

States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

APPLICANT: Mr Robert Cataroche
Represented by: Himself

RESPONDENT: Mr Nigel Hunkin
Represented by: Himself

Decision of the Tribunal Hearing held on 30 April 2010

Tribunal Members: Ms Georgette Scott (Chairman)
Mr Andrew Vernon
Ms Helen Martin

DECISION

Having due regard to all the circumstances presented, the Tribunal unanimously finds that Mr Robert Cataroche was unfairly dismissed from his employment as an electrician with Mr Nigel Hunkin in relation to section 5 (2) (a) of the Employment Protection (Guernsey) Law 1998, as amended. Mr Cataroche was dismissed without any warning or any regard to either a proper disciplinary procedure or the relevant Commerce and Employment Code of Practice and had been treated neither fairly nor reasonably in relation to the circumstances of the case.

Amount of Award (if applicable): £14,258.50

Ms Georgette Scott

.....
Signature of the Chairman

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 represented himself and provided, in addition to the ET1, (Application form), bundles referred to as EE1 and EE2.
- 1.2 The Applicant gave evidence himself and called as a witness, Mr Martin Le Ray.
- 1.3 The Respondent gave evidence himself and provided witness statements from Mr Stephen Merrien, Ms Stephanie Seiffert together with bundles ER1 and ER2. The Respondent also called as a witness, Mr Paul White.
- 1.4 The Applicant alleged unfair dismissal by the Respondent who had telephoned him late at night to advise him that he was sacked.
- 1.5 The Respondent denied unfair dismissal and claimed the Applicant was taking his business contracts and undermining the business through disloyal comments.

2.0 Facts Found by the Tribunal

- 2.1 The employment relationship between Mr Cataroche and Mr Hunkin had existed on and off over many years, with the business having started in 1989 and both having been friends before that time. The most recent period of employment began, according to Mr Cataroche (and not denied by Mr Hunkin), on 5 November 2007.
- 2.2 No written contract of employment between the parties existed but it was clear that Mr Hunkin employed Mr Cataroche and provided him with work for which he was paid.
- 2.3 The employment relationship came under considerable strain in 2009 when Mr Hunkin's marriage broke down. He was unable to work himself through stress and left Mr Cataroche (and other employees) to undertake work for him, often not seeing them for weeks at a time.
- 2.4 The business also suffered during this period as Mr Hunkin was often unobtainable and his business contacts began to look elsewhere for electrical contracting work.
- 2.5 Mr Cataroche often represented the business and when the business began to lose credit facilities with suppliers in September and October, Mr Cataroche paid for supplies and equipment out of his own pocket.
- 2.6 In a telephone call from Mr Hunkin at 11.50 pm on 1 October 2009, Mr Cataroche was subjected to drunken abuse and told that he was sacked.

3.0 The Law

- 3.1 The relevant section of the Employment Protection (Guernsey) Law 1998 (as amended) in relation to this case is 5 (2) (a).

4.0 Summary of Parties' main submissions

(a) The Respondent's case

- 4.1 The Respondent advised that the business had operated well for some years until his marriage failed in April 2009. He had to sell his house and the stress of the break-up had rendered him unable to work.
- 4.2 When operating well the business had up to five people employed in electrical contracting work for other businesses such as States Housing, Sandpiper and Safeway.
- 4.3 After August of 2009, the Respondent felt that Mr Cataroche was not pulling his weight within the business and this showed in the hours he was submitting for payment. His normal 39 hour week reduced in September with weekly payments for 15, 14 and 24 hours.
- 4.4 He communicated with the Applicant mostly by mobile phone and texting and went weeks without seeing the Applicant. He claimed the business ran itself.
- 4.5 He claimed that he knew that the Applicant was taking jobs in his own name at various times and was planning to leave his employ.
- 4.6 In the summer of 2009, the business started to fail and the number of contracts reduced. Work still came through the Respondent but in an emergency went through the Applicant.
- 4.7 Asked how the Applicant got materials or equipment for a job, the Respondent advised that he still had trade suppliers and the Applicant could order direct and collect any materials required.
- 4.8 Some weeks before Mr Cataroche left his employ, Mr Martin Le Ray, another employee of his, who was now in business with Mr Cataroche, texted him to say that he, was leaving.
- 4.9 Asked about his knowledge regarding disciplinary procedures, Mr Hunkin advised that he knew that there was a system of warnings but he favoured, in most cases, just having a quiet word with an employee in any disciplinary matter.
- 4.10 After an adjournment to locate payslips Mr Hunkin said that he could not locate further evidence regarding the Applicant's reducing hours as a number of weeks of payslips were missing, but he did confirm that his last payslip was for 15 hours on 22 October 2009.
- 4.11 Mr Hunkin denied threatening the Applicant's life or sacking him during the telephone call on 1 November. He felt that the Applicant had left before that date and that was why his last payslip was on 22 October 2009.
- 4.12 Witness statements from Mr Stephen Merrien and Miss Stephanie Seiffert (ER1 refers) told of occasions when the Applicant told the witnesses that he intended to leave Mr Hunkin's employment and take all Mr Hunkin's contracts with him. It was also said that Mr Cataroche claimed that he had to pay for materials for jobs he was working on.

Witness Evidence – Mr Paul White

- 4.13 Mr White advised the panel that he had been told directly by the Applicant in June 2009 that he planned to start a business on his own. The Applicant told him that he had had enough of working for Mr Hunkin.

- 4.14 He claimed that, over the previous few years, the Applicant had done spare time work on a number of occasions for him, or on contracts that he was working on as an Independent Plumbing Contractor. The last of these was for Thomas Wharton in the early part of 2009.
- 4.15 Under cross examination Mr White confirmed that he had approached Mr Hunkin directly but as he was too busy he then approached the Applicant to do the work. Mr Cataroche also commented that he had informed his employer that he was doing the work.
- 4.16 Evidence in the form of diary entries was provided (ER1 refers) to support the work Mr Cataroche had done for, or with, Mr White. Two diary entries were noted - the first was at La Haye de Puits in June 2009, which had come through Mr Hunkin, and the second was one hour of work in September.

(b) The Applicant's case

- 4.17 Mr Cataroche told the panel that during the last few months of his employment he was off work for six weeks with broken ribs and this would explain the missing payslips referred to by his former employer.
- 4.18 During June 2009 the business had started to slip. He was undertaking work for Safeway that had started in June and lasted until 11 September and he noted that Mr Hunkin only made a handful of brief appearances during that period.
- 4.19 Following the Safeway work he undertook a contract for AC Heating that had come through Mr Hunkin's business, but because Mr Hunkin was not paying him he arranged to be paid direct by AC Heating for the work.
- 4.20 Materials for jobs had to be bought and paid for out of his own pocket from September 2009, as suppliers would no longer give Mr Hunkin credit. The Applicant's aim was to keep the business going, particularly as Mr Hunkin was going through such a bad time and was not taking calls regarding the business. He added that reimbursement for the materials was still outstanding and provided receipts for the same (EE2 refers).
- 4.21 Mr Cataroche advised that on the night of 1 November at 11.50 p.m. Mr Hunkin telephoned him in a drunken state threatening his life and was generally abusive. Asked at one point by Mr Cataroche whether one of the threats meant he was sacked, Mr Hunkin replied "Yes, you're sacked".
- 4.22 Mr Martin Le Ray was present in the room when Mr Hunkin telephoned.
- 4.23 After the telephone call Mr Cataroche resolved to become self employed and produced diary entries (EE2 refers) that confirmed that he completed paperwork with the Social Security Department on 3 November 2009.
- 4.24 Mr Cataroche said that it was true that he now had a number of Mr Hunkin's former clients but that they had approached him when Mr Hunkin's business dissolved and could not get hold of Mr Hunkin anymore.
- 4.25 Regarding Mr Hunkin's van, the Applicant stated that he had to park it on private land for two months as Mr Hunkin had told him he would report him to the police if he drove it, as he was not insured. Mr Cataroche advised that he had tried contacting Mr Hunkin on numerous occasions to get it removed but without success.

Witness Evidence – Mr Martin Le Ray

- 4.26 Mr Le Ray confirmed that he was at the Applicant's home when the call from Mr Hunkin came through and that he was only able to hear Mr Cataroche's words. He could, however, hear the raised and aggressive voice on the other end of the phone.
- 4.27 He overheard Mr Cataroche saying "So, I'm sacked then" and at one point "So you're getting someone over from the UK to do me in". It was clear that Mr Cataroche was relaying and summarising parts of the conversation that Mr Le Ray could not hear.
- 4.28 A section of the conversation was also about the return of Mr Hunkin's van.
- 4.29 Mr Le Ray confirmed that he was now in business with Mr Cataroche.

5.0 Conclusions/Decision

- 5.1 The employment relationship between Mr Hunkin and Mr Cataroche, despite the lack of a written contract of employment, was a well established one and one that had Mr Hunkin's personal life not affected his control of the business might still be in existence.
- 5.2 Whilst the business was diminishing, due to lack of management control by Mr Hunkin, it is clear Mr Cataroche made attempts to keep the business going by being a point of contact for business contacts and by purchasing materials in his own right.
- 5.3 The suggestions that Mr Cataroche intended to leave are not denied by him but there is no suggestion that he took any substantial work from Mr Hunkin until after 1 November 2009. The outside work, which the panel were provided evidence of through testimony from Mr White, was already known of by Mr Hunkin.
- 5.4 The call on 1 November, during which it was alleged by Mr Cataroche that he was sacked, was witnessed by his now business partner and former colleague, Mr Martin Le Ray. Whilst the Respondent confirms that a call took place he denies the sacking, however, the panel prefer the testimony of Mr Cataroche and Mr Le Ray in this matter.
- 5.5 Having due regard to all the circumstances presented, the Tribunal unanimously finds that Mr Robert Cataroche was unfairly dismissed from his employment as an electrician with Mr Nigel Hunkin in relation to section 5 (2) (a) of the Employment Protection (Guernsey) Law 1998, as amended. Mr Cataroche was dismissed without any warning or any regard to either a proper disciplinary procedure or the relevant Commerce and Employment Code of Practice and had been treated neither fairly nor reasonably in relation to the circumstances of the case.

Ms Georgette Scott
Signature of the Chairman

17 June 2010
Date