

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Ian England
 Represented by: Advocate Simon Geall

RESPONDENT: John Thompson Autoresstorers Limited
 Represented by: Ms Gwenllian Sanders

Decision of the Tribunal Hearing held on 13 May and 9 July 2010

Tribunal Members: Ms Georgette Scott (Chair)
 Mr Norson Harris
 Mr Roger Brookfield

DECISION

In relation the three tests of constructive dismissal:

- that there was a fundamental breach of contract on the part of the employer
- that the employer's breach caused the employee to resign
- that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

The Tribunal unanimously finds all to be proven and in relation to the relevant section of the Employment Protection (Guernsey) Law, 1998 (as amended) for constructive dismissal that Mr England was constructively dismissed by John Thompson Autoresstorers for various breaches of contract.

Amount of Award (if applicable): £13,104.00

Ms Georgette Scott

20 August 2010

.....
 Chairman

.....
 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 was represented by Advocate Simon Geall and provided documentary evidence (EE1 and EE2 refers). The Applicant, Mr Ian England provided witness evidence.
- 1.2 The Respondent was represented by Ms Gwenllian Sanders with Mr John Thompson assisting, and provided documentary evidence (ER1 –ER4 refers).
- 1.3 The Respondent called the following witnesses:

Mr Tim Davey, Bodyshop Manager
Mr Peter Wicks, Senior ATA
- 1.4 The Tribunal noted that Mr John Thompson, the owner and Managing Director of the company did not give evidence.
- 1.5 The Applicant alleged constructive dismissal in relation to a number of breaches of contract.
- 1.6 The Respondent denied constructive dismissal and claimed the Applicant resigned to take up alternative employment.

2.0 Facts Found by the Tribunal

- 2.1 Mr England, the Applicant, had worked for John Thompson Autoresorers Limited since 8 August 2005 as a Panel Beater. He also had a previous period of employment with the same company. His employment with John Thompson Autoresorers Limited ceased on 27 December 2009, although his last day of work was 9 December 2009.
- 2.2 His contract and company rules were provided to him upon commencement of employment (EE1, Tab 2 Refers) and provided information on remuneration, overtime, public holidays and sickness. The latter was defined as an allowance of four weeks full and four weeks half pay after service of 12 months or more.
- 2.3 On termination of employment the Applicant was subject to reimbursement of some training costs. The contract stated, "Training given within the employment in-house or elsewhere will be subject to reimbursement by the employee if that training is within two years of termination of employment."
- 2.4 In August 2008 the company fitted a new compressor into the workshop where the Applicant worked. The Applicant felt the compressor was very noisy and spoke to both Mr Davey the Bodyshop Manager and Mr Thompson the owner.

- 2.5 In late 2008, the company agreed to construct a wall around the compressor. The wall improved the noise levels but the Applicant still had concerns and raised these in a staff meeting in early 2009.
- 2.6 Believing the noise levels were still too high the Applicant contacted Mr Barry Abel, a Health and Safety Officer with Commerce and Employment. The compressor was inspected by Commerce and Employment and was found to be operating outside acceptable noise levels. The action required by Commerce and Employment included providing information and training to all employees and the issue of hearing protectors.
- 2.7 On 23 June the company issued a new contract to the Applicant. This had occurred during a training review meeting with Mr Thompson and Mr Davey. During this meeting the Applicant was advised that his training would include a College of FE welding course and that the company was working towards an ATA kite-mark (Automobile Technical Accreditation) (EE1, page 155 refers). The note on the record of the meeting states ".....send Ian on course or courses which will be most beneficial". The Applicant was not advised of the costs of attending training but was supplied with the new contract and told to go away and read and sign it and return it (EE1, page 19 refers).
- 2.8 The new contract had a number of differences to the Applicant's original contract including the complete removal of sick pay, a clause under the heading Remuneration that stated "Any outstanding debts due to the company at the date of termination will be deducted from final monies due, this will include PAS125 or any other training", and a change to the Termination of Employment section which stated "Training given within the employment in-house or elsewhere will be subject to reimbursement by the employee if that training is within two years of employment commencing". A phrase the Applicant did not understand. Finally, a new clause in bold was added to the end of the new contract "I agree to be bound by the terms of this contract and the terms of any amended contract issued from time to time after prior consultation".
- 2.9 The Applicant wrote to his employer in a letter dated 30 July 2009 (EE1, page 23 refers) stating his grievance and his concerns regarding the contract and asking to be informed in writing of all the costs he might incur regarding training should his employment cease. The Applicant handed in his letter to his employer around 8.00 a.m. on 30 July – this being of significance since he was due to attend training in the UK at Thatcham and wanted to resolve the issue regarding training costs before attending any further training.
- 2.10 Later that day at around 4.00 p.m. the Applicant was given a letter dated 29 July 2009 (EE1, page 22 refers) from his employer and signed by both Mr Thompson and Mr Davey. The letter encouraged the Applicant to either sign his contract or raise a grievance.
- 2.11 On arrival the following morning the Applicant waited for Mr Davey and Mr Thompson to arrive whereupon he was called into a meeting and asked to bring an independent witness.

- 2.12 During the meeting, which was very brief, the Applicant was told that he was suspended on full pay pending the outcome of further discussion. The Applicant was not asked to explain why he had not attended the training in the UK instead the discussion was regarding the new contract. Straight after the meeting he was sent home.
- 2.13 A record of the meeting which the Applicant was not asked to sign or agree to was made by Mr Davey, (EE1, page 24 refers).
- 2.14 The Applicant subsequently received a letter dated 31 July 2009 on Saturday 1 August 2009, inviting him to attend a meeting on the following Monday. The letter asked him to compile a list of points he was unhappy with regarding the contract.
- 2.15 The Applicant compiled a list of points as requested and put these within a letter dated 2 August 2009 (EE1, page 26 refers), which he took with him to the meeting.
- 2.16 Present at the meeting were Mr Thompson, Mr Davey and the Applicant (no witness was offered at this meeting). At the end of the meeting the Applicant was told the suspension was lifted and that he should go home, get changed, and report for work in the afternoon.
- 2.17 He returned to work that afternoon and the remainder of August was without incident or further discussion regarding the contract.
- 2.18 In early September the Applicant was handed yet another new contract (EE1, page 31). Compared to the previous new contract, the third clause under heading of Training/Accreditation and associated costs owed to the company, now included "In-House training, Off Island training, ATA Accreditation, Travel and Accommodation costs." This made the second new contract even less favourable than the first new contract.
- 2.19 On 1 October 2009, the Applicant arrived at work to find a colleague from another body shop was setting up for a course; a Boron Steel Awareness Course (this was a new form of steel used in the manufacture of cars).
- 2.20 On 6 October 2009, Mr Thompson handed the Applicant his third new contract (EE1 refers). This contract had further revisions in relation to Training - this time training costs incurred, clawed back on termination, included "Lost Retail Labour". The Applicant understood this to mean that his hourly rate would be charged for his attendance at any training course.
- 2.21 On 19 October 2009, Mr Thompson provided the Applicant with a document entitled "Ian England ATA and Training Expenses" (EE1, page 41-42 refers). This was in response to the Applicant's letter of 30 July 2009 asking for a list of training costs.
- 2.22 Looking at the document for May 2008 the Applicant had attended an in-house course provided by Thatcham. The Applicant was charged his quarter share of the cost of bringing over the tutor as well as his "lost retail labour" for the day – a total of £421.20 for the day.

- In August 2008, the Applicant attended a three day course in the UK. Together with the cost of the course, flights, hotel, general expenses and lost retail labour the total for this course was £2,585.95.
 - In January 2009, there was no external training but the Applicant worked with Mr Davey to understand how to operate a new jig the company had bought. Mr Davey went through the manual with the Applicant in two sessions over a couple of days. The document makes a charge of eight hours for the "in-house training".
 - In July 2009, the course the applicant failed to attend is listed, including flights, accommodation and the "Consequences of Actions two day suspension with pay, lost retail labour (16 hours x £42.31)". Despite being told that his suspension was with full pay he was being charged for the course, travel and his suspension.
 - In total the document lists in-house and external training, travel and expenses amounting to over £8,000. This was the first the Applicant knew of the cost of any training he had attended.
- 2.23 On Friday 30 October 2009, he returned to work, after seeking advice from Commerce and Employment, at around 9.30 a.m. On returning to work he met both Mr Thompson and Mr Davey. He had a brief discussion with them both and advised that he needed some conciliation in order to move matters forward. The Applicant returned to work the following Monday.
- 2.24 The Applicant received two letters from his employer prior to returning to work both dated 30 July 2009, but clearly referring to matters in October and these have been confirmed as having a true date of 30 October 2009 (EE1 pages 45-47 refer). The first of these letters refers to the events of 29 October 2009 and to the Applicant's failure to attend the Thatcham training about which the letter comments "We should have issued you with a written warning then, but we didn't as we thought it would inflame the situation at that time." The letter also threatens court action if agreement with the disputed training costs could not be resolved. The second letter confirmed a First Written Warning for his refusal to sign off and check the work of his colleagues on 29 October 2009. The letter makes no reference to any right to appeal.
- 2.25 In response to these events the Applicant wrote a letter dated 7 November 2009 to his employer setting out at length his concerns regarding his employment (EE1, page 48-50 refers). In the penultimate paragraph he states "I am distressed and confused by this whole situation. Do you actually want me to stay on as an employee?.....I am not sure if I am being forced to stay or forced to leave."
- 2.26 Despite this letter the Applicant penned his written resignation on 21 November 2009 offering to stay until the start of his annual leave on 10 December 2009.
- 2.27 On his final day at work he was handed a training undertaking form to sign indicating he would pay back the training costs of £8950.39 by direct debit at £100.00 per week for 89 weeks (EE1, page 53 refers).

- 2.28 The Applicant was also given a revised copy of the total training costs which on page 2 show that his employer had reduced the total by his last month's salary (EE1, page 56-57 refers).

3.0 The Law

- 3.1 The relevant section of the Employment Protection (Guernsey) Law, 1998 (as amended) in relation to actual dismissal is 5 (2) (a) and for constructive dismissal is 5 (2) (c). This section refers to where "the employee terminates the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct".

- 3.2 In order to prove constructive dismissal the Applicant must establish:

- that there was a fundamental breach of contract on the part of the employer
- that the employer's breach caused the employee to resign
- that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

4.0 Summary of Parties' Main Submissions

The Applicant's case

- 4.1 The Applicant alleged he had been subject to a number of breaches of contract supporting his claim for constructive dismissal. These were:

- that he had been subject to victimisation and verbal abuse over a considerable period of time
- that he had suffered a breach of his contractual terms relating to the imposition of considerable training costs
- that he had suffered persistent pressure to sign a new contract of employment, the terms of which were substantially less favourable than his original contract.

- 4.2 In addition, the Applicant alleged that the Respondent failed to follow fair or any disciplinary procedures, fair or otherwise.

- 4.3 The result of the above was that the Applicant's trust and confidence in his employer was eroded to such an extent that he had no alternative but to resign.

- 4.4 Mr England, the Applicant, confirmed that he had worked for John Thompson Autoresorers Limited since 8 August 2005 as a Panel Beater. The Tribunal noted that he also had a previous period of employment with the same company. His employment with John Thompson Autoresorers Limited ceased on 27 December 2009, although his last day of work was 9 December 2009.

- 4.5 His contract and company rules were provided to him upon commencement of employment (EE1, Tab 2 Refers) and provide information on remuneration, overtime, public holidays and sickness. The latter was defined as allowance of four weeks full and four weeks half pay after service of 12 months or more.
- 4.6 On termination of employment the Applicant was subject to reimbursement of some training costs. The contract stated, "Training given within the employment in-house or elsewhere will be subject to reimbursement by the employee if that training is within two years of termination of employment." The Applicant when questioned did not interpret this as meaning he would pay for all courses, accommodation and flights.
- 4.7 In August 2008, the company fitted a new compressor into the workshop where the Applicant worked. The Applicant felt the compressor was very noisy and spoke to both Mr Davey the Bodyshop Manager and Mr Thompson the owner. Mr Thompson allegedly said that it was quieter than the previous compressor.
- 4.8 Despite his colleagues agreeing with him that the compressor was noisy the company did nothing more until, in late 2008, they agreed to construct a wall around it. The wall improved the noise levels but the Applicant still had concerns and raised these in a staff meeting in early 2009. Mr Thompson's response was that he had had the compressor tested and there was no problem with it.
- 4.9 Believing the noise levels were still too high the Applicant contacted Mr Barry Abel, a Health and Safety Officer with Commerce and Employment. He advised the Applicant to speak to the person at John Thompson Autorestorers Limited who dealt with health and safety matters; this was Mr Tim Davey. On speaking to Mr Davey the Applicant was told that the company were getting in the previous owner to make sure it was running correctly. The previous owners did come and check on the compressor but nothing more was done about the noise levels so the Applicant sought to make a formal complaint and contacted Mr Abel again, notifying Mr Davey that he was doing so.
- 4.10 In the meantime, the Applicant was provided with an internet page printout from Mr Davey who said that Mr Thompson had thought it would be useful. The printout was information on Tinnitus (EE1, page 18 refers). The Applicant thought the suggestion from his employer on receipt of the printout was that he was hearing things and was insulted by it.
- 4.11 The compressor was inspected by Commerce and Employment and was found to be operating outside acceptable noise levels. The action required by Commerce and Employment included providing information and training to all employees and the issue of hearing protectors.
- 4.12 Earlier in 2009, when Mr Davey had been on holiday the Applicant's work was being supervised by Mr Thompson. Mr Thompson required him to undertake a test weld every day and had set up a notice on the company notice-board to that effect.
- 4.13 One day Mr Thompson approached the Applicant at 4.50 p.m. and asked if he had done a test weld that day. The Applicant apologised and said he had not done one as he had not used the welding equipment all day. There followed a brief exchange

and Mr Thompson followed him into the lunch area and said, "I'm going to make your life difficult with some big bills". The Applicant understood this to mean something to do with training and found Mr Thompson's demeanour threatening.

- 4.14 Following this episode the Applicant had, on advice from Commerce and Employment, kept a contemporaneous dated record of further workplace incidents and comments made to him on a timesheet log in his toolbox (EE1, page 28 refers). These incidents included a comment from Mr Tim Davey on 8 May 2009 that he had "a thick head and should review his options", another on 11 May when Tim Davey told him "Everything is a problem for you" and again on 28 May, "Your work is a joke- you need to be retrained".
- 4.15 A further note on the timesheet log dated 23 June notes the issuing of a new contract to the Applicant. This had occurred during a training review meeting with Mr Thompson and Mr Davey. During this meeting the Applicant was advised that his training would include a College of FE welding course and that the company was working towards an ATA kite-mark (Automobile Technical Accreditation) (EE1, page 155 refers). The note on the record of the meeting states ".....send Ian on course or courses which will be most beneficial". The Applicant was not advised of the costs of attending training but was supplied with a new contract and told to go away and read and sign it and return it (EE1, page 19 refers).
- 4.16 The new contracts had a number of differences to the Applicant's original contract including the complete removal of sick pay, a clause under the heading Remuneration that stated "Any outstanding debts due to the company at the date of termination will be deducted from final monies due, this will include PAS125 or any other training", and a change to the Termination of Employment section which stated "Training given within the employment in-house or elsewhere will be subject to reimbursement by the employee if that training is within two years of employment commencing". A phrase the Applicant did not understand. Finally, a new clause in bold was added to the end of the new contract "I agree to be bound by the terms of this contract and the terms of any amended contract issued from time to time after prior consultation".
- 4.17 The Applicant's case offered that the second contract was offering substantially less favourable terms than his original contract. The Applicant explained this to Mr Davey and advised that he would not be signing it and expected that he would advise Mr Thompson of the same.
- 4.18 The Applicant advised the Tribunal that Mr Thompson would walk around the workshop asking employees "have you signed your contract yet." Feeling the pressure to sign this contract the Applicant consulted Commerce and Employment who advised him that only the terms of his original contract were in effect and to raise a grievance regarding the terms of the second contract if he was unhappy with them.
- 4.19 The Applicant wrote to his employer in a letter dated 30 July 2009 (EE1, page 23 refers) stating his grievance and his concerns regarding the contract and asking to be informed in writing of all the costs he might incur regarding training should his employment cease. The Applicant handed in his letter to his employer around 8.00 a.m. on 30 July – this being of significance since he was due to attend training in the

UK at Thatcham and wanted to resolve issue regarding training costs before attending any further training.

- 4.20 Later that day at around 4.00 p.m. the Applicant was given a letter dated 29 July 2009 (EE1, page 22 refers) from his employer and signed by both Mr Thompson and Mr Davey. The letter encouraged the Applicant to either sign his contract or raise a grievance. The Applicant had an argument with Mr Thompson when he handed over the letter, this was regarding the costs of training and travel as he was due to attend training the following day. Mr Thompson's response was that he could not provide full costs as he would not know what his expenses on the trip were likely to be. The Applicant's response to Mr Thompson was "fine see you tomorrow" from which he had expected Mr Thompson to realise he would not be attending the training the following day until the matter was resolved.
- 4.21 On arrival the following morning the Applicant met Mr Thompson Junior who asked him what he was doing there. The Applicant waited for Mr Davey and Mr Thompson to arrive whereupon he was called into a meeting and asked to bring an independent witness.
- 4.22 During the meeting which was very brief the Applicant was told that he was suspended on full pay pending the outcome of further discussion. The Applicant was not asked to explain why he had not attended the training instead the discussion was regarding the new contract. Straight after the meeting he was sent home.
- 4.23 A record of the meeting which the Applicant was not asked to sign or agree to was made by Mr Davey, (EE1, page 24 refers).
- 4.24 The Applicant received a letter dated 31 July 2009 on Saturday 1 August 2009, inviting him to attend a meeting on the following Monday. The letter asked him to compile a list of points he was unhappy with regarding the contract.
- 4.25 The Applicant compiled a list of points as requested and put these within a letter dated 2 August 2009 (EE1, page 26 refers) which he took with him to the meeting.
- 4.26 Present at the meeting were Mr Thompson, Mr Davey and the Applicant (no witness was offered at this meeting). According to the Applicant the meeting was an open and frank exchange regarding issues with the contract, lasting 30 – 40 minutes, with no discussion of attending future training courses. At the end of the meeting the applicant was told the suspension was lifted and that he should go home, get changed, and report for work in the afternoon.
- 4.27 The Applicant thought the meeting was amicable and there was no indication that he was being disciplined. He returned to work that afternoon and the remainder of August was without incident or further discussion regarding the contract.
- 4.28 In early September the Applicant was handed yet another new contract (EE1, page 31). Compared to the previous new contract, the third clause under heading of Training/Accreditation and associated costs owed to the company, now included "In-House training, Off Island training, ATA Accreditation, Travel and Accommodation costs." This made the second new contract even less favourable

than the first new contract and took the concerns of the Applicant no further forward.

- 4.29 On 1 October 2009, the Applicant arrived at work to find a colleague from another body shop was setting up for a course; a Boron Steel Awareness Course (this was a new form of steel used in the manufacture of cars).
- 4.30 The Applicant had not been told in advance of the course and he had no choice but to attend. The course appeared to be required as part of the ATA Accreditation and kite-mark that the garage was seeking. The Applicant had not requested to attend the course.
- 4.31 On 6 October 2009, Mr Thompson handed the Applicant his third new contract (EE1 refers) without comment. This contract had further revisions in relation to Training - this time training costs incurred that would be clawed back on termination included "Lost Retail Labour". The Applicant understood this to mean that his hourly rate would be charged for his attendance at any training course and that his employer was not making any real efforts to resolve the issues raised by the Applicant and that his trust and confidence in him was totally lost.
- 4.32 On 19 October 2009, Mr Thompson provided the Applicant with a document entitled "Ian England ATA and Training Expenses" (EE1, page 41-42 refers). The Applicant took this to be a response to his letter of 30 July 2009 asking for a list of training costs.
- 4.33 Looking at the document for May 2008 the Applicant had attended an in-house course provided by Thatcham. The Applicant was charged his quarter share of the cost of bringing over the tutor as well as his "lost retail labour" for the day – a total of £421.20 for the day.
- In August 2008, the Applicant attended a three day course in the UK. Together with the cost of the course, flights, hotel, general expenses and lost retail labour the total for this course was £2,585.95.
 - In January 2009, there was no external training but the Applicant worked with Mr Davey to understand how to operate a new jig the company had bought. Mr Davey went through the manual with the Applicant in two sessions over a couple of days. The document makes a charge of eight hours for the "in-house training".
 - In July 2009, the course the applicant failed to attend is listed, including flights, accommodation and the "Consequences of Actions two day suspension with pay, lost retail labour (16 hours x £42.31)". Despite being told that his suspension was with full pay he was being charged for the course, travel and his suspension.
 - In total the document lists in-house and external training, travel and expenses amounting to over £8,000. This was the first the Applicant knew of the cost of any training he had attended.

- 4.34 On 28 October 2009, the Applicant took the day off work to consult Citizens Advice Bureau, Autocare and the Police as he thought he was being stolen from. He also went to the Courts to see how Petty Debts were handled. The Applicant went to see Jethrow Limited and saw a copy of an invoice they had for the same Boron Awareness Course he had attended. They had been charged £525 for three people attending whereas he had been charged £500 individually plus £140 for flights and £173.24 for lost retail labour, a total of £813.24.
- 4.35 The Applicant had returned to work on 29 October after a day off work and was asked by Mr Davey to check the work he and a colleague had undertaken on a new Seat door that had been fitted the previous day. The Applicant advised Mr Davey that he was happy to do the checking but would not sign anything until he had consulted with Commerce and Employment that Friday. Mr Davey's response was aggressive and he told the Applicant that had to sign it as it was in his contract. He then demanded the Applicant go into the office where he was angry and aggressive and insulted him and raised his voice telling him that he had to sign the paperwork and if he didn't then he should go home. He also told him that any time in the office had to be made up. The Applicant gathered his possessions and made to leave work, as he was leaving he asked "when should I come back?" and was told "we haven't asked you to leave". Despite being confused by the response the Applicant left work and made an appointment with Commerce and Employment.
- 4.36 On Friday 30 October 2009, he returned to work after seeing Commerce and Employment at around 9.30 a.m. On arrival at work he met both Mr Thompson and Mr Davey. He had a brief discussion with them both and advised that he needed some conciliation in order to move matters forward. Mr Thompson replied "Fine but we need you back at work straight away - you have cost the company enough already". The Applicant responded that as his wife was facing possible Redundancy he wanted to return home. Mr Thompson replied "no concern to me whatsoever". In the event, the Applicant returned to work the following Monday.
- 4.37 The Applicant received two letters from his employer prior to returning to work both dated 30 July 2009 but clearly referring to matters in October and these have been confirmed as having a true date of 30 October 2009 (EE1 pages 45-47 refer). The first of these letters refers to the events of 29 October 2009 and to the Applicant's failure to attend the Thatcham training to which the letter comments "we should have issued you with a written warning then, but we didn't as we thought it would inflame the situation at that time." The letter also threatens court action if agreement with the disputed training costs could not be resolved.
- 4.38 The second letter sets out a First Written Warning for his refusal to sign off and check the work of his colleagues on 29 October 2009. The letter makes no reference to any right to appeal and the Applicant confirmed that he was offered no opportunity to state his side of the events. In addition, on his return to work on 2 November 2009 he was offered no discussion regarding the letter.
- 4.39 In response to these events the Applicant wrote a letter dated 7 November 2009 to his employer setting out at length his concerns regarding his employment and trying to explain his side of recent events (EE1, page 48-50 refers). In the penultimate paragraph he states "I am distressed and confused by this whole situation. Do you

actually want me to stay on as an employee?.....I am not sure if I am being forced to stay or forced to leave.”

- 4.40 Despite this letter matters did not improve and on 21 November 2009 the Applicant penned his written resignation offering to stay until the start of his annual leave on 10 December 2009. The Applicant told the tribunal with the never ending courses and costs and then with possible reassessment once the kite-mark had been achieved the issues would never be resolved. He also felt that relations with his employer were at an all time low and he had no trust or confidence in them.
- 4.41 On his final day at work he was called into the office to go through his toolbox to ensure he didn't take any work materials when he was asked how he was going to pay training costs. He was handed a training undertaking form to sign indicating he would pay back the training costs of £8950.39 by direct debit at £100.00 per week for 89 weeks (EE1, page 53 refers).
- 4.42 The Applicant was also given a revised copy of the total training costs which on page 2 show that his employer had reduced the total by his last month's salary (EE1, page 56-57 refers).
- 4.43 Asked to confirm why he had sought employment before resigning the Applicant said that with a mortgage and bills he had to ensure that he had an income.

The Respondent's case

- 4.44 The Respondent produced the Company Handbook and a copy of the Disciplinary Procedure which had been requested during presentation of the Applicant's case (ER2 and ER3 refers) and claimed that both were permanently available for all staff in the lunchroom at John Thompson Autorestorers.
- 4.45 The Applicant said he was aware of the Handbook but had never been given a copy of it, had never been asked to agree changes to it and would therefore not know if it had changed regularly during his employment.
- 4.46 The Respondent referred to item 15 of the Company Rules (ER3 Refers) which formed part of the Handbook and pointed out that this stated that ATA courses, whether in-house or external would have to be reimbursed if any member of staff left. It then gave a staggered reimbursement schedule depending on service.
- 4.47 The Applicant upon being questioned said he had not agreed to that as a new clause within the Handbook.
- 4.48 The Applicant also said he had not seen a copy of the Disciplinary Procedure (ER2 refers) and that it had not been produced on 29 October 2010. He also added that he had been offered no right of appeal.
- 4.49 The Respondent suggested to the Applicant that changes to the Employee Handbook had been a regular feature of Staff Meetings that he had attended throughout 2009. The Applicant denied this.

Witness Evidence from Mr Tim Davey, Body Shop Manager

- 4.50 Mr Davey confirmed that the company undertook a test weld every day in the workshop. He also said that the Applicant had a problem with following procedures - this being quite an issue in the workplace as every job had manufacturer's procedures.
- 4.51 Mr Davey claimed that the Applicant had been asked, as had all employees, if he wished to undertake the ATA Accreditation. They were all happy to do it and move forward.
- 4.52 When, on receipt of the first new contract, the Applicant had concerns regarding training Mr Davey claimed that he offered to discuss them with Mr Thompson on his behalf. Mr Davey said that he had no idea that Mr England would not go to the UK for his training on 29 July 2009.
- 4.53 In response to questions Mr Davey recalled suspending the applicant for his failure to attend the course after first taking relevant advice.
- 4.54 In relation to the events of 29 October when the Applicant refused to sign off and check some work Mr Davey claimed that the Applicant had been offered a work place colleague present at the meeting but had refused. In some related notes regarding the issue Mr Davey had recorded "He admitted leading his colleagues to work slow and being disruptive" (ER1, tab 14, page 3 refers).
- 4.55 Regarding the contractual changes Mr Davey said that they were discussed in staff meetings and staff were asked to contribute to the consultation. Mr Davey denied that any pressure was put on the Applicant to sign the new contracts.
- 4.56 Asked if he had ever insulted or threatened the Applicant Mr Davey said that he might have told him to "grow up". He also advised that he was not aware that the Applicant was looking for another job.
- 4.57 Under cross examination Mr Davey confirmed that Mr Thompson was responsible for all employment matters within the company but they both liaised over day to day employment issues and Mr Davey always had input into decision making.
- 4.58 Presented with the three new contracts issued to the Applicant in 2009 Mr Davey confirmed that they had all been left unsigned by the Applicant.
- 4.59 Under questioning Mr Davey confirmed that the events the Applicant described regarding the compressor were correct. Mr Davey also confirmed the derogatory comments he made to the Applicant that he had subsequently recorded on his time sheet.
- 4.60 Mr Davey confirmed he had some part in the drafting of the new contracts.
- 4.61 In relation to the first new contract he confirmed that there was no clause on sick pay and that the last paragraph on training was unclear. He also accepted that the clause in bold indicated that the contract could be changed after it was signed and that the contract was less favourable to the Applicant than his original contract.

- 4.62 Mr Davey advised that all staff attending training would be provided in advance with all their course, travel and accommodation details together with full costs. When these were provided to the Tribunal on day two of the hearing (ER4 refers) no costing details were produced.
- 4.63 Referring to the second new contract issued in early September 2009 Mr Davey accepted that it was much less favourable than the previous new contract issued on 23 June 2009.
- 4.64 Asked whether the Applicant had been advised in advance of the Boron Awareness course Mr Davey claimed he would have been informed in a staff briefing. He agreed that nothing had been provided in writing.
- 4.65 Asked if he was advised of the costs of the course in advance Mr Davey claimed the Applicant had been told verbally but conceded that he had not asked to go on the course.
- 4.66 In relation to the final new contract to which the company had added "Lost Retail Labour" as an additional training cost payable by the Applicant Mr Davey acknowledged that this did not appear on previous contracts.
- 4.67 In relation to the list of training costs provided to the Applicant on his departure where, in addition to training costs "lost retail labour" had been deducted as well two days when the Applicant had been suspended, Mr Davey acknowledged this had been done but did not find it unacceptable.
- 4.68 Under questioning Mr Davey claimed that the Applicant was not entitled to sick pay but had to concede this when he was shown the Applicant's original contract. Referring to the Applicant's October payslip (EE1, page 36 refers), it was noted that the Applicant had been deducted eight hours of pay relating to a day off sick.
- 4.69 Mr Davey acknowledged that in relation to the events of 29 October 2009 that the Applicant had not been accorded his rights in relation to the Disciplinary Procedure and had failed to advise him that he had a right of appeal.
- 4.70 Mr Davey also accepted that in relation to an incident on 12 November 2009, regarding a skip lorry that he had criticised the Applicant's work and then called him into the office and shouted at him.
- 4.71 Mr Davey denied failing to provide training costs to the Applicant saying that he had been made fully aware. He advised that the Applicant had not been provided with a fully itemised list until near the end of his employment and again on his last day of work because the list was constantly evolving.
- 4.72 The Tribunal noted that that the training costs of nearly £9K were over a third of the Applicant's annual salary.
- 4.73 Mr Davey, when asked to comment on the deduction of the Applicant's final month's salary from the £9K training costs bill, said that he could not comment as he did not deal with the financial side of the business.

Witness Evidence from Mr Peter Wicks, Senior Paint Sprayer

- 4.74 Mr Wicks told the Tribunal that ATA Accreditation was a test of an employee's skills and trade and tested these to a very high standard. He added that a lot of the process was a series of tests, usually online looking at legislation, equipment, practical procedures and safety matters.
- 4.75 Once achieved the person is added to an International database and given an ID number. Any new employer can check the person's standing. The accreditation provides the employer with high level skills which can assure the customer that the garage has a high level of expertise.
- 4.76 The Tribunal heard that as a Senior Paint Sprayer he was of a similar level to the Applicant as Senior Panel Beater.
- 4.77 Mr Wicks told the Tribunal that at a staff meeting Mr Thompson had told staff about the ATA Accreditation and kite-mark and advised that certain members of staff would have to pursue training in order for the company to achieve the kite-mark. Mr Wicks advised that both he and the Applicant agreed to undertake the training.
- 4.78 The training and the costs were set out at the meeting and Mr Wicks felt it was something he would want to achieve as the accreditation would stay with him, whoever he worked for. The only proviso was that he would have to retake the tests every five years but that this was possible through occasional training courses reading manuals and magazines.
- 4.79 Mr Wicks told the Tribunal that whenever he attended a course off-island he was given a pack of information covering flights, course details, costs and accommodation. He added that he knew that it would cost him a day's labour but as it was his accreditation this was reasonable.
- 4.80 In June 2009, he was provided with a new contract which had been as a result of liaison between staff and management earlier in the year. Mr Wicks claimed he understood that he would be liable for full costs if he left the company. He added in relation to the signing of the contract, "I understood and agreed to it, anyone that didn't was told they had to do it".
- 4.81 Asked if he knew the Applicant was unhappy at work Mr Wicks responded that the Applicant had told everyone in the Workshop. He was also aware that there were a number of incidents where the Applicant was not working to full speed and, in his view, the Applicant had changed after first failing his accreditation and had thereafter lacked enthusiasm for the job.
- 4.82 Under cross examination Mr Wicks was asked what his outstanding training costs were since he claimed to be aware of them. Mr Wicks responded that given that he was in his second year the outstanding amount to him was about £900.
- 4.83 Asked how much his reassessment would cost him Mr Wicks responded that he had not thought that far ahead and agreed that it was not covered in the employment contract.

5.0 Conclusions/Decision

- 5.1 Taking each of the Applicant's alleged areas of breach of contract in turn, the Tribunal found as follows:
- 5.2 First the Tribunal accepts that Mr England had been subject to some sustained pressure to sign his new contracts, Mr Wicks' testimony in part supports this. It is also clear that Mr England was often subject to criticism that included raised voices, shouting and name calling – Mr Davey's testimony also support this. The Tribunal would add that Mr England was also subject to long periods where his concerns in the workplace and his correspondence with his employer went unanswered. It is possible that Mr England had been identified as a trouble maker in relation to the issue regarding the compressor and thereafter was subject to a variety of victimisation and verbal abuse. The Tribunal therefore finds that the employer was responsible for a breach of Mr England's employment contract in this regard.
- 5.3 The unprecedented attempts by Mr England's employer to claim back escalating training costs through a series of increasingly unfavourable new contracts, together with the pressure and threat of "big bills" that took the employer two months to produce following a request by Mr England, are evidence of considerable manipulation by an employer of Mr England's employment rights and, in the Tribunal's view provide for a further breach of contract.
- 5.4 The elements of the aforementioned training costs including in-house courses where the tutor was an untrained colleague who was reading from a manual, the payment of a tutor's flight costs to the island, the payment of "lost retail labour" for every hour that could feasibly be called training or development and the repayment of suspension days which, according to the company's disciplinary code, suspension was applied with full pay, all point to an employer who regularly rewrote the rule book whenever it was in his interests. Indeed, the new contracts were designed to allow the employer to do just that – Mr Davey conceded this in his testimony. Once again the Tribunal finds that this is a breach of contract.
- 5.5 The Tribunal also accepts that John Thompson Autorestorers both failed to follow their own disciplinary procedures or any other fair process in their management of Mr England in relation to the events 29/30 October 2009.
- 5.6 Mr England's concerns raised in articulate and detailed letters were ignored and there is no doubt that he suffered over a long period and that his resignation was directly related to his loss of trust and confidence in his employer. To suggest, as the Respondent does that Mr England simply left to pursue a new job in a different industry as is claimed by the Respondent, is inadequate.
- 5.7 Whilst it is unusual to find an employee that claims constructive dismissal but whom serves their notice period, it is not unique, and the Tribunal accepts that Mr England wished to leave on reasonable terms with his employer of six years and that that is not relevant to the case overall.

5.8 In relation the three tests of constructive dismissal:

- that there was a fundamental breach of contract on the part of the employer
- that the employer's breach caused the employee to resign
- that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

5.9 The Tribunal unanimously finds all to be proven and, in relation to the relevant section of the Employment Protection (Guernsey) Law, 1998 (as amended) for constructive dismissal, that Mr England was constructively dismissed by John Thompson Autorestorers Limited for various breaches of contract and failure to follow any fair disciplinary procedures.

The Tribunal therefore makes an Award of £ 13,104.00.

Ms Georgette Scott

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Chairman

20 August 2010

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Date