

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Bruce Wallace

Represented by: Himself

RESPONDENT: Wallace Barnaby & Associates Limited (in Liquidation)

Represented by: Not present

Decision of the Tribunal Hearing held on 19 May 2009.

Tribunal Members: Ms Georgette Scott

Mrs Paula Brierley

Mr Andrew Vernon

DECISION

Having due regard to all the circumstances presented, the Tribunal unanimously finds that Mr Bruce Wallace was unfairly dismissed from his employment as Chief Executive Officer of Wallace Barnaby Associates Limited in relation to section 5 (2) (a) of the law when his employer, a member of the Board of WFCA Plc/EKAY Plc, owners of the company terminated his employment without warning, with no reasons given and without notice and pay.

Amount of Award (if applicable): £63,227.84

Ms Georgette Scott

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Signature of the Chairman

11 June 2009

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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 company of Wallace Barnaby Associates Limited had gone into voluntary liquidation on 27 October 2008, shortly after the applicant had been dismissed.
- 1.2 The Respondent, in the form of Joint Liquidators Begbies-Traynor, had alerted the Tribunal Service ahead of the Tribunal date that it would not be appearing or contesting the complaint.
- 1.3 The Applicant submitted bundles EE1 and EE2 to the Tribunal.

2.0 Facts Found by the Tribunal

- 2.1 Mr Bruce Wallace was employed by Wallace Barnaby Associates Limited from 1984 to 22 September 2008. (Neither party was able to produce a precise date for the start of employment).

3.0 The Law

- 3.1 The relevant section of the Employment Protection (Guernsey) Law 1998 (as amended) is 5 (2) (a). This is the section that refers to where,

“the contract under which he is employed is terminated by the employer, whether it is so terminated by notice or without notice”

4.0 Summary of Parties’ Main Submissions

The Applicant’s case

- 4.1 Mr Bruce Wallace was asked to meet with two Directors of WFCA Plc / EKAY Plc, the controlling companies of Wallace Barnaby Associates Limited on 22 September.
- 4.2 The two Directors were Mr Stephen Wise and Mr Steve Latter, the group Finance Director. In the event only Mr Latter appeared for the meeting, arriving late.
- 4.3 After some awkward chit chat about Mr Wallace’s holiday that he had just returned from, Mr Latter advised that he was the bearer of bad news and that at a recent Board Meeting of EKAY Plc it had been decided to terminate Mr Bruce Wallace’s employment. No reason was given other than Mr Wallace would “no longer be a part of the team, moving forward”. Mr Wallace did not press for a reason.

Mr Wallace advised that no Employee Handbook for Wallace Barnaby was in existence (although one had been in the drafting stage for some time) and therefore there was also no disciplinary, redundancy or dismissal policy or procedure to follow. However, Mr Wallace did point out that he had dismissed staff in the past and had used the services and guidance of the Jersey based law firm, Morells, to assist him with advice on lawful process.

However, in his submission to the Tribunal Mr Wallace stated that no recognised disciplinary procedure was used in his dismissal.

Asked whether redundancy had been mentioned by Mr Latter in any of their discussions, Mr Wallace repeated that no reason was ever given either verbally or in writing.

- 4.4 Mr Wallace asked when he was expected to leave and was told “this evening”. The time was approximately 4.50 pm, which left him around 10 minutes to clear his desk. He subsequently cleared his desk over a number of days.
- 4.5 Although no compromise agreement was ever mooted for Mr Wallace, a severance agreement was planned. Mr Steve Latter corresponded by email with Mr Wallace for several weeks, refining the terms. In the event, just as the terms of the severance pay agreement was settled the voluntary liquidation of the company was announced and no severance was ever made to Mr Wallace.

The Respondent’s case

- 4.6 The Respondent, in the form of Joint Liquidators Begbies-Traynor, had alerted the Tribunal Service ahead of the Tribunal date that it would not be appearing or contesting the complaint.

5.0 Conclusions

- 5.1 In the absence of the Respondent the Tribunal questioned Mr Wallace over the possible motive or reasons for his dismissal and the circumstances leading up to his dismissal. Mr Wallace had reiterated that no reason was ever given for his dismissal either verbally or in writing. Whilst the Tribunal considered the possibility that the Respondent may have intended to make Mr Wallace redundant ahead of the company’s liquidation, it had followed no redundancy procedure, nor any other procedure that the Tribunal would recognise; and certainly gave Mr Wallace no indication that redundancy was their intention.

The Tribunal concluded therefore that “some other substantial reason” in relation to the subsequent liquidation of the company may have been the reason.

- 5.2 No Employee Handbook for Wallace Barnaby was in existence and therefore there were no termination policies or procedures to follow. However, Mr Wallace did point out that he had dismissed staff in the past and had used the services and guidance of the Jersey based law firm, Morells, to assist him with advice on lawful process. However, no recognised termination procedure was used in his dismissal.
- 5.3 In relation to Mr Wallace’s own employment contract the Tribunal noted there was no clause specifically in relation to either Redundancy or Disciplinary Procedure but there was one headed Grievance Procedure, the last sentence of which stated, unusually, “There is no set disciplinary rules applicable to the executive”.

6.0 Decision

- 6.1 Having due regard to all the circumstances presented, the Tribunal unanimously finds that Mr Bruce Wallace was unfairly dismissed from his employment as Chief Executive Officer of Wallace Barnaby Associates Limited in relation to section 5 (2) (a) of the law when his employer, a member of the Board of WFCa Plc/EKAY Plc, owners of the company, terminated his employment without warning, with no reasons given and without notice and pay.

Signature of the Chairman: Ms Georgette Scott

Date: 11 June 2009