

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Miss Sarah Dillon

Represented by: Self represented

**RESPONDENT:** Stanhope Leisure (Guernsey) Limited / The Island Bowl

Represented by: Mr Harry O'Neill

**Witnesses:**

**Called by the Respondent:**

Mrs Hazel O'Neill

**Decision of the Tribunal Hearing held on 8 June 2010**

**Tribunal Members:** Mr Peter Woodward (Chairman)

Mr Norson Harris

Mr George Jennings

**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, the Applicant was unfairly dismissed. An award of £8032.70 is ordered. This being based on the calculation of an hourly rate of £8.35, a working week of 37 paid hours and the period of 26 weeks as stipulated in the Law.

Mr Peter Woodward  
Signature of the Chairman

6 July 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, Miss Sarah Dillon, gave both oral and documentary evidence (EE1 refers).
- 1.2 For the Respondent, Mr Harry O'Neill, General Manager of The Island Bowl, gave both oral and documentary evidence (ER1 refers).
- 1.3 The Respondent called the following witness:-
  - Mrs Hazel O'Neill
- 1.4 The Parties agreed that Miss Dillon was on an hourly rate of £8.35 at the end of her employment in October 2009.
- 1.5 The Applicant asserted that her statutory right to written terms of employment as defined in The Conditions of Employment (Guernsey) Law 1985 had been breached and that this constituted a dismissal within the provisions of the Employment Protection (Guernsey) Law, 1998.
- 1.6 The Respondent resisted the complaint, asserting that a dispute over appropriate work clothing had resulted in the ending of Miss Dillon's employment.

#### **2.0 Facts Found**

- 2.1 Whilst the evidence from the parties was at some minor variance the Tribunal has determined that Miss Dillon was employed by the Respondent from 10 August 2009 until 26 October 2009 in the role of Café / Bar Assistant.
- 2.2 The Island Bowl is registered in Guernsey as Stanhope Leisure (Guernsey) Limited and is a subsidiary of a UK chain of similar enterprises.
- 2.3 The Applicant received written confirmation of her employment in a letter dated 21 August 2009 (ER1 refers). No further documentation relating to her employment conditions was issued to her in the remaining period of her employment. This letter included the following:-
  - The parties to the contract were identified
  - Date of commencement of employment
  - The title of the role which she would perform
  - The hourly rate of pay
  - That the employment was "Part Time"
  - Confirmation that the employment was subject to a three month probationary period
- 2.4 Monthly time Sheets for August, September, and October 2009 were submitted by the Respondent (ER1 refers) and were, after inspection, agreed to be accurate by the Applicant. This record demonstrated a very high variability of hours worked in any given week. This being influenced by customer demand, shift rotas and a desire by the employer to grant a level of flexibility in the working pattern to Miss Dillon and fellow employees. After some questioning it was agreed by both parties that in the absence of any formal statement of hours to be

worked that the underlying intent was that Miss Dillon would work, on average, 37 hours per week.

### **3.0 Miss Sarah Dillon**

- 3.1 Miss Dillon was interviewed by the Respondent in early August and within a few days received telephone communication that she had been successful and that employment could commence on 10 August 2009. During this interview and the subsequent telephone discussion she was told that the details of her employment would be included in a contract of employment.
- 3.2 Miss Dillon stated that she was given the expectation that her hours each week would be variable within a range of 30 to 50 hours per week. Further that these hours would be scheduled on a three week rolling schedule with some shifts commencing at 9.00 a.m., others at 11.00 a.m. and with subsequent evening work. In response to a question from the Tribunal Miss Dillon observed that she had not questioned the use of the term “Part Time” in her offer letter as she had been reassured that the hours worked would be sufficient to meet her expectations.
- 3.3 Miss Dillon was told that contractual notice would be one month either side but this was not confirmed in writing.
- 3.4 Miss Dillon stated that during the first week of her employment and subsequently after approximately a month into her employment she had requested her contract of employment. She was told each time by the Respondent that the practice of her employer was not to issue a contract until three months of employment had elapsed.
- 3.5 On 20 October 2009 Miss Dillon phoned the Citizens Advice Bureau (CAB) to obtain information on her legal rights to a contract of employment. She was advised that her employer should have communicated specific information as to her employment within the first four weeks of that employment and the CAB sent her an explanatory leaflet by post. (Advisory Booklet “Contracts of Employment (*Written Statements and Payslips*) published by Commerce and Employment). Subsequently, on 26 October 2009, as Miss Dillon had stated in her ET1, she requested her contract again from Mrs O’Neill and was told she would get a contract when her employer thought she deserved one.
- 3.6 There followed another disagreement between the Applicant and Mrs Hazel O’Neill. Mrs O’Neill told the Applicant that she should remove her hat whilst working in the Respondent’s kitchen. Miss Dillon responded by telling Mrs O’Neill that it was a legal requirement of food hygiene to wear a hat and that she would be breaking the law if she did not. Mrs O’Neill responded by asking her if she really wanted to be in the kitchen and when Miss Dillon replied “no” she was told by Mrs O’Neill that she may as well go. As a result Miss Dillon left the building.
- 3.7 That same day Miss Dillon briefly returned to confirm that she would be paid for the hours she had worked and was informed that this would occur. In response to questions from the Tribunal Miss Dillon stated that there was no mention of notice or notice payments during this conversation.

### **4.0 Mr Harry O’Neill**

- 4.1 Mr O’Neill is the General Manager of “The Island Bowl”. In both his written statement (ER1 refers) and in his oral evidence he stated that it was the normal practice of his company to

issue a contract of employment within the three month probationary period to which all new employees are subject. This was the procedure applied to Miss Dillon.

- 4.2 An introductory letter was sent to Miss Dillon by the Respondent dated 21 August 2009 (ER1 refers); however he stated no other document was issued to Miss Dillon during her period of employment.
- 4.3 In response to questions from the Tribunal Mr O'Neill admitted that prior to the complaint being brought by Miss Dillon he had no knowledge of The Conditions of Employment (Guernsey) Law 1985; he stated that he understood that ignorance of the law was no defence.
- 4.4 The Respondent explained the content of the monthly time sheets included in the document bundle (ER1 refers) and stated that they confirmed his overall intent that the Respondent work an average of 37 hours per week.

## **5.0 Mrs Hazel O'Neill**

- 5.1 The witness, who is responsible to the Respondent's General Manager for the administration of the centre, referred to a witness statement to be found in ER1. Mrs O'Neill stated that on the last day of her employment she had turned down a request by the Applicant to take a day off work as there was no alternative employee to cover her shift. Miss Dillon was not satisfied with this response and stated she would take the day off anyway. Mrs O'Neill told her that if she did not work her scheduled shift then she would not have a job.
- 5.2 Later on the same day there was a further altercation over a baseball cap which Miss Dillon insisted on wearing in the kitchen. After several repeated requests Mrs O'Neill asked Miss Dillon if she wanted to continue working for the Respondent. Miss Dillon said she did not wish to continue working and left the building, thus ending her employment.
- 5.3 Mrs O'Neill told the Tribunal that Miss Dillon had never specifically stated that the company was breaking the Employment Law.

## **6.0 The Law / Code of Practice**

- 6.1 The Tribunal considered the complaint under The Employment Protection (Guernsey) Law, 1998, as amended, and with particular reference to Section 12.1 Dismissal on grounds of assertion of statutory right. The relevant clauses are as follows:-

*The dismissal of an employee by an employer shall be regarded for the purposes of this part of the Law as having been unfair if for the reason for it (or, if more than one, the principal reason) was that the employee-.....*

*.....Section 12(1)(b) alleged that the employer had infringed a right of his which is a relevant statutory right.....*

*.....12(4) For the purposes of this section a "relevant statutory right" is any right conferred by or under-*

*(a) this Law*

*(b) the Conditions of Employment (Guernsey) Law, 1985.....*

- 6.2 Also with reference to Section 15 Qualifying Period that this .....*shall not apply to the dismissal of an employee if it is shown that the reason.....was one of those specified in section 12(1)....*

- 6.3 Thus the Applicant is not required to have 12 months continuous service before this allegation is heard by a Tribunal.
- 6.4 In regard to an award The Employment Protection (Guernsey) Law, 1998, as amended, does not permit any reduction of award in the event that a dismissal occurred under section 12(1).

## **7.0 Conclusions**

- 7.1 It was not disputed by the Respondent that Miss Dillon made repeated requests for her Contract of Employment and that these requests were disregarded. The Respondent took the position that a contract of employment would not be issued until a period of three months employment had been achieved. It was also not disputed by the Respondent that Miss Dillon was told on her last day of employment that she would only get a contract when she deserved one.
- 7.2 The only document received by Miss Dillon which detailed any terms and conditions of employment was a letter of 21 August 2009 (ER1 refers) and the Tribunal has compared the contents of this document with the requirements of the Conditions of Employment (Guernsey) Law, 1985. This law requires that the employee receives a written statement of terms and condition of employment no later than four weeks after the commencement of their employment; and that this written statement includes certain specified information.
- 7.3 The Respondent met the requirements of this law with reference to the sections of the law as follows:-
- 7.3.1 1(2)(a) Identified the Parties
  - 7.3.2 1(2)(b) Specified the date on which employment began
  - 7.3.3 1(3)(a) The rate of remuneration
  - 7.3.4 1(3)(f) The Job Title
- 7.4 The Respondent did not meet the requirements of this law, with reference to the sections of the law as follows:-
- 7.4.1 1(3)(b) There were no terms relating to hours of work (including any terms and conditions relating to normal working hours).
  - 7.4.2 1(3)(d)(i) There was no statement as to the entitlements to holidays including public holidays and holiday pay (the particulars given being sufficient to enable the employee's entitlement , including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated).
  - 7.4.3 1(3)(d)(ii) There was no statement as to any terms or conditions relating to sickness or injury; including any provision for sick pay, whether such terms existed or not.
  - 7.4.4 1(3)(d)(iii) There was no statement as to the provision, or non provision, of pension and pension schemes.
  - 7.4.5 1(3)(e) There was no statement as to the length of notice to which the employee is obliged to give and entitled to receive to determine his contract of employment.
- 7.5 The 1985 Law requires that the employee must normally work 15 hours or more for the above requirements to be met. The Monthly Time Sheets (ER1 refers) and the verbal agreement of the parties evidenced that a working week of 37 hours constituted the oral contract of employment which existed between the parties.

- 7.6 The Respondent admitted that they had no knowledge of the '1985 law' until after Miss Dillon's employment had ended. The Respondent stated that he understood that ignorance of the law did not constitute a defence.
- 7.7 The parties to this complaint advanced different reasons for the dismissal. It therefore falls to the Tribunal to decide on the balance of probabilities, as a matter of fact, which reason caused, or principally caused, the dismissal. The Tribunal has concluded the principal reason for the dismissal was the fact that Miss Dillon had frequently requested her contract of employment, both prior to and during her employment. The Tribunal puts weight on the fact that by 20 October such is her concern she consults the Citizens Advice Bureau. Subsequently on her last day of employment she again requests a contract. She is told, by an apparently exasperated employer, she will only receive a contract when she deserves it. The Tribunal accepts that there was a later disagreement over appropriate headgear in the kitchen but does not regard this as the principal reason for this dismissal.
- 7.8 The Tribunal does not believe that the Respondent acted in bad faith and the Applicant did not dispute that the Respondent had acted as a good employer in many ways. However the Tribunal finds a clear breach of The Employment Protection (Guernsey) Law, 1998, as amended, in that the Respondent had repeatedly asserted a statutory right and did not have a satisfactory response.

## **8.0 Decision**

- 8.1 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, the Applicant was unfairly dismissed. An award of £8032.70 is ordered. This being based on the calculation of an hourly rate of £8.35, a working week of 37 paid hours and the period of 26 weeks as stipulated in the Law.

Mr Peter Woodward  
Signature of the Chairman

6 July 2010  
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