

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Ms S Cotterill

RESPONDENT: Blanchelande Park Nursing Home Limited
Represented by: Ms R Richardson, Solicitor

Witnesses: Called by the Applicant:
Ms D Moss

Decision of the Tribunal Hearing held on Wednesday, 29 September 2010

Tribunal Members: Ms C Latham (Chairman)
Ms G Scott
Mr A Vernon

DECISION

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed on grounds of:

- (1) Refusal to carry out a Health and Safety task
- (2) Asserting a Statutory right

In these circumstances, the Applicant is not entitled to claim exemption from the qualifying period of employment as required by 'the Law'.

The complaint is dismissed.

Costs

The Claimant must pay to the Respondent costs amounting to £485.64, this amount being in accordance with The Employment Protection (Recoverable Costs) Order, 2006.

Caroline Latham

.....
Signature of the Chairman

12 November 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

The Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended ('the Law')
The Employment Protection (Recoverable Costs) Order, 2006 ('the 2006 Order')

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Ms S Cotterill, appeared in person and gave evidence under oath.
- 1.2 The Applicant called Ms D Moss as a witness.
- 1.3 The Respondent, Blanchelande Park Nursing Home Limited, was represented by Ms Rachel Richardson, Solicitor, and *Mr James Madden, Managing Director of the Respondent.*
- 1.4 *The Applicant claimed that* the Respondent unfairly dismissed her on 19 April 2010; her claim (ET1 refers) stated that the grounds for her dismissal were:
- (1) Refusal to carry out a Health and Safety task
 - (2) Asserting a Statutory right
- 1.5 The Respondent disputed the claim (Form ET2 refers) and, in summary, its grounds were that:
- (1) The Applicant was not dismissed for refusing to carry out a health and safety task
 - (2) The Applicant was not dismissed for asserting a statutory right
 - (3) The Applicant did not therefore have the length of service required in order to bring a complaint under the Law
 - (4) The Applicant refused to obey reasonable instructions and for behaved poorly towards staff and residents
 - (5) The Applicant made unfounded complaints to HSSD and The Guernsey Fire Service
 - (6) That amounts deducted from her wages were in accordance with instructions from HM Sheriff's Office
- 1.6 Ms Cotterill had less than the 12 months employment ordinarily required in order to qualify to make a claim under 'the Law'. Ms Cotterill claimed that the 12 month period did not apply in her circumstances.
- 1.7 The parties agreed that it was appropriate for the Tribunal to determine whether the dismissal was for reasons of a) Health and Safety and b) Assertion of a Statutory right, as Ms Cotterill asserted; both of these falling within the category of potentially automatically unfair reasons for dismissal and therefore not requiring the ordinary qualifying period of employment (QP).
- 1.8 If the Tribunal found that the dismissal was for either or both of these reasons, the claim would move to a Hearing of the substantive issues of the complaint.
- 1.9 If the Tribunal found that the dismissal was not for the reasons asserted by Ms Cotterill and therefore did not fall into one or more of the categories not requiring the ordinary QP, the complaint would be dismissed.

2.0 Facts Found by the Tribunal

- 2.1 The Applicant commenced employment as a Care Assistant on 8 February 2010.

- 2.2 Ms Cotterill worked 36 hours per week.
- 2.3 The Applicant was given induction training at the commencement of her employment. Ms Cotterill was, by her own evidence, an experienced care worker familiar with issues of Health and Safety.
- 2.4 There was an incident on 3 April 2010, reported by a senior carer on 6 April, when the Applicant refused to provide cover for levels 4 and 5 at the care home.
- 2.5 Ms Cotterill's assertions that issues relating to the treatment of patients had been reported to her line manager and reported in the 'handover book' were not proven.
- 2.6 The Respondent made deductions from the Applicant's wages in accordance with instructions from HM Sherriff (attachment to ET2 refers).

3.0 Summary of Main Submissions

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

4.0 Summary of Applicant's Submissions

- 4.1 The Applicant gave details of her employment including the dates of commencement and termination.
- 4.2 She confirmed that she was given induction training by Tania Jones. She stated that she was an experienced care worker and was familiar with Health and Safety and issues relating to manual handling.
- 4.3 Ms Cotterill referred to several incidents and made several allegations regarding the treatment of patients and breaches of Health and Safety.
- 4.4 Ms Cotterill was specifically and repeatedly requested to provide dates, times and the facts relating to each of the incidents. She stated that she had reported incidents verbally to her line manager who 'must have reported it in the handover book'. She was unable to give specific details. She gave no evidence to provide a link between Health and Safety and the reason for her dismissal.
- 4.5 At the request of the Tribunal, Ms D Moss, a witness for the Applicant, was called to give evidence under oath regarding the 'handover book' and details of the records kept in that book. Details of a confidential nature, or of a nature described by the Applicant, were not kept in the book. Ms Moss gave examples of the type of entries made, such as which residents were up, who was washed and dressed, times etc. at the time of staff handover.

5.0 Summary of Respondent's Submissions

- 5.1 Ms Richardson submitted that there was no legal basis for the dismissal to be linked to the grounds submitted by the Applicant and described in Form ET1. The dismissal did not fall into the exemptions allowed under 'the Law'. The Applicant is unable to provide evidence (witness or documentary) to substantiate any breach of Health and Safety (S.11 of 'the Law').

- 5.2 With regard to the alleged breach of a 'statutory right' (S.12 of 'the Law') referred to in the Applicant's claim she had to assume that this referred to the arrest of wages. These deductions were made in accordance with an Order of the Court and the Respondent was acting in accordance with the Court's requirements.
- 5.3 The dismissal took place because the Applicant refused to obey reasonable instructions, had a poor working relationship with colleagues and failed to work as part of a team. The letter of dismissal states the actual reasons for dismissal (ER1 tab 11 refers).
- 5.4 The Respondent's care home is a happy and caring environment and no employee had ever been dismissed before this incident.
- 5.5 Ms Richardson made an application for costs in accordance with 'the Law' and 'the Order'. The Respondent's application was made because the claim made by Ms Cotterill was misguided, frivolous and vexatious. The purpose of the claim was to damage the reputation of the Respondent by making unsubstantiated allegations. The claim details are:

Parties' costs (s4)

Mr James Madden:	Claim
a) Costs, fees and expenses reasonably incurred in the preparation or presentation of his case (loss of earnings, photocopying etc:	£100.00
b) Residence overnight	£105.00
c) Travel (flight to Guernsey)	£ 50.64
Total	£255.64

Witness costs (s2(1))

Ms E Couzens:	
a) Travel to/from hearing	£ 15.00
b) Loss of earnings – (2 sessions 12.5 hours @ £18.17 = £227.12).	£100.00
Ms Tanya Jones	
a) Travel to/from hearing	£ 15.00
b) Loss of earnings – (2 sessions 12 hours @ £10.20 = £122.40).	£100.00
Total	£230.00

6.0 Conclusions

- 6.1 The Tribunal had to consider whether the Applicant, having less than 12 months service, could make a claim. The Applicant claimed exemption from the usual qualifying period because the dismissal fell within the exemptions described at S.11 and S.12 of 'the Law'. It was agreed with both parties at the outset of the Hearing that the Tribunal would make a decision on this preliminary matter. The Tribunal would only proceed to a substantive hearing if the reason for the dismissal fell within the exemptions.
- 6.2 The Tribunal explained this to the Applicant at the beginning of the Hearing and reminded her on several occasions during the hearing that she must produce evidence on these issues. She was requested to give full details of the alleged breaches of Health and Safety and breach of her assertion of her statutory rights.

- 6.3 The Applicant's evidence was general in its nature and on occasion made serious and unsubstantiated allegations against her former employer. Despite the various and repeated requests to provide specific details of the incidents, including dates and times Ms Cotterill was unable to provide evidence to support her claim for exemption from the qualifying period.
- 6.4 The Tribunal also had to consider the application made by the Respondent for costs. This is an unusual application before an Employment and Discrimination Tribunal in Guernsey. The Tribunal took into account the claim made by the Applicant. The Applicant was unable to substantiate any part of the claim to the Tribunal and decided to make unfounded allegations against the Respondent. The Tribunal agrees with the Respondent's assertion that the allegations were made to cause damage to its reputation. Bringing this claim before the Tribunal has put the Respondent to considerable expense in terms of costs, fees and expenses incurred in the preparation and presentation of the case, including witness costs. The Tribunal was persuaded by the representations made by Ms Richardson in relation to costs and therefore agrees to the Respondent's Application for Costs.
- 6.5 The Tribunal considered the amount claimed by way of costs and found the claim to be in accordance with 'the 2006 Order'.

7.0 Decision

- 7.1 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal finds that under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed on grounds of:

- (1) Refusal to carry out a Health and Safety task; nor
- (2) Asserting a Statutory Right

In view of this finding, the Applicant is not entitled to claim exemption from the qualifying period of employment as required by 'the Law'.

- 7.2 The complaint is therefore dismissed.

8.0 Costs

- 8.1 The Claimant must pay to the Respondent costs amounting to £485.64 being in accordance with The Employment Protection (Recoverable Costs) Order, 2006.

Caroline Latham

.....
Signature of the Chairman

12 November 2010

.....
Date