

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Miss Karen Carre

RESPONDENT: Acumen International Limited

Decision of the Tribunal Hearing held on 20 May 2010

Tribunal Members: Mrs Tina Le Poidevin
Mr Roger Brookfield
Mrs Paula Brierley

UNANIMOUS DECISION

1. Having considered all the evidence presented, the Tribunal unanimously found, under the provisions of Section 5(2)(c) of The Employment Protection (Guernsey) Law 1998, as amended, that the Applicant had been constructively unfairly dismissed in that she was entitled to terminate her contract with or without notice by reason of the employer's conduct.
2. The Respondent shall pay to the Applicant an award of £15,774.18, this being the equivalent of six months' pay as determined by the Tribunal.

Mrs Tina Le Poidevin
.....
Chairperson

17 June 2010
.....
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 claimed that:

- She had been constructively unfairly dismissed as there was no prospect of her receiving payment for her work and there was no-one taking control of the business she was working for.

1.2 The Respondent disputed the claim on the grounds that:

- The Applicant had not been dismissed but rather she resigned of her own volition.

1.3 The Applicant appeared in person and gave witness testimony under affirmation on her own behalf.

1.4 Form ET1 and a bundle of documents labelled EE1 (containing the Applicant's statement, copies of Mr Dunne's letters of 3 February 2009 and 6, 14 and 18 May 2009 to the Tribunal Secretary and letter to Advocate Clare Tee of 24 March 2009; Mr Dunne's Affidavit dated 22 May 2009; case search on Acumen; letter from Miss Carre's GP, Dr Sinnerton, dated 15 May 2009; confirmation of Miss Carre's temporary appointment with Social Security dated 12 March 2009; letter of resignation dated 28 January 2009; email from Mr Dunne dated 29 January 2009 at 19.13 hrs and written statements from Mrs Lucy Humphries and Mrs Rachel Smith) were presented in evidence.

1.5 One witness, Mrs Lucy Humphries, was called for the Applicant and gave evidence under oath.

1.6 Mr Dunne, Acumen International Limited's Managing Director, was unable to attend due to his continued ill health. His wife, Mrs Allison Dunne, a Director of Acumen International Limited, was asked to attend in his place but declined, stating that her husband had made all the original responses and she was not party to day to day occurrences. She did, however, confirm that Mr Dunne's original responses/statements were all the information he wished for the Tribunal to have and these should be utilised as the Respondent's arguments in the hearing.

1.7 In addition to form ET2, letters from Mr Dunne to Mrs Robey, Tribunal Secretary, dated 3 February 2009, 6, 14 and 18 May 2009 and a copy of Miss Carre's offer of employment dated 5 June 2007 and Particulars of Employment were presented in evidence.

2.0 Facts Found by the Tribunal

2.1 The Applicant's gross earnings during the last six months of employment were £15,774.18.

2.2 The Applicant commenced employment on 3 July 2007.

2.3 As evidenced by the Respondent's offer letter to the Applicant, she was employed as a Receptionist/Administrative Assistant for the Respondent.

- 2.4 As evidenced by the Applicant's Particulars of Employment, her remuneration was paid monthly on the 20th day.
- 2.5 The Applicant resigned from her employment by way of a letter dated 28 January 2009 claiming that the Respondent had fundamentally breached her contract of employment by not paying her wages for January 2009 which enabled her, by law, to claim for constructive dismissal.
- 2.6 The Applicant raised an official grievance against the Respondent, advising that she would be submitting a claim for wages owed for the month of January 2009, one month's salary in lieu of notice and any holiday pay owed at the rate of 2.08 days per month as specified in her contract.
- 2.7 The Applicant considered that 30 January 2009 would be her final day of employment with the Respondent unless the situation could be rectified by that date.
- 2.8 The Applicant's last day of employment with the Respondent was 30 January 2009 as payment was not made by the Respondent.

3.0 The Law

- 3.1 Section 5(2)(c) of the Law notes that an employee shall be treated as dismissed by his employer if "the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct."

4.0 Summary of Parties' Main Submissions

Applicant

- 4.1 Miss Carre was employed by Acumen International from 3 July 2007 as a Receptionist/Administrative Assistant. She apologised to the Tribunal for mistakenly noting her job title as Office Administrator on her ET1 form, explaining that she had lost her contract of employment when moving house and thought at the time that the job title she had written was correct. She did not do this with the intention of deceiving anyone.
- 4.2 Whilst working for the Respondent, Miss Carre's duties included being a key holder, setting the office up/switching on computers, etc., checking the appointments diary so that she was aware of which clients were coming in, checking which accounts needed to be ready for certain dates, reviewing the post, sorting out the most important priorities and speaking with Lucy Humphries or Rachel Smith about the production of accounts if they had not already been done by Mr Dunne.
- 4.3 Mr Dunne was in the office quite a lot when the Applicant first started working for the Respondent.
- 4.4 Miss Carre started to get seriously worried about the Respondent's ability to service its clients around September 2008 when Mr Dunne seemed to be preoccupied with a number of issues he had with various people but it was not until early January 2009 that everything came to a head.

- 4.5 In the second week of January 2009, on a day when the Applicant was on holiday, Mr Dunne came into work and called a meeting with the three ladies the Applicant worked with and explained that the salaries would be paid later than normal as his advocates had not collected the outstanding monies that were owed to him.
- 4.6 The Applicant had not been informed by Mr or Mrs Dunne that he would be coming in to the office so she did not find out about the salary payment delay until the following day from her work colleagues.
- 4.7 The Applicant decided to wait and see if any monies were going to be collected but already had serious doubts that this would not happen as no work had been going out during the previous months.
- 4.8 The Applicant tried everything she could to help with the situation including asking her sister (who was a qualified accountant) if she could assist by speaking with Mr Dunne. There were at least 15-20 sets of draft accounts sitting in Mr Dunne's office at the time awaiting amendment before they could be despatched to clients. Her sister made an appointment to see Mr Dunne to offer her assistance. Mr Dunne was impressed with her and told her she could be a real help but he did not communicate with her again.
- 4.9 The Applicant was so worried about the volume of clients chasing for their accounts that she asked Mr Dunne if he could take some home with him as he was at home more than he was in the office. He said he would but he never did.
- 4.10 At one point, the Applicant and colleagues took it upon themselves to send some accounts to his house for him to check and amend if required as they had not seen him for nearly a week. The Applicant thought this might take some of the pressure off her as she was being constantly chased by clients but they were sent back untouched after two days.
- 4.11 Clients were receiving invoices from the Respondent and telephoning on a daily basis to enquire what the invoices were for as most of them had not yet received their accounts and were waiting for Mr Dunne to telephone them.
- 4.12 Mr Dunne made client appointments but the Applicant often had to cancel them as Mr Dunne was unwell. This put a lot of pressure on the Applicant as these clients had already been cancelled two or three times before.
- 4.13 The Applicant recalled one instance when she had to pick up a cheque from a client on the basis that Mr Dunne had promised the accounts. Mr Dunne instructed the Applicant to assure the client that they were next on the list and the accounts would be ready within a week or two at the most. The Applicant set up an appointment which provided Mr Dunne with four weeks to complete them only to find when the day came that the accounts were still not finished. The Applicant had to telephone the client to say that Mr Dunne could not make this appointment as he was unwell and, as the client had been cancelled a number of times and paid for his accounts in advance, he was not happy to hear of yet another cancellation.
- 4.14 As Mr Dunne was a professional person and a sole practitioner, the Applicant would have expected him to have a contingency plan in place. She recalled hearing something from a colleague some time ago that there was some sort of continuity arrangement in place with accountants based in England but she could not recall the details. In any event she would have had no authority to implement such a plan and Mr Dunne had never spoken to her about

it. If there was such a plan, she could not understand why Mr or Mrs Dunne had not implemented it.

- 4.15 Mr Dunne provided the Applicant with an Aged Debtors list from which she attempted to recover monies until she realised that her efforts were futile as clients were still waiting for their accounts to be completed and/or waiting for Mr Dunne to telephone them to reassure them that he was dealing with Income Tax letters and invoices that they were becoming increasingly worried about.
- 4.16 Miss Carre was aware that Mr Dunne had a serious health problem.
- 4.17 Just before Christmas 2008 the Applicant had to call the Police as she had an angry client in the office that she could not remove. He said he would sit there all night until he got all his paperwork and accounts back.
- 4.18 Mr Dunne stated that the staff would have been paid if it had not been for his clients holding monies back but there should have always been sufficient funds available to pay staff salaries as the Respondent had a large client base.
- 4.19 During the last few weeks in January 2009 the Applicant had to tolerate clients coming in demanding the return of their paperwork and some of these clients had been telephoning to chase their accounts from the day the Applicant had started working for the Respondent, which indicated that Mr Dunne was anything from two to three years behind. This was also supported by Mrs Lucy Humphries' evidence.
- 4.20 The Applicant managed to stall them for a couple of days by explaining that she needed to get permission from either Mr or Mrs Dunne to release them.
- 4.21 The Applicant informed Mr and Mrs Dunne that their clients were getting very angry and frustrated and she was struggling with the situation.
- 4.22 The Applicant did not receive an answer from them for a couple of days but, by then, things had got out of hand and she had no choice but to give some paperwork back, bearing in mind that some of the clients had received letters from the tax office and wanted Mr Dunne's assurance that he was dealing with matters. Mr Dunne chose not to return their calls.
- 4.23 The Applicant did not allow any paperwork out of the office from clients that Mr Dunne had passed on to the Advocates for court.
- 4.24 The Applicant felt that she was very much on her own in having to deal with the situation and, by this time, she was not even able to answer the telephone as she could not help the volume of clients who were very angry and wanted their accounts.
- 4.25 Mr and Mrs Dunne were well aware that the Applicant was unable to answer the telephone and was having serious problems with angry clients but they chose to let the situation accumulate.
- 4.26 The Applicant notified Mr and Mrs Dunne of all the incoming messages and faxed all necessary paperwork to them but she could see that nothing was being done to rectify the situation which was continually worsening.

- 4.27 The Respondent's Social Security contributions were due in on 15 January 2009 and, up until the Applicant left on 30 January 2009, they were still sitting unopened on Mrs Dunne's computer, as was most of the post that had come in over the past couple of months.
- 4.28 The Applicant was emailing Mrs Dunne practically every day.
- 4.29 In the months leading up to the Applicant's resignation, the Applicant was aware that Mr Dunne was struggling to open a bank account. After many rejections from various banks, he managed to open one without an overdraft facility.
- 4.30 One of the Applicant's colleagues' salary cheque was returned to her with 'Refer to Drawer' around August 2008.
- 4.31 Mrs Humphries confirmed that, as the Respondent's internet was cut off, the Applicant paid the bill out of her own money so that staff could access emails. She had to wait some time to be reimbursed and the first cheque presented bounced.
- 4.32 Court summonses were being received at the office in relation to monies owed by the Respondent, including a repossession order of Mr Dunne's jeep.
- 4.33 The Applicant was also informed several times by the Guernsey Electricity Board that the Respondent would be cut off if they did not receive payment in full for an overdue account.
- 4.34 The Applicant was becoming increasingly worried about the Respondent's future and Mr Dunne's refusal to deal with the situation, making her job virtually impossible.
- 4.35 The Applicant was being treated by her GP for stress in relation to her work situation.
- 4.36 The Applicant asked on a number of occasions when her salary was likely to be paid and if there was anyone else who could review the draft accounts that sat in Mr Dunne's office. She was told that a date for this or any future salary payments could not be given and there was no-one else to deal with the accounts but once Mr Dunne started on them he could get through them quite quickly.
- 4.37 The Applicant could not continue to work for the Respondent with no prospect of payment or any hope of somebody taking control of the situation and trying to rectify it so she felt she had no alternative but to inform Mr and Mrs Dunne that she would be resigning with effect from 30 January 2009 on the grounds that her contract of employment had been fundamentally breached due to non payment of salary.
- 4.38 This was not a decision that the Applicant made lightly, she did not want to leave but she had financial commitments that meant this was an unacceptable position for her to be placed in.
- 4.39 Mr Dunne sent her an email at 19.13 hrs on 29 January 2009 in response to her letter of resignation apologising for the situation and assuring her that, as soon as sufficient funds were recouped from debtors, the Respondent would be providing salary and any additional amounts owed to her for January and February 2009. Within this email Mr Dunne asked her to refrain from lodging an official grievance.

- 4.40 The Applicant confirmed that she received her last salary payment from the Respondent in December 2008. During the latter months of her employment her salary was paid from Mrs Dunne's personal bank account.
- 4.41 Whilst the Particulars of Employment document noted the 20th day for salary payment, in reality payment was usually around 22nd/23rd day of the month.
- 4.42 The Applicant always kept an eye on incoming cheques to assess whether or not there would be sufficient money available to pay everyone.
- 4.43 Mr Dunne's response attached to form ET2 referred to the Applicant's forgetfulness in relation to one of the Respondent's clients in that he had given her £300 in cash as a part payment of his account around November 2008 and she had put it in the petty cash tin and had subsequently forgotten about it. The Case Search provided in evidence by the Applicant notes that the £300 was appropriately recorded against the client account.
- 4.44 Mr Dunne alleged that the Applicant had dismissed a Mrs Cameron who worked for the Respondent for two days per week. The Applicant, together with her colleagues, looked after Mrs Cameron the whole time she was in the office as she was very nervous and did not like answering the telephone or going to the front desk. Mrs Cameron was not at work the week the Applicant resigned and, knowing that the office would not be manned on Monday 2 February 2009, she tried to telephone her without success so contacted her son to advise him of the position. Before leaving on 30 January, the Applicant spoke to Mrs Dunne to say she was concerned about Mrs Cameron being in the office on her own on Monday as she would struggle with the door and the alarm system and Mrs Dunne assured her that she would contact her personally to explain what had happened.
- 4.45 Mr Dunne alleged that the Applicant had damaged the Respondent's client base and referred to thirty-six telephone calls being made over a ten day period. The Applicant confirmed that there were three people in the office, sometimes four, so the total calls averaged between one and two per person per day which would not amount to the many telephone calls that would have been needed to damage the Respondent's client base. The Applicant denied that she would ever do such a thing in any event.
- 4.46 The Applicant made several telephone calls to the Social Security Authority on behalf of herself and her colleagues to find out where they stood with regard to salary deductions which had not been forwarded to the department.
- 4.47 The Applicant did not apply for her current job at the Social Security Authority before tendering her resignation as the job was simply not available at that time. After following up on the payment of unemployment benefit in late February 2009, as she was increasingly worried about her financial situation, she was asked if she would be interested in attending an interview as there was a potential vacancy. The interview took place on 2 March and she was subsequently offered the position on 12 March 2009, her offer letter being provided in evidence.
- 4.48 The Applicant confirmed that Mr Dunne had never raised any performance issues with her during the course of her employment.
- 4.49 During her employment with the Respondent the Applicant considered herself to be a hardworking, reliable and trustworthy employee.

- 4.50 The Applicant denied all other allegations that she had not specifically defended. She had not caused financial and reputational damage to the Respondent and wanted to clear her name.
- 4.51 She had not wanted to leave the Respondent's employment, she wanted to stay but resignation was the only alternative available to her.
- 4.52 Mrs Humphries explained how Mr Dunne had operated the business before the Applicant joined and confirmed that clients were chasing for their accounts when there was no-one apart from Mr Dunne who could complete them and he was rarely in the office. Whilst Mr Dunne used to telephone or email daily, this now rarely happened. Mrs Dunne used to telephone occasionally to cancel Mr Dunne's appointments or to say he was ill in bed but that was largely the extent of their contact. Sometimes clients would come in, wait for half an hour and leave as Mr Dunne did not appear which was extremely unprofessional and Miss Carre would have to deal with them. Miss Carre was often heard dealing with clients who would become quite abusive and nasty but she was always professional in the way she dealt with them and they would leave in a much calmer state and apologetic about taking out their grievances on her.
- 4.53 The staff would often say how worried they were about the state of the business with no money coming in and bills mounting up.
- 4.54 Mr Dunne confided in Mrs Humphries and Miss Carre about the possibility of a company buying the business, reassuring them that their jobs would be safe. She understood that the offer made was not agreeable to Mr Dunne so this was not progressed.
- 4.55 Mrs Humphries recalled another time when an offer was made to Mr Dunne to buy the building from him and pay for an accountant so that the business could get back on its feet. Some progress was made in searching for an appropriate accountant but this also came to a standstill so the offer was later retracted.
- 4.56 The staff was shocked to hear in July 2008 that he had hired a new part time bookkeeper, in addition to Margaret Cameron, who had also been taken on, on a part time basis. They were concerned that he had employed additional staff when he clearly had difficulty paying the staff he had. This employee arrived at work on Monday morning and, as no one knew what she was supposed to be doing, she waited for Mr Dunne. Mr Dunne arrived after 2 pm and immediately met with a client for an hour. He called her in briefly between clients and then she left for the day. The next day she returned and waited until mid morning, then left as Mr Dunne had not appeared. She was not seen in the office again but Mrs Humphries was aware that she wrote a strongly worded email to Mr Dunne as she was appalled at the way she had been treated.
- 4.57 Mrs Humphries understood that Mrs Cameron was apparently employed to chase up all outstanding bills owed to the Respondent and she had been hired because she needed some extra cash. As far as Mrs Humphries was aware Mrs Cameron did not call clients for any reason and wanted to do bookkeeping so the staff tried to show her how to use the computer but, as she found it too difficult, she worked on written books.
- 4.58 Mr Dunne also employed the services of Virtual PA and this was during the time that the final demands were being received. Upon asking why Mr Dunne had done this he said that he was doing the person a favour as she was just starting out. She was often in the office filling

envelopes and putting stamps on them which any of the staff were capable of doing. Mrs Humphries believed her charge out rate to be £30 per hour when the staff could do this at a cheaper rate, particularly as they were willing to do whatever Mr Dunne asked. Mrs Humphries recalled seeing many reminders for payment of her invoices and was unsure if she had been paid in full or not but they did not see her in the office again.

- 4.59 Mrs Humphries even telephoned Mr Dunne offering to put her secretarial skills and relevant qualifications to good use but this was ignored.
- 4.60 Mrs Humphries felt that Mr Dunne probably employed certain people as a favour to them rather than for the benefit of his business.
- 4.61 Mrs Humphries considered that Miss Carre was treated in a very unfair and selfish manner by Mr Dunne and his wife as they were never in the office, there was a severe lack of communication and they left her to deal with a number of angry and upset clients. Mr Dunne spent his whole time blaming everybody else when the business was failing and would never admit it was his fault. The fact that he never returned client calls, answered their emails or completed their accounts had more to do with his client loss than anything Miss Carre did.
- 4.62 Miss Rachel Smith confirmed that one of her salary cheques had bounced in 2007 before Miss Carre commenced employment and, thereafter, payments were often late, more and more calls were being received from irate clients and it would often be weeks before she saw Mr Dunne in the office.
- 4.63 The staff knew that working for the Respondent was sometimes a strain because of Mr Dunne's condition but everyone genuinely cared about Mr and Mrs Dunne and Acumen International Limited. They had flexible working hours (Miss Smith worked ten hours per week) and they were all well paid.
- 4.64 Miss Smith knew that cash flow was extremely tight and in the first six months of 2008 morale was strained due to the lack of support from Mr and Mrs Dunne, with Miss Carre being under the greatest strain as she was on the reception desk dealing with the clients.
- 4.65 Miss Smith took some unpaid leave at the beginning of July 2008 but worked the odd hour here and there on an unpaid basis for the Respondent. Whilst undertaking one of her last jobs for the Respondent she noticed that there were many companies that had not even had their 2004 accounts produced.
- 4.66 In January 2009 Miss Carre telephoned her to advise that she was leaving Acumen International Limited as Mr Dunne was unable to pay her January salary so she called in to say goodbye to them on 30 January. Whilst she was there, the telephone was constantly ringing and people coming in to collect their books as they had heard rumours that the company was in trouble. She did not hear any of the staff say that the company had gone bust. All she heard them say was that they were leaving the office that day, as anyone who had a client facing position would have done.

Respondent

- 5.1 Mr Dunne is the Managing Director of Acumen International Limited.

- 5.2 Miss Carre was employed by the Respondent from 3 July 2007 to 30 January 2009 and resigned of her own volition.
- 5.3 Miss Carre was employed as a Receptionist/Administrative Assistant, not an Office Administrator.
- 5.4 Mr Dunne refuted Miss Carre's claim that he was preoccupied with a number of issues he had with various people as it implied that this related to personal issues when this was not the case.
- 5.5 Miss Carre had always been provided with an Aged Debtors Report and he had explained that certain clients caused cash flow problems as a result of their actions, i.e. the non-payment of fees, evading fees, etc. He did not withhold any information from her and she knew at all times how much each and every client owed to Acumen.
- 5.6 Miss Carre was continually persuaded by the false excuses offered up by clients which enabled them to extend their payment terms and/or evade payment altogether.
- 5.7 Miss Carre's comment that 'no work was going out' and that somehow the Respondent was not generating fees or that it was not owed any money was simply untrue as the chargeable work done by Mr Dunne and Miss Carre's colleagues was recorded in Acumen's management system. Miss Carre did not appreciate or understand that Acumen could have work in progress at any point in time.
- 5.8 Miss Carre did arrange for her sister to meet with Mr Dunne for an informal chat but the conversation was private and confidential and had no bearing on Miss Carre's case.
- 5.9 Miss Carre gave the impression that Mr Dunne was not doing any work because he was not in the office. This was untrue and the volume of emails sent to her and her colleagues was testament to this. In addition to working in the office or at home during the normal working week, he worked more than half of the weekends in 2008.
- 5.10 Mr Dunne was not present in the office during the period in question as a result of a serious illness.
- 5.11 Mr Dunne spoke with Miss Carre and/or other members of staff on the telephone every day when he routinely answered questions and delegated work.
- 5.12 A key part of Miss Carre's role was answering the telephone, meeting and greeting clients and taking messages for Mr Dunne and her colleagues. Her claim that she was under pressure as a result of Mr Dunne's absence from the office is untrue. If Mr Dunne had been in the office she would have been far busier undertaking numerous other administrative tasks.
- 5.13 Mr Dunne never deliberately left the staff in difficult situations when he should be taking responsibility.
- 5.14 The vast majority of the Respondent's clients had agreed fixed annual fees so Miss Carre's claims that clients were sent invoices for work that had not been undertaken were unfounded.

- 5.15 The Respondent always invoiced clients in arrears in respect of time spent although it was acceptable to levy fees in advance of work being undertaken. Billing and invoicing in advance usually occurs when clients are new to a professional firm.
- 5.16 Sometimes Mr Dunne would raise invoices weeks or months after a set of accounts had been signed off and submitted to the Income Tax Office.
- 5.17 During the course of 2008, particularly the latter part, a growing number of clients sought to evade their fees by suggesting to Miss Carre or Mr Dunne that their accounts had to be signed and submitted to the Income Tax Office before monies were due by them when in fact such a 'concocted' or non-existent practice is not and would not be permitted by the professional institutes and associations.
- 5.18 Mr Dunne spoke with Miss Carre on countless occasions with regard to billing and invoicing explaining that any balance shown next to a client's name on the Aged Debtors' List noted an amount properly due to the Respondent and she or the Respondent's Advocates were to set about collecting those fees.
- 5.19 Despite Mr Dunne's best efforts, eventually Miss Carre ignored him and his explanations and chose to believe the clients who were clearly attempting to gain unlawful receipt of the accounts.
- 5.20 During the latter part of 2008 and early 2009, there were many instances of Miss Carre passing copies of accounts to clients who had not paid their fees which resulted in significant losses to the Respondent in terms of non-payment of fees. Miss Carre also took it upon herself to return books and records to clients thus leaving the Respondent with no means of legitimately and legally securing payment of its fees. She did not understand or stop to consider the ramifications of her actions.
- 5.21 In early December 2008 Mr Dunne was taken ill and was advised by his GP and Consultant to take three months off work. Miss Carre failed to explain or disclose this but instead inferred that Mr Dunne was absent without leave.
- 5.22 Prior to tendering her resignation, Miss Carre took it upon herself to contact clients and falsely advise them that 'Acumen was closing down and/or that Acumen had gone bust', thus breaching her employment contract and placing herself in a position where she could be dismissed without notice. Clients contacted by Miss Carre during the week to ten days prior to her resignation had since spoken with Mr Dunne of their own volition expressing their disgust at what had taken place in his absence.
- 5.23 Mr Dunne obtained a computerised print out from Cable & Wireless noting telephone calls made from the Respondent's telephone lines during the period from 19 to 30 January 2009 and noted that Miss Carre had made thirty-six telephone calls to fourteen individual clients, where some clients were obviously telephoned more than once. Twelve of the fourteen clients contacted by Miss Carre no longer used the Respondent's services and have since appointed new accountants following the falsehoods advised to them by Miss Carre.
- 5.24 Miss Carre made three telephone calls to the Social Security Authority during the period from 22 to 28 January 2009 in connection with applying for the job she now holds and enquiring about unemployment benefit.

- 5.25 Due to Data Protection restrictions, Mr Dunne was unable to provide a copy of the lists received from Cable & Wireless.
- 5.26 Miss Carre had decided to leave the Respondent's employment and apply for her existing job before tendering her resignation.
- 5.27 There were a number of serious personal and professional issues which took up a great deal of Mr Dunne's time in 2008 which resulted in forced absences from his office.
- 5.28 A formal Practice Continuity Agreement was in place with another firm of accountants to take over the Respondent's practice in the event of Mr Dunne's sudden death or incapacity. This is a requirement for all practising accountants.
- 5.29 Miss Carre received £300 in cash from a client as a part payment of his account and placed it in the petty cash tin in the Respondent's safe. This was the client Miss Carre referred to as refusing to leave the office until his books and records were returned to him. Miss Carre failed to remember that the client had made a part payment.
- 5.30 Miss Carre's statements and assertions in connection with clients attending the office of their own volition to collect their books and records are wholly false and misleading. Miss Carre contacted the majority of the clients in question by telephone or email and asked them to attend the Respondent's offices to collect them because the Respondent's business was closing down and/or had gone bust.
- 5.31 Miss Carre also personally delivered certain clients' books and records without an original request from the clients and without Mr Dunne's knowledge or consent.
- 5.32 Miss Carre referred to certain clients being two or three years behind with their accounts. This was not unusual and particularly so given the time Mr Dunne lost to the serious personal and professional issues he encountered during 2008.
- 5.33 One of the Respondent's employees, a Mrs Cameron, confirmed to Mr Dunne that Miss Carre had in effect dismissed her from her job having advised her to 'go home and not come back because Acumen was closing down'.
- 5.34 Miss Carre had no actual or implied authority to do or sign anything on the Respondent's behalf or on Mr Dunne's personal behalf.
- 5.35 Miss Carre would have known that she had committed acts of gross misconduct which would have meant her instant dismissal.
- 5.36 On discovering what had taken place, Mr Dunne took the decision not to pay the employees.

6.0 Conclusion

- 6.1 In this case, the burden of proof rests with the Applicant to establish whether or not there has been a dismissal (under the provisions of Section 5(2)(c) of the Law).
- 6.2 Miss Carre admitted to making an error by noting an incorrect job title on her form ET1. The Tribunal is satisfied that this was a genuine error which does not materially affect the outcome of this case.

- 6.3 There is strong evidence to support that Miss Carre was placed in an extremely difficult and stressful situation whilst in the Respondent's employment and that very little support was forthcoming from Mr and Mrs Dunne.
- 6.4 No evidence was produced to verify exactly who made telephone calls from the Respondent's office during the period 19 to 30 January 2009 and what the content of each of those calls was.
- 6.5 Miss Carre confirmed that Mr Dunne had never raised any issues with her in relation to her conduct or performance whilst she was in the Respondent's employment and whilst certain assertions have been made by Mr Dunne, there is no evidence to support them.
- 6.6 Mr Dunne asserted that Miss Carre had committed acts of gross misconduct and breached her employment contract by contacting clients to advise them that Acumen International Limited was 'closing down' or 'had gone bust'. As this was not raised or investigated until after the employment relationship had ended it is irrelevant in terms of determining whether or not the employee was constructively unfairly dismissed and is not for consideration by this Tribunal.
- 6.7 Miss Carre was fully aware of the financial difficulties being experienced by Acumen International Limited and the health issues suffered by Mr Dunne. Despite this, she was sufficiently committed and loyal to Mr and Mrs Dunne to tolerate the situation for quite some time and go well out of her way to assist. However, the situation became intolerable when the Applicant knew that she would not receive her contractual salary payment.
- 6.8 The Tribunal has great sympathy towards Mr Dunne in relation to the personal and professional issues faced by him over recent years but this does not discharge him from his contractual responsibilities as an employer.
- 6.9 The evidence confirms that there was a fundamental breach of contract on the part of the Respondent in that salary payment was not made to Miss Carre, this breach caused her to resign and she did not delay too long before doing so.
- 6.10 Therefore, based on all the evidence presented, the Tribunal unanimously found, under the provisions of Section 5(2)(c) of The Employment Protection (Guernsey) Law 1998, as amended, that the Applicant had been constructively unfairly dismissed in that she was entitled to terminate her contract with or without notice by reason of the employer's conduct.
- 6.11 The Respondent shall pay to the Applicant an award of £15,774.18, this being the equivalent of six months' pay as determined by the Tribunal.

Mrs Tina Le Poidevin
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Chairperson

17 June 2010
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Date