

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPELLANT:** Mr David Bourgaize

The Appellant sought to appeal the decision made by the Commerce and Employment Department that his claim of unfair dismissal was submitted out of time.

Decision of the Tribunal Hearing held on 19 August 2010

**Tribunal Member:** Ms Helen Martin

**DECISION**

Having considered all the evidence presented and the 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 Appellant had not submitted his complaint with the prescribed time limit and therefore this complaint is dismissed.

**Amount of Award (if applicable): Not applicable**

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

Ms Helen Martin

17 September 2010

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Chairman

Date

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 Appellant, Mr David Bourgaize, represented himself and gave oral and documentary evidence (ET1 refers).
- 1.2 The Appellant asserted that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998 as amended.
- 1.3 The Appellant sought to appeal the decision made by Commerce and Employment that his claim was submitted out of time.
- 1.4 The Chairperson advised that she would hear arguments from the Appellant on the “Time Limit” issue. If she found that the complaint had been presented in time then further hearing(s) would be scheduled for the full Tribunal panel to hear the substantive issues in Mr Bourgaize’s complaint. If the Chairperson found that the complaint had been submitted out of time then the Appeal would be dismissed.
- 1.5 The Appellant claimed that his Effective Date of Termination (EDT) was 5 March, 2010, the date that he was paid up to by the employer according to his income tax records.

#### **2.0 Facts Found**

- 2.1.1 Mr David Bourgaize was employed by AAA Drainforce Limited based in Guernsey from 6 February 2004.
- 2.2 On 26 February, 2010, following a conversation with Mr Richard Lovering, the Managing Director of AAA Drainforce Limited, the Appellant left the site of Drain force Limited and did not return.
- 2.3 The Appellant was paid by the employer until 4 March, 2010, according to his income tax record.
- 2.3.1 The Appellant received a letter from the employer dated 24 March, 2010. The letter stated that the employer assumed that Mr Bourgaize had terminated his contract of employment with AAA Drainforce Limited by leaving the site on Friday 26 February and not returning to work subsequently. In addition, the letter referred to concerns that the employer had had with regard to the Appellant’s performance and attitude towards his work over the preceding 12 months. The letter also made reference to the overpayment of accrued holiday pay and the half a day’s labour owed to the Appellant up until he left the site on 26 February.

#### **3.0 Mr David Bourgaize**

- 3.1 The Appellant advised the Chairperson that he had expected a telephone call from Mr Lovering of AAA Drainforce Limited to apologise for the heated conversation that had occurred on site on 26 February, 2010.

- 3.2 The Appellant advised the Chairperson that he worked for a friend for a few days during the period after he left the work site and before he attended the job centre.
- 3.3 After a period of two weeks had elapsed, Mr Bourgaize alleged that he went to AAA Drainforce Limited to collect his tax and social insurance details. He was told that these had been forwarded to the job centre.
- 3.4 Mr Bourgaize attended the job centre and was advised that he was disqualified from claiming benefit as it was assumed that he was suspended from work at AAA Drainforce Limited.
- 3.5 The Appellant claimed that his poor literacy skills meant that although he was given booklets about how to make a claim to Commerce and Employment he did not understand how to go about making a claim for unfair dismissal. He met with an Employment Relations Officer at Commerce and Employment who he found very helpful. His partner completed his ET1 form under his direction due to his poor literacy skills and he signed the document. The Appellant claimed that the ET 1 form was submitted to the Employment Relations department at Commerce and Employment without delay. The ET1 form was received on 27 May, 2010.

#### **4.0 The Law**

- 4.1 The complaint was considered under The Employment Protection (Guernsey) Law, 1998, as amended.
- 4.2 Section 17 of the Employment Protection (Guernsey) (Amendment) Law, 2005 entitled "Time limit for presenting complaints", states that the Tribunal shall not hear and determine a complaint under section 16(1) unless it is presented to the Secretary -
- (a) within a period of three months beginning on -
  - (i) the effective date of termination ... (EDT)
- 4.3 The Tribunal may exercise discretion as to this time limit where it was 'not reasonably practicable' for the complaint to be delivered in the three month time limit.

#### **5.0 Conclusions**

- 5.1 The Chairperson noted that a letter confirming the end of employment was not issued on 26 February, 2010. Written confirmation of the ending of the contract by the employer was sent to the Appellant in a letter dated 24 March 2010.
- 5.2 The Chairperson placed weight on the fact that Mr Bourgaize, even after time to reflect and complete his ET1 with assistance from his partner, considered his termination date to be 26 February 2010 on the ET1 form. It was therefore reasonable that his claim had been considered to be out of time by the Commerce and Employment Department when it was received on 27 May, 2010.
- 5.3 It was not contested that the ET1 was signed and delivered to the Secretary to the Tribunal at Commerce & Employment on 27 May 2010. This date being outside of the 3 month allowed time limit when calculated from the date the Appellant left the work site on 26 February, 2010.
- 5.4 An employee wishing to claim unfair dismissal must present his or her complaint to the Commerce and Employment department before the end of the three month period beginning with the effective date of termination of employment. If he or she fails to do so, the claim will

only be accepted if it was 'not reasonably practicable' for the employee to comply with the time limit, and if the claim was presented within such further period as the Tribunal considers reasonable.

- 5.5 The Chairperson was persuaded that in circumstances where one of the parties to a contract terminates it in circumstances where the other party is made immediately aware of the termination, then the termination is regarded as taking effect on that same day. Therefore, the effective date of termination (EDT) is considered to be 26 February, 2010. In this case, the actions of the employer after the effective date of termination (EDT) concerning the payment to Mr Bourgaize up until 4 March, 2010 are not relevant to the date on which employment is to be regarded as terminated for statutory purposes.
- 5.6 The indication that the employer did not remove the Appellant from the pay roll system until 4 March does not alter the EDT.
- 5.7 Further, the Appellant admitted he had worked for a friend after he left the work site, indicating he no longer believed he worked for AAA Drainforce Limited.
- 5.8 The Chairperson was not persuaded that Mr Bourgaize's apparent ignorance of the time limit was a reason to gain a time extension on the ground of 'not reasonably practicable.' The Chairperson's view was that when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right and three months is a reasonable time frame in order to do so.

## **6.0 Decision**

- 6.1 Having considered all the evidence presented 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 Appellant had not submitted his complaint with the prescribed time limit and therefore this complaint is dismissed.

Ms Helen Martin

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Signature of the Chairman

17 September 2010

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Date