

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

**APPLICANT:** Mr P Farnham

**RESPONDENT:** Mr N Price

**Decision of the Tribunal Hearing held on 15 January 2010**

**Tribunal Members:** Ms Caroline Latham  
Mr Andrew Vernon  
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.

Under Section 22(1)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, the Respondent shall pay to the Applicant an award of £12,512.50, this being the sum equal to six months' pay, as determined by the Tribunal, with reference to the Applicant's final six months of employment with the Respondent.

**Amount of Award (if applicable): £12,512.50**

Ms Caroline Latham  
Signature of the Chairman

10 February 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 ('the Law')**

### **Extended Reasons**

#### **1.0 Introduction**

- 1.1 The Applicant, Mr P Farnham, appeared in person and gave witness under oath.
- 1.2 The Respondent, Mr N Price, appeared in person and gave witness under oath.
- 1.3 At the outset of the hearing, the date of termination had not been agreed, nor had the amount of Mr Farnham's salary.
- 1.4 After discussion and reference to the average weekly working hours, it was agreed by both parties that Mr Farnham's average weekly wage was £481.25 based on 27.5 hours per week.
- 1.5 It was agreed between the parties that the effective date of termination was 6 May 2009.
- 1.6 It was alleged by Mr Price that he was unfairly dismissed, contrary to Section 3 of "the Law".
- 1.7 Mr Price claimed that his business had ceased trading as a result of substantial debts.

#### **2.0 Facts Found by the Tribunal**

- 2.1 The Applicant commenced employment as a general builder with the Respondent on 29 April 2008. He had asked Mr Price for work and from the outset he was aware that Mr Price had financial difficulties.
- 2.2 His weekly hours of employment varied, depending on the amount of work and the availability of materials. Mr Price was aware from the outset that the amount of work that Mr Price could provide would vary. Over the period of his employment the average weekly hours were 27.5. Records of the weekly hours were maintained and payslips provided but were unavailable to the Tribunal.
- 2.3 During the period of Mr Farnham's employment the amount of work began to increase. However, the regularity of payment of Mr Farnham's weekly wage became less frequent. Mr Price paid Mr Farnham as and when he could afford to do so. When Mr Farnham was paid he was given cash depending on how much money Mr Price had available; any outstanding monies owing were shown on an "IOU" after the calculation of tax and social security deductions.
- 2.4 The situation regarding payment of wages deteriorated until the situation arose in March 2009 when Mr Farnham had not been paid for 9/10 weeks.
- 2.5 Mr Farnham discussed the lack of payment of his wages. He spoke to Mr Price about it "12 times or more". In spite of making demands for payment and being given assurances from Mr Price that wages would be paid on a regular basis, nothing changed.
- 2.6 By April 2009 Mr Farnham was in need of his unpaid wages amounting to about £4000. His wife had given birth to their son on 23<sup>rd</sup> March and was on maternity leave.

- 2.7 In 2009, Mr Farnham's working hours reduced as a result of a lack of materials available due to Mr Price's increasing financial problems. When materials were available, Mr Farnham tried to increase his hours for his own benefit and in an effort to keep Mr Price's customers satisfied. There was no evidence that there was a shortage of work available.
- 2.8 In April 2009, Mr Farnham received payment of £3897.13, in 2 tranches, for the wages owed to him from previous weeks.
- 2.9 The relationship between the two men began to deteriorate during April and May 2009. Mr Farnham was working at a property in Torteval. On Wednesday 6 May, Mr Price arrived at the site and the two men went to a local public house. Mr Price explained his business situation saying "that's it, no more work".
- 2.10 Although the two men remained at the public house for some time they had no further discussion that day. Mr Farnham left Mr Price's van keys at the public house and returned home on the bus. He never returned to work since he had interpreted Mr Price's statement on 6 May 2009 to be a statement dismissing him from his employment.
- 2.11 Some time after that day, arrangements were made to return tools, keys and a pressure cleaner.

### **3.0 Evidence given by the Parties**

- 3.1 The Tribunal was presented with no written evidence relating to the Applicant's terms of employment, record of his earnings, documentation relating to the alleged dismissal etc.
- 3.2 Both parties gave their own oral account of the employment relationship, details of Mr Price's business, the terms of Mr Farnham's employment, details of his work routine and the type of work undertaken. Both parties described the events that concluded in the alleged dismissal on 6 May 2009. The Tribunal was careful to assist the parties throughout the proceeding by asking questions to elicit all the facts and information that was relevant to the claim. The evidence provided is summarised under Section 2 above, 'Facts Found by the Tribunal'. All submissions and arguments put forward by the parties were considered by the Tribunal, whether they are mentioned specifically in this judgement or not.

### **4.0 Conclusions**

- 4.1 The Tribunal concluded that Mr Price's business was under considerable financial pressure and this, combined with Mr Price's inability to manage his financial affairs led to an uncertain situation for the Applicant due to the lack of regular payment of his weekly wages.
- 4.2 Mr Price's business was clearly in a difficult trading position with debts that he was having difficulty in repaying for a variety of reasons. The Tribunal concluded that in spite of running a very small business, his apparent lack of management skill and dire financial situation, his employee was entitled to be treated fairly in his employment. This, Mr Price failed to do and his employee was entitled to conclude that on 6 May 2009 his statement, "that's it, no more work", was properly interpreted as a dismissal.
- 4.3 The working relationship between the two men deteriorated during the months preceding the dismissal as a result of Mr Price's failure to pay the Applicant his weekly wages and his inability to manage his business in an appropriate way, including properly managing and communicating with his employee.

- 4.4 Having determined that the Applicant properly interpreted the Respondent's words as a dismissal, the Tribunal had regard to Section 3 of "the law" which states that every employee shall "have the right not to be unfairly dismissed by his employer". The Tribunal then further considered the provisions relating to the fairness of dismissal, in accordance with Section 6 of "the law" and, in particular, whether the dismissal was for a potentially fair reason. The Tribunal found that the reason for the dismissal was not for any of the potentially fair reasons, defined at Section 6 (2) of "the law" and concluded therefore that the dismissal was unfair.

## **5.0 Decision**

- 5.1 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.
- 5.2 Under Section 22 (1)(a) of the Law, the Respondent shall pay the Applicant an award of £12,512.50, this being the sum equal to six months' pay, as determined by the Tribunal.

Ms Caroline Latham  
Signature of the Chairman

10 February 2010  
Date