redundancy. Her colleague responded by stating that she would let management make such a decision and would not volunteer.
- 7.12 On 19 January 2009 the Applicant was requested to meet Martyn Mann in his office and was subsequently told that she would be made redundant. During this meeting the Applicant asked Mr Mann whether her redundancy was due to her job as an exporter and he confirmed this. She was given a letter confirming her redundancy payment and was informed that she would receive £7,549.68 based on her current salary and her years of service. The letter informed her that her employment would cease at the end of February 2009.
- 7.13 Subsequent to this meeting the Applicant felt she had been avoided by her colleagues and by management.
- 7.14 On 5 February 2009 Martyn Mann invited the Applicant to his office and told her that she was clearly uncomfortable in the working environment that she would be released early and would not be required to work until her end of contract date, 28 February 2009.
- 7.15 The Applicant told the Tribunal that subsequent to her departure both her colleagues remained on their full-time hours of 36 per week. Thus in effect with her redundancy, the company had only achieved reduction of 26.5 hours per week.
- 7.16 It was the Applicant's belief that she was more flexible in her approach to her role than her colleagues and she had taken several courses of study at College of Further Education to be more effective in her job.
- 7.17 The Applicant also told the Tribunal that on the basis of her prior experience in manufacturing, quality control and stores functions that she should be considered for other roles. She told the Tribunal that the packing of shipments was done by a 65-year-old who was put on reduced hours, however in her opinion he could have been retired and his job made available to her.
- 7.18 In summary the Applicant told the Tribunal that her role had not been eliminated when she left and it had been reassigned to others who had maintained their 36 hour per week full time roles.

## **8.0 Martyn Mann - Closing statement**

- 8.1 He regretted that Miss Robert had to be made redundant; she had been a valued employee.
- 8.2 The Tribunal should consider the context of her dismissal, there had been a significant fall in hardware sales in 2008 and this was continuing into 2009; this reduction in activity had a direct impact on the workload of Miss Robert.
- 8.3 He acknowledged that although Miss Robert had worked for 10 years in her current role she had other skills; however those skills related to areas such as stores and manufacturing with significant cuts also being made in these two areas. In the case of the stores the current job holder had agreed to a voluntary reduction in hours.



- 8.4 The company did not have a defined retirement age and indeed if it had sought to require employees to retire it would have been in contravention of their contractual rights.
- 8.5 Mr Mann refuted that a reduction of 36 hours was his ultimate aim, he did however confirm that if staff had been willing to reduce their hours, it would have needed to have been by 36 hours; or, alternatively, for the Department to be manned in future by 2 employees.
- 8.6 Mr Mann claimed that the management had sought alternatives to redundancy and had made significant cuts/savings in many other areas in order to avoid compulsory redundancy.
- 8.7 The assessments contained in the skills matrix were based on company needs and did not consider the gender or the hours worked of any of the job holders.
- 8.8 In summary the company had made every attempt to give prior warning of the redundancy, to consult with the employees, sought ways to avoid compulsory redundancy and was fair and reasonable in all the steps they took during this process. The Tribunal should also give consideration to the relatively small size of the organisation and the guidelines for such organisations issued by Commerce and Employment when considering redundancy.

**9.0 Mr Smith - Closing statement**

- 9.1 It was the opinion of Mr Smith that the Applicant should have been given alternative options such as moving into the stores where the current job holder, being 65 years of age could have been required to retire. The Applicant had prior experience and expertise in this area. Alternatively Miss Robert might have been retrained for the marketing post had the current job holder been made redundant or had taken the redundancy package, given that she was only one year away from normal retirement age.
- 9.2 There was a fundamental error in the selection process for the pool; in his opinion the Front Office was not made up of similar positions and therefore each of the job holders should have been put into single pools. Alternatively as the Applicant's role was more closely related to manufacturing and stores she could have been moved into a role in one of these areas if others had been made redundant. Mr Smith could not understand why Miss Robert was not considered as one of the manufacturing and stores pool.
- 9.3 The Respondent had adopted contradictory positions in that they required a reduction of 36 hours per week or more from the Front Office team and yet in the event they made a part time employee redundant, saving only 26.5 hours per week; leaving the remaining two job holders in full-time employment of 36 hours per week.
- 9.4 Other than a reduction of hours or voluntary redundancy no meaningful alternative options were proposed to Miss Robert in order to avoid her being made redundant. The Applicant had proved herself to be very flexible in the past and was willing to retrain into other disciplines; and had even offered to perform office cleaning for the company.
- 9.5 Another key option provided for in Commerce and Employment guidelines was that a company could consider short time working, this option was not discussed with the Applicant.
- 9.6 Mr Smith disagreed that the skills matrix developed by the management team was fair and unbiased; on the contrary it excluded items that would have favoured the Applicant. Mr Smith commented that the company can design a table to meet their objectives which is not fair to the employees.
- 9.7 Miss Robert offered a reduction in her hours however this was unfairly rejected by Mr Mann.

- 9.8 It was the opinion of Mr Smith that her dismissal was in contravention of the Sex Discrimination (Employment) (Guernsey) Ordinance 2005 in that she was a part-time female employee and she was the only staff member to be dismissed. None of the full-time staff were dismissed whereas Miss Robert had been singled out for redundancy.

## **10.0 The Law**

- 10.1 The Applicant alleged that she was unfairly dismissed within the meaning of Section 5(2)(a) of the Employment Protection (Guernsey), Law, 1998, as amended and that the dismissal fell under the general provisions relating to fairness of dismissal and the principal reason being that of Section 6(2)(c) that she was made redundant.

- 10.2 The Applicant also alleged that the dismissal was unfair as defined in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005; as follows:-

- (1) *In any circumstances relevant for the purposes of any provision of Part II of this Ordinance, a person discriminates against a woman if-*
- (a) *on the grounds of her sex he treats her less favourably than he treats a man, or*
  - (b) *he applies to her a provision, criterion or practice which he applies or would apply equally to a man but*
    - I. *which is such that it would be to the detriment of a considerably larger proportion of women than of men*
    - II. *which he cannot show to be justifiable irrespective of the sex of the person to whom it applied, and*
    - III. *which is to her detriment*

and as provided for in section 70 of this ordinance:-

Amendment of the Employment Protection Law Section 9A

*The dismissal of an employee by an employer shall be regarded for the purposes of this part if this law as having been unfair if the dismissal constituted an act of discrimination against the employee prohibited by any provision of Part II of Sex Discrimination (Employment) (Guernsey) Ordinance 2005.*

## **11.0 Conclusions**

- 11.1 In relation to the allegation of the redundancy being unfair within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, an employer must first demonstrate that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish. This was evidenced by the Respondent and not contested by the Applicant. There was an evident decline in hardware sales due to reduced demand which was not reversible in the near future, and the Tribunal was persuaded by the evidence that the role of Miss Robert was significantly reduced by this downturn in sales.
- 11.2 The next test for the Tribunal is to establish that the employer made all reasonable attempts to minimise or avoid redundancies. In response to questions from the Tribunal the Respondent defined a number of actions undertaken prior to compulsory redundancy including, terminating a product line, asking for volunteers for redundancy in return for a discretionary redundancy payment, requesting employees to voluntarily reduce their working

hours and making savings in marketing and other business costs. Also the company froze all salaries for the year 2009 and the management team did not receive end of year 2008 bonus payments. The Tribunal notes the view of the Applicant that the company might have sought to compulsory retire employees on the grounds of age; however without a formal retirement policy or contractual requirement for a specific retirement age it would not seem reasonable for the Respondent to have pursued this option, albeit it is referenced as an option on the Commerce and Employment Code of Practice for Handling Redundancy. The Tribunal concludes that the steps taken were those of a reasonable employer seeking to avoid compulsory redundancies.

- 11.3 The Respondent should demonstrate that a pool of employees was defined, or indeed a number of pools, with the requirement that within each pool the employees are undertaking similar work. The Respondent chose to define a pool of 3 "Front Office" staff, in which Miss Robert was included. The Applicant claimed that the Respondent should have included her in a Manufacturing and Storage pool. The Tribunal was persuaded by the evidence that Miss Robert's roles in stores and manufacturing were performed some 8 to 10 years ago and it would seem that both of these roles were significantly changed, and diminished, from the time they were undertaken by the Applicant.
- 11.4 The skills matrix (ER2 refers) produced by the Respondent would seem to demonstrate that the Front Office staff did perform some similar tasks and a reasonable employer might seek to include them in a pool. If the Respondent had not chosen to do this, as argued by the Applicant there was significant evidence from the Respondent, that her role was seemingly the most affected by the reduction in sales. It might have been the judgement of a reasonable employer that her role would have been made redundant prior to the Marketing or Accounting roles if she had been defined as in a pool of one.
- 11.5 The Respondent had given a reasonable length of time for consultation and this included significant efforts to consult with the staff as to potential savings. On 6 January 2009 the 3 Front Office staff were requested to consider ways of cutting costs through reduction in hours and voluntary redundancies; 2 weeks were given for this consideration. However, the Respondent did not apparently pursue Miss Robert's subsequent query into the possibility of reducing her hours in a coordinated fashion with those of her colleagues; the Respondent could have explored this further.
- 11.6 The Respondent should also demonstrate that the selection criteria applied to the pool of employees to be made redundant was objective, fair and consistently applied. The selection criteria adopted by the Respondent seemed to be those of a reasonable and objective employer. It was evident that Miss Robert's role was diminishing by the nature of the work becoming increasingly focussed on software sales and less on hardware sales. This meant she was unlikely to attain a high score on the matrix as the remaining skills were weighted towards the non-hardware elements of the business.
- 11.7 The Applicant was not given the opportunity to see the selection criteria or comment on the scores applied to her in the skills matrix. This was of concern to the Tribunal which questioned the Respondent as to how it was developed and applied. In summary the Tribunal found the process to develop and apply the matrix was fair and objective. The process necessarily involves judgements as to the abilities of staff members and the Tribunal puts some weight on the fact that all 3 Front Office staff had long service with the Respondent, and consequently their capabilities were well known to management.
- 11.8 The Applicant argued that the Respondent had been inconsistent in demanding a voluntary reduction of least 36 hours per week from the three Front Office employees' but in the event made a part time employee redundant and only saved 26.5 hours per week. The Tribunal was

persuaded by the evidence from the Respondent, and the letter to the Applicant on 6 January 2009 that there were two clear cut options, either the Front Office employees reduced their weekly working hours by at least 36 hours or a volunteer could come forward for voluntary redundancy and thus leave 2 remaining staff. When neither option was taken up the Respondent then proceeded to a compulsory redundancy and thus left two employees in Front Office roles. The Tribunal was persuaded that the Respondent had not been contradictory in the actions taken.

- 11.9 The Commerce and Employment Code of Practice for Handling Redundancy advises that an appeal process could be adopted prior to confirming a compulsory redundancy. Whilst it is not a legal requirement it is the view of the Tribunal that if the Respondent had offered an appeal process it would have added to the robustness and fairness of the process used. However the Tribunal is also mindful that the Code of Practice has a section which refers to the principles which should be adopted by small firms and does not include guidance on appeals in that section. In summary the Tribunal is persuaded that overall process observed by the Respondent fell into a reasonable range of actions taken by a reasonable employer of their size and resources.
- 11.10 The Tribunal has concluded that in relation to the Applicant's redundancy the employer took actions which fell into a band of reasonableness expected of a reasonable employer and therefore finds the dismissal to be fair under the Employment Protection (Guernsey) Law, 1998 as amended.
- 11.11 The Tribunal also considered whether the Respondent had indirectly discriminated within the meaning of Sex Discrimination (Employment) (Guernsey), Ordinance 2005 by selecting Miss Robert for compulsory redundancy.
- 11.12 The primary test in applying a complaint of indirect discrimination to this dismissal is to consider whether the Respondent treated everybody the same in the Redundancy process but the effect of any provision, criteria or practice that was applied had a more adverse effect on one sex than the other, and that any element of the provisions, criteria or practices could not be justified.
- 11.13 The Tribunal was informed that in considering the pool of employees in which the Applicant was included that length of service was a criterion which was set aside. Thus the well established view that a greater proportion of part time employees are women who often have breaks of service and thus often less length of service does not apply to this complaint.
- 11.14 The Skills matrix (ER2 refers) did not include reference to flexibility of working hours as a criterion, which again may have a more adverse effect on part time female employees. The evidence submitted to the Tribunal by both parties established this was not part of the Applicant's complaint.
- 11.15 The Tribunal did not find any evidence that the Applicant was disadvantaged by lack of Training opportunities in comparison with full time employees. In the period commencing 6 January 2009 the evidence given by the Respondent indicates that if an employee other than the Applicant had volunteered for redundancy the Respondent would have chosen to assist the Applicant in further training rather than make the Applicant compulsorily redundant.
- 11.16 The terms of the voluntary redundancy offered to the Applicant and to her full time colleagues were not differentiated in any way other than the monetary amounts were calculated on the basis of her part time earnings.

- 11.17 The Skills matrix would seem to have been equally applicable to a male employee in the same or similar role and does not exhibit any other characteristics where a provision, criteria or practice might have an adverse effect on part time female employees.
- 11.18 In summary the Tribunal having reviewed all available evidence and the oral testimony of both parties cannot find that there were any provisions, criteria, or practices which established indirect discrimination within the meaning of the Ordinance. The Tribunal therefore dismisses the complaint.

## **12.0 Decision**

- 12.1 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 unfairly dismissed.
- 12.2 Further the Tribunal has found no grounds on which a complaint of indirect Sex discrimination as defined the Sex Discrimination (Employment) (Guernsey), Ordinance 2005 can be upheld
- 12.3 Both complaints are dismissed.

**Mr Peter Woodward**

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Signature of the Chairman

**24 July 2009**

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Date