

States of Guernsey**EMPLOYMENT & DISCRIMINATION TRIBUNAL****APPLICANT:** **Mr Alan Roussell**

Represented by:

RESPONDENT: **Regency Fulfilment Limited**

Represented by: Mr J Symons

Decision of the Tribunal Hearing held on 17 March 2011

Tribunal Members: Ms Georgette Scott (Chair)
Mrs Caroline Latham
Mr Norson Harris

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 and circumstances presented and the representations of both parties, the Tribunal concluded that the overall process and actions followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that, under the provision of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed.

The claim of unfair dismissal is therefore dismissed and no award is made.

Amount of Award (if applicable):

Ms Georgette Scott	4 May 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, Mr Alan Roussell, claimed that he had been unfairly dismissed by reason of redundancy, and specifically that the selection process had been unfair.
- 1.2 The Applicant also claimed that the procedures prior to redundancy were flawed.
- 1.3 The Respondent, Regency Fulfilment Limited, disputed the claims on the grounds that the Applicant was fairly dismissed by reason of redundancy, their selection criteria had been appropriate and fairly applied and that they had followed a recognised procedure thoroughly.
- 1.4 The Applicant submitted, in addition to ET1 (Unfair Dismissal Form) and enclosures, a file of documents referenced EE1.
- 1.5 The Applicant appeared in person and gave witness testimony under oath on his own behalf.
- 1.6 The Respondent submitted in addition to ET2 (Response Form) and enclosures, a file of documents referenced ER1.
- 1.7 The Respondent, in agreement with the present owners, was represented by Mr James Symons, the former owner and Managing Director of Regency Fulfilment. Mr Symons also gave testimony under oath.
- 1.8 The Respondent also called Mrs Brenda Le Huray, Fulfilment Manager, who gave witness testimony under oath.

2.0 Facts Found by the Tribunal

- 2.1 Mr Roussell was employed by Regency Fulfilment from 4 September 2006 to 8 July 2010.

3.0 The Law

- 3.1 In this complaint, it is for the Tribunal to determine whether the employer (the Respondent) has been able to show that the reason for the dismissal, or the principal reason for dismissal, is redundancy; the section of the Law relevant to the complaint brought by this Applicant is Section 6(2)(c) of the Employment Protection (Guernsey) Law, 1998, as amended. Once the Tribunal has established the reason, or the principal reason, for the dismissal, then it must determine whether the employer

acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, in accordance with equity and the substantial merits of the case.

4.0 Summary of Parties' Main Submissions

(a) The Respondent's case

- 4.1 As a result of a reduction in business and with the closure of MX2 client business and a downturn in general revenues Regency Fulfilment needed to reduce costs. In May 2010, they therefore started a process to reduce the company's headcount by following Commerce and Employment guidelines.
- 4.2 Being a small organisation it was agreed that Mrs Brenda Le Huray, Fulfilment Manager, would lead the process and Mr James Symons would act as communicator and administrator at the meetings with employees.
- 4.3 A set of criteria was established which they felt could be applied equally to all employees and which did not isolate individuals unreasonably. The criteria were: length of service; timekeeping; sickness absence; general attitude and communication; computer skills; and efficiency, which effectively meant the breadth of skills required by the employee to be able to do the range of tasks undertaken within the company.
- 4.4 A series of meetings were held with employees after the initial announcement on 11 May 2010 (ER1 refers), when all staff were informed of the need to reduce hours or headcount.
- 4.5 Any employees intending to leave in the near future were asked to make themselves known and two people raised their hands.
- 4.6 Employees were also asked to make suggestions regarding cost reduction, but none were made.
- 4.7 The next steps in the process were explained to all present at the meetings, these being: an assessment would be made against specific criteria; given the outcome of that assessment, decisions would then be made; each employee selected for redundancy would then be notified in writing and seen individually.
- 4.8 In the event eight people scored low upon the selection criteria, including the Applicant. A letter of 3 June 2010 (ER1 refers), was sent to the Applicant setting out his provisional selection for redundancy and inviting him to a meeting on 8 June 2010, to discuss the matter in more detail, to cover the process and to discuss ideas for avoiding redundancy.
- 4.9 At the meeting, which was minuted (ER1 refers), the details of the selection criteria were explained to the Applicant. The scores ranged from 52 points at the highest to 26 points at the lowest. The Applicant's score of 32 was the third lowest out of the 26 employees assessed.
- 4.10 The Applicant made objections to some of the criteria used, principally, IT skills and efficiency. In relation to IT skills, he felt that because he did not use a computer in

the Post Room and had not learnt the systems, the assessment was unfair. Mr Symons then explained that the assessment was done on what everyone could do on the IT system, not upon access to the computer.

- 4.11 The Applicant objected to his selection for redundancy because the timing of it coincided with a planned holiday to Australia. If selected he would have no time to look for alternative work. The Applicant requested the company delay dealing with the redundancy until he returned from holiday. Mr Symons informed him that a decision would be made in the next 24 – 48 hours.
- 4.12 In relation to efficiency it was explained that the Applicant was no longer allowed to work in the main despatch area since a client company had refused to allow him to work on its account, following a complaint. Added to which, Mrs Le Huray explained, the Applicant's assessment showed he was not as flexible, did not pack fast, get on with his work nor did he look for other work once his was completed.
- 4.13 It was confirmed to the Tribunal that since Mr Roussell had been transferred out of the main despatch area to the Post Room where he didn't have access to the computer, this had affected the development of his IT skills and therefore his assessment grading in this area.
- 4.14 The timekeeping figures for the selection pool went back over the previous 50 days. A point was deducted for each minute the employee was late on any given day. Because he refused to get an earlier bus to arrive at work on time, Mr Roussell had arranged with Mrs Le Huray to have a later start time, and to make time up at the end of the day. Mr Roussel scored very low in this section; it was noted that in spite of the above agreement, the Applicant often still arrived for work at later than his agreed start time.
- 4.15 Mrs Le Huray confirmed that it was expected that all employees should clock in a few minutes ahead of the time they were expected on the workroom floor to allow time to get to their stations.
- 4.16 It was noted that of those employees within the pool selected for redundancy, three resigned of their own accord, including one person who was approaching retirement age, and one employee volunteered to work fewer hours, a suggestion which was accepted by the company.
- 4.17 Of those employees advised that they were provisionally selected for redundancy, two appealed against the selection, including the Applicant.
- 4.18 At the Appeal, the Applicant made the same request to delay the redundancy until his return from holiday in Australia. He also felt he had been singled out and that the process was unfair. Mr Symons and Mr Rod de Carteret, who was attending the Appeal as a witness, went through the selection spreadsheet with Mr Roussell, but he persisted with his concern that the process was unfair.
- 4.19 The Tribunal noted that Regency Fulfilment Limited was part of Regency Logistics Limited, a Jersey based company and that, in addition to the Guernsey based fulfilment staff there were four more staff in Jersey, including an Administrative

Assistant, who also did a small amount of Human Resources work; the Tribunal took account of the small size of the company in reaching its decision.

(b) The Applicant's case

- 4.20 The Applicant referred the Tribunal to a petition (EE1 refers) of 14 fellow workers who signed that they agreed that Mr Roussell was a conscientious, helpful colleague who did not deserve a rating of 4 out of 10 for attitude and communication in the selection criteria.
- 4.21 The Applicant felt that the process was over too quickly; in a matter of four weeks. He added that the Respondent had showed no compassion either in relation to the effect on his holiday plans or the effect on his future employment.
- 4.22 One of the employees who scored low on the selection criteria one was offered fewer hours and avoided redundancy, Mr Roussell was not offered the same opportunity.
- 4.23 In relation to his timekeeping, the Applicant confirmed that he had an arrangement to come in later than his colleagues and to make up the time at the end of the day; this had been confirmed by Mrs Le Huray.
- 4.24 Mr Roussell felt that the points system, in relation to IT skills, was unfair as he did not have access to a computer for his Post Room duties. He added that the company had paid no redundancy settlement.
- 4.25 Under cross-examination Mr Roussell confirmed that he had not suggested reducing his hours when asked for suggestions to avoid redundancy.

5.0 Conclusions

- 5.1 The Tribunal concluded that there had been a genuine economic reason for Regency Fulfilment Limited to make employees redundant. There was an evident decline in income due to the loss of a significant client.
- 5.2 The Tribunal found little fault with the redundancy procedures followed by Regency Fulfilment Limited in relation to the consultation of employees and to the options considered to mitigate against redundancy.
- 5.3 The Tribunal noted that a pool for selection was identified and that staff were graded according to largely objective criteria; the exception was that the IT skills criteria did isolate the Applicant unfairly, given that he did not have access to a computer in his role in the Post Room. However, even excluding the IT skills grading, the Applicant would still have scored below the threshold for redundancy.
- 5.4 In summary, the Tribunal concluded that the overall process and actions followed by the Respondent were those of a reasonable employer.

6.0 Decision

- 6.1 The Applicant asserted that he had been unfairly dismissed, within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, by reason of redundancy.
- 6.2 Having considered all the evidence and circumstances presented and the representations of both parties, the Tribunal concluded 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.
- 6.3 The claim of unfair dismissal is therefore dismissed and no award is made.

Signature of the Chairman:	Ms Georgette Scott
-----------------------------------	---------------------------

Date: 4 May 2011
