

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Michael Cluer

Represented by:

RESPONDENT: CAMS Limited

Represented by: Mr Marc Littlewood

Decision of the Tribunal Hearing held on 21 April 2011

Tribunal Members: Ms Georgette Scott (Chair)
Ms Kathy Tracey
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 unanimously found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

Amount of Award (if applicable): £12,000.00

Georgette Scott

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Signature of the Chairman

11 June 2011

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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, Mr Michael Cluer, appeared in person and gave witness testimony under oath.
- 1.2 The Respondent was represented by Mr Marc Littlewood, Director of CAMS Limited, who gave witness testimony under oath.
- 1.3 The Respondent called two witnesses, Mr Steve Gould and Mr Alan Pike, both of whom gave witness testimony under oath.
- 1.4 The Applicant alleged unfair dismissal through forced retirement.
- 1.5 The Respondent claimed that the Applicant was asked to retire as he had reached 65 years of age, but that this was made necessary by increasing concerns in relation to his conduct with clients and colleagues.

2.0 Facts Found by the Tribunal

- 2.1 Mr Cluer was employed by CAMS Limited as a Sales and Hire Operative from January 2002 until October 2010.
- 2.2 CAMS Limited is a small company consisting of two full-time employees and one part-time employee.
- 2.3 Mr Cluer reached the age of 65 on 6 October 2010.
- 2.4 Neither Mr Cluer's contract of employment nor any company policy made reference to a retirement age for employees.
- 2.5 On 26 October 2010 Mr Cluer received a letter from Mr Littlewood (EE1, p23 refers) asking him to take the day off to consider his retirement plans and to return at 4.00 p.m. to discuss them in a meeting with Mr Littlewood.
- 2.6 On 27 October 2010 Mr Cluer received a further letter from Mr Littlewood (EE1, p24 refers) confirming that he would like Mr Cluer to retire at the end of the month. He was to take the rest of the week off and would have any "underpayments" on his salary to date in his final salary.

3.0 The Law

- 3.1 The Applicant alleged that he was unfairly dismissed within the meaning of 5 (2) (a) of the Employment Protection (Guernsey) Law, 1998 as amended, and that the dismissal fell under the general provisions relating to fairness of dismissal and the principal reason that of section 6 (2) (e) a dismissal for some other substantial reason.

4.0 Summary of Parties' Main Submissions

The Respondent's case

- 4.1 Mr Littlewood advised the Tribunal that the Applicant's conduct over the previous two years had led to a number of disagreements with other staff. When Mr Littlewood realised that the Applicant had reached the age of 65 on 6 October 2010, he initially paid no attention to the fact and had expected the Applicant to raise it with him, as had previous employees.
- 4.2 Mr Littlewood also stated that he had not taken advice over enforcing the retirement age as he felt sure it would mirror his knowledge of public sector employees who were required to retire upon reaching their 65th birthday. When the Applicant's conduct again gave cause for concern on 25 October 2010, he felt he had to ask him to retire.
- 4.3 On 26 October 2010, Mr Littlewood provided the Applicant with a letter (EE1, p23 refers) asking him to take the day off to consider his retirement plans and to return at 4.00 p.m. the same day to discuss them in a meeting with Mr Littlewood.
- 4.4 Mr Littlewood stated that he had asked the Applicant to retire on several grounds; abusive behaviour, health and safety concerns, unauthorised expenditure and non-compliance with management instructions. His abusive behaviour and swearing was targeted at both work colleagues and customers.
- 4.5 In relation to the health and safety matters Mr Littlewood gave a few examples where the Applicant had caused concern; the first was in relation to failing to have machinery tested before providing it to customers and the second related to failure to provide health and safety instructions on hire contracts, causing on one occasion, an accident and he added that the Applicant also failed to request customers to provide a health and safety assessment on chainsaws.
- 4.6 Mr Littlewood was unable to provide the Tribunal with dates of the events described nor was he able to produce documentary evidence of the disciplinary warning he claimed to have given the Applicant. On reflection he said the warning was issued "about four years ago" and said the reason he did not have documentary evidence was that he did not have a computer.

Witness Testimony – Mr Alan Pike, General Manager

- 4.7 Mr Pike confirmed that he was the General Manager of CAMS Limited and had worked at CAMS for 16 years. He read out a prepared statement saying that the working environment at CAMS was poor and that the Applicant had had a terrible attitude to both staff and customers. This resulted in regular complaints from customers. He added that he personally had received numerous abusive telephone calls from the Applicant and that the company was running more smoothly with greater turnover since the Applicant had left.
- 4.8 Mr Pike stated that there were often arguments at the workplace often between Mr Cluer – the Applicant, and Mr Littlewood.
- 4.9 Asked whether Mr Pike had any involvement in performance or conduct matters he said that Mr Littlewood took care of all employment matters, as well as the matter of the Applicant's retirement.
- 4.10 Under cross-examination Mr Pike agreed that he had had help in typing up but not in drafting his statement.

Witness Testimony – Mr Steve Gould – Engineering Operative

- 4.11 Mr Steve Gould confirmed that he had worked for CAMS Limited for 10 years and was a part-time Engineer.

- 4.12 Mr Gould read from a prepared statement that stated that having worked with the Applicant for several years he knew him to have an aggressive and demanding attitude. As a result there was much confrontation in the workplace and most of this related to the way in which the Applicant worked and behaved towards others.
- 4.13 Asked what he knew of the Applicant's retirement, Mr Gould confirmed that he knew the Applicant had reached 65 but that it had not been discussed. He confirmed however that previous employees that had reached the same age had simply declared this and their intention to retire and left CAMS employment.

The Applicant's case

- 4.14 The Applicant said that the main reason for bringing his case to a tribunal was due to being forced to retire. He stated that he could not be forced to retire unless it was specifically covered in the employment contract. Since there was no reference to it in his contract (EE1 page 22 refers) he understood, from legal advice he had taken, that he could not be forced to retire. As a consequence the Applicant believed that his dismissal by enforced retirement was unlawful.
- 4.15 Referring to the employment contract the Applicant noted that Section 11 (EE1, page 22 refers) stated that notice periods for those with 3-12 years service would receive one week for each year of service up to a maximum of six weeks. The Applicant pointed out that he had effectively been given 24 hours notice to leave and had only been paid to the end of the month. He was therefore owed six weeks pay given his service with the company.
- 4.16 Mr Cluer admitted that he often swore around the workplace but never at Mr Littlewood and that he was known to raise his voice.
- 4.17 The Applicant advised that the 4.00 p.m. meeting referred to in the letter of 26 October 2010, took place in the workshop and lasted less than five minutes. The Applicant wanted to retire later in the year and work up to Christmas but this was refused by the Respondent. At the end of the meeting the Applicant was told to take the rest of the week off and return his keys.
- 4.18 The events of the 25 October 2010 had largely been a misunderstanding relating to the Applicant using a work based delivery order from the UK to include personal bathroom equipment items which he had not requested prior permission for. A heated discussion between the Applicant and Mr Littlewood resulted when the goods arrived in Guernsey.
- 4.19 Mr Cluer stated that Mr Littlewood had known that he was 65 as he had attended his birthday party.
- 4.20 Under cross examination Mr Cluer said that that the subject of his retirement had been touched upon briefly in social discussion but no decision had been reached and the matter had never been discussed in work hours. He assumed that Mr Littlewood would allow him to continue to work until Christmas 2010.

5.0 Conclusions/Decision

- 5.1 It is clear from the statements made by Mr Littlewood at the outset of the Tribunal that the reason for Mr Cluer's dismissal had been one of conduct in the workplace. Mr Cluer's age, having reached 65, presented an opportunity to Mr Littlewood for the matter of their poor

working relations and Mr Littlewood's failure to deal with the issue of Mr Cluer's conduct in the workplace to be dealt with under the guise of retirement.

5.2 Even accepting that the Respondent is a small company with limited resources no disciplinary procedure was followed that respected the Applicant's usual rights of notice prior to the disciplinary meeting, nor of the right to reply in relation to the allegations (given that the meeting was so brief), nor of any appeal. It is also noted that the Applicant did not receive his contractual notice or pay (although there is no redress through the Tribunal on this matter since it is dealt with through a different legal avenue).

5.3 Having considered all the evidence presented and the representations of both parties, and having due regard to all the circumstances, the Tribunal unanimously found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

5.4 The Tribunal therefore makes an Award of £12,000.00.

Georgette Scott

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Signature of the Chairman

10 June 2011

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Date