

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Mark Guille
Represented by:

RESPONDENT: Gale & Le Page Limited
Represented by: Mr Nigel Gale

Witnesses: Called by the Tribunal on behalf of the Applicant:
Mr Mark Corbally
Mr Kevin McKenna

Called by the Tribunal:
Mr Brian Le Page

Decision of the Tribunal Hearing held on 28 February 2011

Tribunal Members: Ms H Martin (Chairman)
Mr P Woodward
Ms Katie Vidamour

DECISION

The Applicant asserted that he had been unfairly dismissed by reason of redundancy within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal concluded that, that the overall process and actions followed by the Respondent, were those of a reasonable employer. The Tribunal therefore found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed. The Tribunal, therefore, makes no Award.

Amount of Award (if applicable):

Ms H Martin	25 March 2011
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Signature of the 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

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended

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.

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Mr Mark Guille represented himself and gave both oral and documentary evidence (EE1 refers).
- 1.2 The Respondent, Gale and Le Page Limited, was represented by Mr Nigel Gale who gave both oral and documentary evidence (ER1 refers).
- 1.3 The Tribunal issued a summons to Mr Mark Corbally and Mr Kevin McKenna to attend as witnesses of the Tribunal prior to the hearing.
- 1.4 During the hearing, the Tribunal issued a summons to Mr Brian Le Page to attend as a witness of the Tribunal.
- 1.5 The Applicant asserted that he had been unfairly dismissed by reason of redundancy within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.
- 1.6 During the hearing it was agreed that:
 - 1.6.1 The effective date of termination was 25 August, 2009
 - 1.6.2 The gross earnings were as recorded in the Respondent's ET2 form.
- 1.7 The Respondent made an initial submission concerning the summons issued to witnesses and this was heard by the Tribunal as a preliminary matter. Mr Gale told the Tribunal that he was concerned that Mr Mark Corbally was being placed in an invidious position as a witness to the Tribunal. Mr Gale stated that Mr Corbally was the longest serving employee of Gale and Le Page Limited and that his attendance as a witness would not impact his relationship with his employer but that he was concerned regarding his security.
- 1.8 The Tribunal agreed that Mr Gale should issue a verbal assurance to Mr Corbally in the Tribunal that he would not suffer any detriment as an employee in the future arising from giving evidence in the Tribunal.
- 1.9 The Applicant claimed that he had been unfairly dismissed by reason of redundancy. He stated that Mr Gale told all the employees of the company that two redundancies had to be made in a meeting at the Rockmount pub on Wednesday 4 August. Mr Guille told the Tribunal that Mr Gale had asked for volunteers for redundancy in this meeting and that one employee called Ray McGowan had volunteered. Mr Guille alleged that another employee called Kevin McKenna had volunteered to be made redundant. However, after the others had left the meeting and were outside smoking, he alleged that Mr Gale had said that he did not wish Mr McKenna to 'go'. The Applicant told the Tribunal that his redundancy was confirmed by Mr Gale on Wednesday 11 August. Mr Guille told the Tribunal that the decision to select him for redundancy was unfair because he had worked for the company for over two years and was no less versatile than his work colleagues, Mr McKenna had only worked for the company for a matter of weeks.
- 1.10 The Respondent stated that the company had to make redundancies because of impact of the economic downturn. In preparation for doing so, Mr Gale contacted Mark Palfrey, President of the Building Trades Employers Association, to ask for advice on dealing with redundancies

and also obtained a copy of the Code of Practice 'Handling Redundancy' from Commerce and Employment. Mr Gale told the Tribunal that all the employees were advised at the meeting on Tuesday 6 July that the selection for redundancy would be undertaken in a fair and objective way. Mr Gale stated that he and his partner, Mr Brian Le Page, scored employees in an objective and fair way and that Mr Guille was identified as the employee that should be made redundant. Mr Gale told the Tribunal that he communicated the decision concerning the selection for redundancy to Mr Guille on 11 August, 2010.

2.0 Facts Found

2.1 Gale and Le Page Limited are a small general building company based in Guernsey.

2.2 Mr Mark Guille was employed by the company from 19 June 2008 to 25 August 2010

3.0 Mr Nigel Gale

3.1 The witness told the Tribunal that the process that was followed involved scoring the employees using objective criteria and that although the Applicant's work was generally of a good standard there had been attitude and time keeping issues that had been taken up with the Applicant in January 2010 (ER1 refers).

3.2 Under cross examination by Mr Guille, Mr Gale told the Tribunal several contracts had come to an end immediately prior to the selection for redundancy and that there had been two significant tenders that had not come to fruition; one had been lost and the other was delayed.

3.3 Mr Gale told the Tribunal that Kevin McKenna and Mark Guille had similar job descriptions and that they were most often engaged as plasterers and blocklayers for the company.

3.4 Mr Gale stated Tribunal that on at least two occasions Mr Guille had said that he would work on a Saturday morning and had not turned up on site with the company van and tools. This had resulted in another employee being on site without the tools.

3.5 Mr Gale informed the Tribunal that the process of selection had involved the application of objective criteria and that he and Mr Le Page both graded each employee against the criteria. Mr Gale stated that he had referred to the Code of Practice issued by Commerce and Employment relating to the handling of redundancies by small companies. The criteria used included timekeeping, attitude, quality, efficiency and team working. Mr Gale told the Tribunal that Mr Guille fared least well in the scoring and that this was the reason that he was selected.

3.6 Mr Gale told the Tribunal that Mr Guille's enthusiasm to do the job had been impacted by his mood at times and that this manifested itself in a notable difference in his attention to detail and diminished pride in the finish or output.

3.7 Mr Gale told the Tribunal that Mr McKenna had resigned after Mr Guille had received confirmation that his role was redundant.

4.0 Mr Mark Guille

4.1 Mr Guille read from his witness statement (EE1 refers). He told the Tribunal that an incident had occurred at the Rockmount pub on Monday 7 June, 2010. He told the Tribunal that Brian Le Page had complained that he had not gone to work the previous Saturday. The Applicant told the Tribunal that he had told Mr Le Page that he did not wish to work at the weekend and that there were no agreed overtime rates.

- 4.2 Mr Guille stated that Mr Le Page had told him on Monday 7 June in the same informal meeting, in response to his feedback concerning his reluctance to work on a Saturday, that he would 'sort out' his contract and 'sack' him.
- 4.3 The witness claimed that two weeks later on Thursday 24 June, Mr Brian Le Page accused him of starting late in the mornings. The Applicant told the Tribunal that this had not happened and that he suggested to Mr Le Page that if he was not trusted that possibly it was time to seek work elsewhere. In response, the witness told the Tribunal that Mr Le Page had asked him twice if he had 'quit' and that he had told Mr Le Page that he had not done so.
- 4.4 The Applicant told the Tribunal that Mr Le Page had come to his house after work that day and told him again that he had 'quit' and in response to the Applicant refuting this had verbally given him six days notice.
- 4.5 Mr Guille told the Tribunal that he wrote to Mr Gale to explain the situation and sought legal advice and that Mr Gale had written back saying he accepted Mr Le Page's explanation of what had happened.
- 4.6 The Applicant stated that on Thursday 1 July, Mr Gale had come to him and had offered him his job back and assured him that he would not be 'forced out' at a later date.
- 4.7 The Applicant stated that approximately three weeks later on Wednesday 4 August the Respondent announced that two redundancies were to be made.
- 4.8 Under cross examination by Mr Gale, the Applicant stated that his contract of employment was not up to date. With regard to one of the timekeeping issues, the Applicant claimed that he had told Mr Le Page that he was going to finish early to watch a football match.

5.0 Mr Mark Corbally

- 5.1 Mr Corbally, who was an employee at the time of the redundancy, told the Tribunal that the alleged incident at the Rockmount pub on Monday 7 June involving Mr Le Page and Mr Guille was only "banter" in the pub involving alcohol and that in his view it was not the time or place to discuss the matter.
- 5.2 Mr Corbally told the Tribunal that he could not recall Brian Le Page saying that he would 'sack' Mr Guille on Monday 7 June, 2010.
- 5.3 Mr Corbally told the Tribunal that Mr Guille had been 'up and down' at work. He told the Tribunal that Brian Le Page and Mark Guille had not worked directly with himself for two months preceeding the letter of 30 January, 2010 (ER1 refers).
- 5.4 Mr Corbally told the Tribunal about an alleged conversation at the pub with Mr Mark Arnold where the Applicant had discussed suing his employers, Mr Gale and Mr Le Page.
- 5.5 The witness told the Tribunal that he could not recall Mr Le Page telling Mr Guille that he was 'sacked' in the pub on 7 June and that there had not been any tension between the Respondent and Mr Guille evident at this time as far as he could recall.

- 5.6 Referring to the announcement of redundancies, Mr Corbally said that he had been shocked at the time and that it had been an open issue as to who would be selected. He told the Tribunal that he was not spoken to by his employers before the final decision was made. He said that the process to be followed involving criteria for selection had been communicated by Mr Gale to the employees at the meeting at the Rockmount pub on Wednesday 4 August.

6.0 Kevin McKenna

- 6.1 Mr McKenna, who was an employee at the time of the redundancy, read from his witness statement (EE1 refers). Mr McKenna told the Tribunal that Mr Gale had asked for volunteers for redundancy on 4 August and that when he had offered, Mr Gale had said he did not wish to lose him. Mr McKenna alleged that this conversation occurred while the other employees were outside smoking.
- 6.2 Mr McKenna told the Tribunal that he received a job offer from Island Construction for increased pay and that Mr Gale and Mr Le Page could not match the offer. He told the Tribunal that he worked out his notice and only found out after he had resigned who had been selected for redundancy.

Before the Tribunal adjourned for lunch, the Chair issued a summons for Mr Brian Le Page to take the witness stand when the Tribunal reconvened.

7.0 Brian Le Page

- 7.1 Mr Le Page told the Tribunal that during the World Cup a complaint had been received by a customer that Mr Guille and Mr Corbally had left early to watch a football match at the Rockmount pub. He told the Tribunal that Mr Guille had told him to "look for another plasterer" when he was challenged about leaving the site early.
- 7.2 When Mr Le Page went to retrieve the van keys from the Applicant later in the day there had been a heated discussion and a 'shouting match' had ensued. Mr Le Page told the Tribunal that his understanding of this incident was that the Applicant had resigned. However, after discussing the matter with Mr Gale it was decided that they would put the incident aside and continue as if it had not taken place.
- 7.3 Regarding the selection for redundancy, Mr Le Page said that they followed the advice of Mark Palfrey, the President of the Building Trades Employers Association concerning the process followed.
- 7.4 Mr Le Page told the Tribunal that Ray McGowan had volunteered for redundancy and that this had been accepted.
- 7.5 Mr Le Page stated to the Tribunal that Mr Guille had been selected because of his poor timekeeping and attitude.
- 7.6 The witness stated that Mr McKenna had been hired on a trial period and that it had been determined on assessment of his performance that he would fail his probation prior to the announcement of redundancies.
- 7.7 Mr Le Page told the Tribunal that this was the first time in five years that the company had had to make redundancies. He explained that one large project in the pipeline had fallen through and that another had been significantly delayed by the Environment Department. Mr Le Page told the Tribunal that no further tradesmen had been taken on since confirming Mr Guille's redundancy.

8.0 Closing Statement by the Respondent

- 8.1 Mr Gale told the Tribunal that the company had followed the redundancy procedure from the Code of Practice of 'handling redundancy' and the advice of the Building Trades Employers Association and had acted in a fair and measured way.
- 8.2 Mr Gale confirmed that the company had not hired any blocklayers or plasterers since communicating the redundancy.
- 8.3 Mr Gale stated Tribunal that the market was now much more competitive than it was three to five years ago and that it was important for small companies to be able 'to staff up and down' to remain competitive, as and when required.
- 8.4 The Respondent told the Tribunal that 'banter' in the pub was normal in the building trade and that he and his partner had enjoyed very good relationships with their employees over the years and he hoped that there would be no animosity between them and Mr Guille going forward.

9.0 Closing Statement by the Applicant

- 9.1 The Applicant stated that he felt that he had upset Mr Le Page and that this had led to a breakdown in their relationship and his selection for redundancy.
- 9.2 Mr Guille told the Tribunal that he had not resigned at any time and that he had only been encouraged to stay on by Mr Gale because he wrote an email advising the Respondent that he had taken legal advice.
- 9.3 The Applicant told the Tribunal that his work had been impacted by his personal life but that his attitude had changed during the period of selection for redundancy because he was scared that he would lose his job.

10.0 The Law

- 10.1 The Applicant alleged that he was unfairly dismissed within the meaning of section 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) (c) that he was made redundant.

11. Conclusions

- 11.1 The Tribunal concluded that there had been a genuine economic reason for the company to make employees redundant. There was an evident decline in the contracts that were out to tender and accepted, combined with a number of current contracts reaching conclusion.
- 11.2 The Tribunal was persuaded that the company made all reasonable attempts to avoid or minimise compulsory redundancies by offering voluntary redundancy to employees.
- 11.3 The Tribunal was also persuaded that that the Respondent, as part of their considerations, had already formed the view by the 4 August 2010 that Mr McKenna would not pass his probationary period and would be released from his employment

with the Respondent. Thus it followed that the pool of employees to be considered for redundancy did not include Mr McKenna.

- 11.4 The Tribunal noted that a pool for selection was identified and that staff were graded according to objective criteria. The objective criteria chosen did not include length of service. The Tribunal concluded that the steps taken by the Respondent were actions within the band of reasonable responses of a reasonable employer. Careful consideration was given to the principles that should be adopted by small firms and the process to be followed by a reasonable employer of their size and resources.
- 11.5 The Tribunal was persuaded that the Respondent acted reasonably in selecting the Applicant for redundancy and did not place weight on the evidence presented concerning what was described as 'banter' in the pub leading up to the announcement of redundancies. The Tribunal placed additional weight on the evidence that the Applicant had not been replaced following the confirmation that his role had been made redundant.
- 11.6 In summary, the Tribunal concluded that the overall process and actions followed by the Respondent were those of a reasonable employer.

12.0 Decision

- 12.1 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 not unfairly dismissed. The Tribunal, therefore, makes no Award.

Ms H Martin

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Signature of Chairman

28 March 2011

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Date