

## States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Robert Lihou  
 Represented by: Litigant in person

**RESPONDENT:** Maryland Service Station (2003) Limited (In Voluntary Liquidation)  
 Represented by: The Respondent did not attend the Hearing

**Witnesses:**

**Called by the Applicant:**  
 Mr Marcio Reis  
 Mr Alan Whales

**Decision of the Tribunal Hearing held on 24 May 2011**

**Tribunal Members:** Mr Peter Woodward  
 Ms Alison Girollet  
 Mr Norson Harris

**DECISION**

Having considered all the evidence presented, whether recorded in this judgment or not, 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 that the Applicant was subject to an unfair dismissal. The principal reason for the dismissal has been found to be the Applicant's objection to, and stated wish to opt out of, proposed Sunday working which is an automatically unfair reason for dismissal pursuant to Part IIA Section 15(I)(1) of The Employment Protection (Guernsey) Law, 1998, as amended.

An award of £13,953.09 is ordered, such figure being determined by reference to the Applicant's gross earnings during his final six months employment with the Respondent.

Mr Peter Woodward

6 June 2011

.....  
 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

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, Robert Lihou represented himself.

1.2 The Applicant called the following witnesses:-

Mr Marcio Reis  
Mr Alan Whales

*By Witness Statement*  
Mr Steve Browning  
Mr George Warren

1.3 The Respondent did not attend. The Tribunal notes that Respondent wrote to the Tribunal on 23 May 2011, the day before the scheduled hearing, indicating that they had appointed a liquidator and therefore they believed their involvement in these proceedings had ended. Given the non-attendance of the Respondent, during the Hearing the Tribunal relied on the documentary information supplied by the Respondent in its ET2 (Response Form).

1.4 The Applicant supplied a bundle of documents catalogued in 12 sections.

1.5 At the outset of the hearing it was confirmed that:-

1.5.1. It was agreed that the Effective Date of Termination (EDT) was 26 August 2010.

1.5.2 The gross earnings of £13,953 for the six months prior to the EDT had been agreed in the Respondent's form ET2 .

1.6 The Applicant brought his claim for unfair dismissal under three heads (cf. ET1 and extended argument);

1.6.1 The Respondent acted unreasonably leading up to and including his dismissal and that the dismissal was unfair as the company failed to follow a fair and proper procedure; and secondly and in the alternative.

1.6.2 By opting out of working on Sunday as prescribed and protected under The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, he was dismissed wholly or in part due to his refusal to participate in shop work on Sundays which is an automatically unfair reason for dismissal pursuant to Part IIA Section 15(I)(1) of The Employment Protection (Guernsey) Law, 1998, as amended (the Law); and thirdly and in the alternative.

1.6.3 The Applicant was dismissed for asserting his statutory rights to receive his contract of employment which is unfair to Part II Section 12(1) of the Law.

1.7 The Respondent, in his ET2, admitted the dismissal but claimed it had been fair. The Respondent denied that the dismissal was in any way related to a breach of the provisions for the protection of Sunday Shop Workers. The Respondent stated in the form ET2 that the

dismissal was due to alleged breaches of confidentiality by the Applicant with customers and other employees, also it was alleged that the Applicant had bullied other staff members. The Respondent believed that, given the size of the company and its administrative resources, they had followed a reasonable procedure in pursuance of the dismissal.

- 1.8 The third alternative was addressed in the Tribunal Hearing and it is accepted that the Applicant did receive a contract of employment from the Respondent as early as 22nd January 2004 (cf. ET2 paragraph 33 and Document 3 of the bundle). This contract was amended from time to time, albeit the Applicant had not signed the original contract or the later amendments as he had some disagreement over holiday entitlement. In addition the Applicant also claims that he was due a new contract of employment following his leaving the company in March 2007 and later re-joining some 4 weeks later (cf. ET1 paragraph 1 and Documents 4 of the combined bundle). It has been accepted by the Tribunal that the terms of the employment were covered by the earlier contracts and that both parties were aware of their obligations and remunerated accordingly. Therefore the Tribunal does not seek to address this matter any further.
- 1.9 Thus the Tribunal sought to address the two remaining allegations; the first in relation to the alleged unfair dismissal with particular reference to Sections 6 (2) (b) and 6(3) which states *"..the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including size and administrative resources of an employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case"* and the second as a corollary as to whether such dismissal was in relation to the Applicant asserting a Statutory Right provided under the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001.

## **2.0 Facts Found**

- 2.1 The Applicant commenced employment with the Respondent in April 2007 as an Assistant Manager / Forecourt Crew Member.
- 2.2 The Applicant was one of several individuals employed by the Respondent to perform similar tasks namely the sale of fuel and various products stocked at the garage shop.
- 2.3 The Applicant was provided with a written copy of his latest contract of employment on 24 August 2011. The Tribunal notes that this contract contains a number of express terms including those related to Termination of Employment, the Disciplinary Procedure and the grievance procedure.
- 2.4 During the first half of 2010 the Respondent decided that it might improve its commercial position by adopting 7 day a week working and consequently on 8 July it commenced a consultation with existing employees as to their willingness to adopt a new shift rota which included Sunday working.
- 2.5 The consultation on 8 July was conducted by two of the Respondent's directors, Mr Nightingale and Mr Weeks. It was explained to the staff that the company was trading at a loss and if changes were not made at the garage then the business would have to close. The Respondent claimed that the initial employee response to these proposals was mainly positive. This assertion was strongly refuted by the Applicant.
- 2.6 At the consultative meeting on July 8 the employees were shown a draft of the advertisement the Respondent was due to place in the Guernsey press the following week (section 5 of the

bundle refers). This advertisement requested applications from individuals who would be prepared to work a shift rota including weekends. The Applicant was told on 8 July that he would be offered one of three posts available under this new rota as a "Head of Shift". The Applicant was told that if he was not prepared to work on Sundays there would not be a job for him.

- 2.7 The Applicant had a meeting with Mr Nightingale on 12 July at which he again communicated his reluctance to work on Sundays. Mr Nightingale responded that whilst they did not wish to lose him from their employment the company was resolute in making the proposed shift changes.
- 2.8 On 15 July a meeting was convened between the Applicant, Mr Whales, Mr Reis, Mr Nightingale and Mr Weeks. A copy of the proposed rota was circulated at this meeting. The rota which can be found in section 5 of the bundle indicates that each of the staff members would have been required to work a five day week including two Sundays out of every three.
- 2.9 At the meeting on 15 July Mr Weeks stated that there was no option for existing employees to back out from the proposed rotas and that all existing contracts of employment would be changed to reflect these new arrangements. The three employees were told that they had until end of business on Monday 19 July to make a decision as to whether they wished to take up the "Shift Leader" roles in the new structure.
- 2.10 On 19 July the Applicant handed a letter to Mr Nightingale formally stating that he objected to and wished to opt out of Sunday working. There was no response to this letter by the Respondent until 24 August.
- 2.11 The Applicant returned from a two week vacation on 23 August. He understood from colleagues that in the absence of any further communication that they believed the Respondent still intended to implement the seven day shift rotas.
- 2.12 On 24 August Mr Nightingale handed an envelope to the Applicant as he was leaving the company premises. The Applicant found that this envelope contained copy of his employment contract, an enclosure detailing his statutory rights in relation to Sunday Shop Work and a letter stating that the company would not be pursuing Sunday opening at that time (cf. ET1 Section 5 of the combined bundle).
- 2.13 On 25 August Mr Weeks arrived at the company premises and handed an envelope to the Applicant and then immediately drove off. The Applicant was not given any explanation as to the contents of the envelope. On opening it he found a letter requesting him to attend a disciplinary hearing at the Boatworks+ premises on 26 August, stating that he could be accompanied by a work colleague or union representative of his choice (cf. ET1 section 5 of the combined bundle). The Tribunal notes that this letter does not contain any statement of allegations or information as to why the Applicant was to be called to this meeting.
- 2.14 The Applicant telephoned Mr Whales on the evening of 25 August who agreed to accompany the Applicant to the disciplinary hearing.
- 2.15 The Applicant arrived at Boatworks+ premises with Mr Whales. A meeting was then conducted in the company Board Room chaired by Mr Nightingale and with Mr Weeks taking the minutes. The Applicant was told that Mr Weeks would also be acting as a witness to the events.
- 2.16 Mr Nightingale asked Mr Lihou if he had bullied or harassed fellow employees; Mr Lihou denied such actions and asked who had made such allegations. Mr Nightingale would not

state who made these allegations. Mr Lihou stated that the only action he had taken in the recent past was to pass out information on Sunday trading employment law to fellow colleagues. Mr Nightingale stated that these allegations were not about Sunday trading but would not elaborate further.

- 2.17 Mr Nightingale moved on to the subject of alleged breaches of company confidential issues. Mr Lihou stated that he had responded to customer enquiries as to why the garage shop had ceased to be a hardware store and become a convenience grocer by telling them it was a business decision by the company.
- 2.18 Mr Lihou and Mr Whales were ushered into another room for approximately 10 minutes and then returned to the Boardroom where Mr Weeks read out a document entitled "Statement of Disciplinary Procedure". The Tribunal notes by the Respondent's own admission that this document had been prepared prior to the disciplinary hearing (cf. ET1 section 5 of the combined bundle).
- 2.19 Mr Lihou was recalled back to the Board Room together with Mr Whales, he was informed that he was summarily dismissed and was told to return his keys and leave the premises.

### **3.0 Mr Marcio Reis**

- 3.1 The witness referred to a letter he had sent to the Applicant on 31 March 2011 (cf. ET1 section 6 of the combined bundle).
- 3.2 Mr Reis stated he had left the Respondent's employment for a number of reasons including the fact that he had been offered a position in the car trade and that the proposed change in his shift rota pattern, including Sunday working, would have an adverse effect on his social life. He stated that the allegations that he was bullied by the Applicant, purportedly made by him during an interview with Mr Weeks and subsequently detailed by the Respondent in the ET2, were completely untrue. He further stated that he had a good working relationship with the Applicant and that he had never been bullied or harassed by him.

### **4.0 Mr Alan Whales**

- 4.1 The witness read from a witness statement (cf. Document 7).
- 4.2 The witness was the Station Manager until his resignation in March 2011 and was the Applicant's direct line manager at the time of his dismissal.
- 4.3 In his statement the witness confirmed that he only became aware of impending disciplinary proceedings against the Applicant on the evening of 25 August when Mr Lihou telephoned him and requested he accompany him as his chosen work colleague.
- 4.4 Prior to 25 August no one to his knowledge had made a complaint as to the Applicant's behaviour.
- 4.5 The witness told the Tribunal that as the Applicant's line manager he would have expected to have been consulted by the Directors prior to any disciplinary action being taken against one of his staff; this was not the case.
- 4.6 The disciplinary hearing commenced with the Respondent asking the Applicant if he had ever bullied or harassed or criticised any member of staff. Mr Lihou denied any such actions but did admit to informing other members of staff as to the laws relating to shop workers on Sundays. In response to this statement Mr Nightingale stated that the disciplinary

proceedings had nothing to do with Sunday working. Mr Lihou then asked for details of any allegations by his fellow employees but Mr Nightingale would not give any further precision.

- 4.7 Mr Nightingale then asked Mr Whales if he had any comment to make re the alleged bullying and harassment. In response Mr Whales told Mr Nightingale that he had never had any problems with the Applicant and that if other members of staff had such issues he would have expected them to come to him.
- 4.8 The hearing then moved on to the issue of confidentiality. The witness confirmed that Mr Lihou had admitted that, in response to customer questions, he had replied by confirming the changeover from hardware products to convenience store products and also had confirmed that the company had the intention to open on Sundays as demonstrated by the advertisement in the Guernsey Press.
- 4.9 The witness and the Applicant were then asked to go into another room and stayed there for approximately ten minutes. Mr Whales recalled that, on being called back into the boardroom, the Applicant was immediately dismissed and handed a piece of paper to sign. Mr Weeks left the meeting to obtain copies of the document and in the meantime Mr Lihou was promised that he could have a copy of the minutes of the hearing. He again pressed Mr Nightingale for more information but Mr Nightingale would not respond stating that without Mr Weeks as a witness he had nothing to add. In the event Mr Lihou was not given any further information; he was requested to hand back his keys and told to leave the premises.
- 4.10 The witness informed the Tribunal that he held the opinion from the manner of the dismissal it was at least in part due to the Applicant's objection to Sunday working. He had never been consulted by the Respondent, either formally or informally, as to the conduct of Mr Lihou and expressed his sense of shock as to the manner of the dismissal.

## **5.0 Witness Statement Mr Steve Browning**

- 5.1 The Tribunal reviewed the witness statement to be found in section 8 of the Bundle and noted the following.
- 5.2 Mr Browning stated that, contrary to the assertions by the Respondent in the ET2, he had never been asked about the Applicant's behaviour or conduct. He stated that he was not aware of any bullying or harassment of staff by the Applicant neither did he hear the Applicant breach any confidentiality to customers other than state he was unhappy about Sunday working.

## **6.0 Witness Statement Mr George Warren**

- 6.1 The Tribunal reviewed the witness statement to be found in section 11 of the Bundle and noted the following.
- 6.2 He had been informed by the Respondent in July / August 2010 of the proposed Sunday working, although his own rota was not to be changed. He stated that at no time during this period had the Respondent inquired as to the conduct / behaviour of Mr Lihou.
- 6.3 Mr Warren stated that he had never been aware of any bullying of Marcio Reis and had always understood that Mr Reis left the Respondent's employment to further his career in the motor trade as a panel beater.
- 6.4 Commenting on "customer relations" the witness held the opinion that any conversations between customers and Mr Lihou were normally instigated by the customers. The witness

stated that clientele made adverse comments as to the Respondent's decision to no longer sell hardware products; and in the event Mr Lihou also expressed similar concerns.

## **7.0 Mr Robert Lihou**

- 7.1 Much of the testimony offered by Mr Lihou has been addressed in the facts found by the Tribunal however the following statements made by Mr Lihou during his examination were considered as significant by the Tribunal.
- 7.2 The witness could not agree with the Respondent's assertion that the proposed introduction of Sunday working generally met a positive response. He believed that many of his colleagues had strong reservations as to accepting such a change in their working arrangements. His colleagues expressed the hope that the Sunday working could be addressed by newly recruited employees following the advertisements in the press.
- 7.3 Mr Lihou confirmed that he did obtain leaflets on employee rights re Sunday working and distributed these to his colleagues. However he stated he had not tried to dissuade or persuade his colleagues as to this issue, in his opinion each employee had to make his own independent decision.
- 7.4 Mr Lihou held the view that given his conversations with the Respondent that failure to agree to Sunday working would result in the loss of his employment however he was informed by the Respondent during the consultation period that they might find him an alternative post working for Boatworks+.
- 7.5 Mr Lihou confirmed that he did talk to a parish official as to the possibility of the Respondent adopting Sunday working and that once the issue came into the public domain he was often asked by customers as to this proposed change. He did, on occasion, mention to them that he did not wish to make this change.
- 7.6 Mr Lihou stated that, given the allegations made against him had little merit, and in relation the alleged bullying were groundless, he attributed his dismissal to his decision to formally decline to work on Sundays.
- 7.7 He confirmed that no appeal was offered by the Respondent as to the decision to dismiss him.

## **8.0 Conclusions**

- 8.1 In relation to the dismissal the Tribunal has concluded that the Company had ineffective disciplinary procedures. The only written disciplinary procedure submitted in evidence was contained in the 2004 Contract of Employment. These amounted to a single paragraph (cf. paragraph 6 Contract of Employment) and set out a rudimentary procedure of verbal warning to be followed by a written warning ultimately culminating in the dismissal of the employee.
- 8.2 The Tribunal notes that in the last few days leading up to the dismissal that there was some attempt by the Respondent to follow, in part, "The Code of Practice – Disciplinary Practice and Procedures in Employment" as issued by the States of Guernsey Commerce and Employment Department as the letter dated 25th August 2010 from Mr Paul Weeks on behalf of the Respondent to the Applicant informing him of the disciplinary hearing includes reference to; *"...you can be accompanied by a work colleague or a union representative"* (cf. Documents 5 p.14). However in examining the Applicant, it became evident that there were no union members in the company and the Respondent did not recognise any union representation.

- 8.3 To the extent that any procedures did exist they were not followed by the Respondent. The Applicant asserts that he received no verbal or written warnings until receipt of the Respondent's letter of 25th August 2010 and was unaware of any problems. The Respondent does not seek to rebut this nor offers any evidence that its own procedure was followed.
- 8.4 The Applicant was not presented with the facts or any supporting evidence in relation to the three accusations made against him, that he;
- 8.4.1 "1. Bullied and or criticised and or harassed other members of staff..."
- 8.4.2 "2. Expressed with customers at every opportunity...adverse comments and criticisms of the Directors and the policies of the company and the vision of the future shop offering."
- 8.4.3 "3. Engaged customers in matters relating to confidential employer/employee information" (cf. Document 5 page 16).
- 8.5 In relation to the first allegation, the Respondent went further and asserted that a colleague of the Respondent, Mr Marcio Reis had resigned as a direct consequence of "the Applicant's sustained bullying and harassment" (cf. ET2 paragraph 29.1). Not only did Mr Reis under examination confirm that he left the company to explore an opportunity on the Island more suited to his own skills and training he also asserted that he had a good relationship with the Applicant. Under further examination, Mr Reis testified that at no time had he made any allegations as to the Applicant in relation to bullying or harassment, and was surprised that the Respondent had asserted this in the ET2.
- 8.6 Significantly, it became evident from the testimony of the Applicant's line manager, Mr Whales that he had not received any complaints from employees as to the Applicant's conduct; the only ever complaint from an employee was in relation to an unrelated matter and was dealt with informally. Indeed, Mr Whales' own participation in the disciplinary procedure of 26 August came as a surprise to him.
- 8.7 Mr Whales' own witness statement and his oral evidence clearly identified that there were no previous major disciplinary problems for what seemed to be a genuinely liked work colleague.
- 8.8 It would seem somewhat contradictory behaviour that during the consultative period the Respondent apparently valued the Applicant sufficiently to suggest they might find alternative employment for him with Boatworks+ but then dismissed him shortly afterwards.
- 8.9 This evidence, and in the absence of any credible rebuttal, can only lead to the curious proposition that there was no real case against the Applicant under the first heading of the disciplinary hearing.
- 8.10 The second head of the allegations made against the Applicant may well be founded. The Applicant did write to the Respondent in October 2009 (cf. Document 5 p.4) and discussed his concerns on a number of occasions with Mr Mark Nightingale. Nor is it denied that the Applicant raised his concerns with his colleagues. It has not been shown, however that this extended in to "*expressing with customers at every opportunity...adverse comments and criticisms*". The Applicant also acknowledged speaking to a local parish officer about the impending application for the Sunday Opening licence. These could be considered as potential breaches of his duties toward his employer and, if accepted, might have deserved a warning. However the Tribunal does not believe that a reasonable employer would hold them to be sufficiently serious to merit a summary dismissal.



- 8.11 In relation to the third allegation against the Applicant, it has not been denied that the Applicant spoke to members of the public when they expressed concern or raised questions over the future of the service station and shop. The Tribunal does not find this unusual in the circumstances. It should be remembered that the Respondent did place an advertisement in the "Guernsey Evening Press and Star" in the week commencing Monday 12 July 2010 advertising the new seven day offering (cf. Document 5 page1).
- 8.12 Further the Tribunal concludes that the severity of such breaches that might have occurred were mitigated by the fact that the Applicant acknowledged under examination that he had no access to any commercially sensitive material, such as; financial statements, profit and loss accounts, employee records nor the decisions of the Board.
- 8.13 The Tribunal also has considerable concerns that the "Statement of Disciplinary Procedure" (cf. Document 5 p16) was prepared in advance of the disciplinary meeting on 26 August (cf. ET2 para. 26). This appears to have led to inevitability about the decision to dismiss. The Applicant was not allowed to challenge the allegations made against him or to examine any of the purported evidence against him. The Tribunal believes despite the limited the size and resources of the Respondent that any reasonable employer of comparable size and resources would not adopt such peremptory tactics.
- 8.14 Whilst all of these reasons in themselves are fatal to the Respondent's case, the absence of any appeal procedure or indeed any consideration of even offering one made the Respondent's decision to dismiss the Applicant manifestly unfair, this was very arguably not the behaviour expected of any reasonable employer; and the Tribunal finds in favour of the Applicant.

#### **The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001**

- 8.15 In the absence of any oral testimony or cross examination of the Respondent, the Tribunal has had to rely on the ET2 and the Applicant's evidence, this has some limitations. But it is safe to assume from the announcements made to the staff by both Mr Nightingale and Mr Weeks that the company would only succeed and surmount its financial difficulties if radical changes were to take place. The management of the Company clearly had given this matter some attention and had elected to change the products being offered at the store; from a hardware shop to a convenience shop typically found on fuel station forecourts. It is not denied by the Applicant that he opposed this change.
- 8.16 More radically, at least as so far as the Applicant is concerned, the Respondent proposed to introduce Sunday Trading. Again it is not contested that the Applicant, for personal reasons, was strongly against the idea.
- 8.17 Critical in considering whether as to whether this dismissal was in relation to the Applicant asserting a Statutory Right under the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001 is the chronology of events:-

8 July 2010	The Respondent notifies staff that the Company would be seeking to open on Sundays
12 July 2010	The Applicant raises concerns with Mr Mark Nightingale Advert placed in "Guernsey Press and Star"
15 July 2010	New shift rotas circulated and staff told they had 4 days (19 July 2010) to notify the Respondent whether they would be applying for the position of Shift Leader. Applicant again raises his concerns over Sunday trading proposals with Mr Mark Nightingale.

19 July 2010	The Applicant, by letter, informs the Respondent that he has elected to exercise his statutory right to opt-out of Sunday working.
7 August 2010	Applicant commences agreed leave.
23 August 2010	Applicant returns to work from leave.
24 August 2010	Mr Mark Nightingale hands the Applicant a letter acknowledging that the Respondent takes note of the Applicant's wish to opt-out and notifies him that the Company has decided not to pursue Sunday opening.
25 August 2010	Mr Paul Weeks hands letter to the Applicant informing him of the requirement for him to attend a disciplinary hearing.
26 August 2010	Disciplinary hearing at which the Applicant is summarily dismissed.

- 8.18 There is no evidence to suggest that the Applicant had anything other than an unblemished employment record. It has further been adduced in evidence by the Applicant's line manager, Mr Whales, that there was no fault in his work or relationships. Significantly, the resignation of Mr Marcio Reis, which the Respondent claims was the reason for the disciplinary hearing, has been found to be scurrilous and seemingly a fabrication.
- 8.19 Thus in the absence of any genuine disciplinary grounds for dismissal, the Tribunal has been compelled to look at the broader reasons.
- 8.20 The timings referred to in the table at paragraph 8.17 are significant. It can be surmised that the Respondent had taken detailed steps in seeking to extend the opening hours of the business. This would have probably been through careful financial analysis, and as evidenced, drawing up rotas and considering staffing requirements and recruitment. Further, we know from the evidence of Mr Whales that the Sunday trading licence had been sought sometime previous to the staff announcements as it had been received in the post. Indeed, the Applicant admitted that he had discussed this matter with a parish official (cf. 2.10 supra.).
- 8.21 Thus having taken these matters in to consideration and having expressed that the company would only survive if these steps were taken, one can imagine the annoyance to the Respondent when a member of staff not only opted-out of Sunday working but then circulated copies of the law to his work colleagues. Whilst Mr Whales acknowledges that this made no difference to his own position on Sunday working and the Applicant confirmed that it was no consequence to him whether colleagues worked or not, it seems far from coincidental that the disciplinary matters were raised at this juncture.
- 8.22 The Tribunal cannot ignore the fact that the Applicant's request to opt-out and the disciplinary hearing are so closely timed. The Tribunal is also troubled by the fact that the day before the disciplinary hearing the Respondent not only acknowledged the Applicant's request to opt-out but informs him of the Company's decision not to pursue Sunday trading. Not twenty four hours later a disciplinary hearing is called on grounds as already discussed herein which evidently were without any credible foundation.
- 8.23 The Tribunal is also troubled by the fact that the Respondent sought to distance itself from any suggestion that this matter is related to the Applicant's request to opt out but then proceeds immediately to pursue him in a disciplinary matter. The Tribunal came to the conclusion that this could be viewed as an unfair sanction against an employee who challenged the Respondent in terms of the management of the business, discussed worker's rights with his colleagues and then asserted a statutory right in opposition to the Respondent's detailed plans.

8.24 Without the opportunity to examine the Respondent on this issue the Tribunal must rely on the above and has decided that, on the balance of probabilities, the principal reason for the dismissal was the assertion by the Applicant of a statutory right. The proximate timing of the events described above being so compelling, combined with the lack of any other credible explanation, have led to this decision, pursuant to Part IIA Section 15(I)(1) of The Employment Protection (Guernsey) Law, 1998, as amended.

## **9.0 Decision**

9.1 Having considered all the evidence presented, whether recorded in this judgment or not, 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 that the Applicant was subject to a unfair dismissal.

Mr Peter Woodward

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Signature of the Chairman

6 June 2011

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Date