

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Jason Billien

RESPONDENT: Mr Ross Le Brun trading as Labour Force Guernsey

Decision of the Tribunal Hearing held on 24 February 2012

Tribunal Members: Mrs Tina Le Poidevin
Mrs Joanne de Garis
Mr George Jennings

DECISION

The Applicant claimed that he had been unfairly dismissed as the Respondent had failed to follow a proper redundancy procedure before advising him that there was no more work for him. The Respondent's contention was that the Applicant had resigned without giving notice and was not dismissed.

Having considered the written and oral evidence produced in connection with this claim, the Tribunal determined that the Applicant, Mr Billien, was not dismissed within the meaning of Section 5(2)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, but rather he resigned without notice in breach of his contract. The Applicant's claim is, therefore, dismissed and no award is made.

In response to the Respondent's application for costs representing loss of earnings and administrative expenses incurred, the Tribunal ruled that an order would be made against the Applicant in accordance with Section 4(a) of The Employment Protection (Recoverable Costs) Order, 2006, in the sum of £100 that being the maximum award the Tribunal could apply.

Mrs Tina Le Poidevin
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8 March 2012
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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

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 Mr George Jennings declared that he had previously come into contact with Mr Le Brun in Mr Jennings' capacity as a boxing referee. He had recognised Mr Le Brun in person when he appeared at the Hearing but had not known his name when he had received details of the claim and the parties involved. The Respondent and the remaining Tribunal members did not consider that this declaration affected Mr Jennings' impartiality in this case.
- 1.2 The Applicant, Mr Jason Billien, claimed that he had been unfairly dismissed as the Respondent failed to follow a proper redundancy procedure before advising him that there was no more work for him.
- 1.3 The Respondent, Mr Ross Le Brun trading as Labour Force Guernsey, disputed the claim on the grounds that the Applicant was not dismissed, he resigned without notice in breach of his contract.
- 1.4 The Applicant failed to comply with the Case Management Orders made on 27 January 2012 in that, firstly, he did not confirm to the Secretary to the Tribunal by 1 February 2012 as to whether or not he would be legally represented and, secondly, he did not provide a witness statement from a Mrs Lyn Billien by 10 February 2012, thus preventing an exchange of documents prior to the Hearing.
- 1.5 The Applicant failed to attend the Hearing and when contacted by telephone by the Secretary to the Tribunal at the scheduled start of the Hearing, advised her that he did not know the Hearing was being held that day. This was despite:
 - the Applicant's oral communication at the Case Management Meeting that he would be in attendance;
 - the Case Management Orders being sent to him by Special Delivery; and
 - further written and oral attempts being made to communicate with him following the Case Management Meeting.
- 1.6 The Respondent represented himself and gave witness testimony in person under affirmation.
- 1.7 Form ET1 and attachments (namely a copy of the Applicant's written statement of terms of employment (without the Employer's signature) and copies of twenty of his payslips) were presented in evidence and were taken as read.

- 1.8 In addition to form ET2, document bundle ER1 (containing a detailed response to question seven on the ET2; four pages of 2011 quarterly tax returns noting the Applicant's pay details; a one page report noting the Applicant's pay and work period details; a copy of the Applicant's written statement of terms of employment (signed by both the Employer and the Applicant); a copy of email correspondence between Mr Rob Phillips of R G Phillips & Son Ltd on 10 and 11 November 2011; a transcript of text messages from 10 November 2011 to 23 November 2011 (verified by the Tribunal Chair as being from Mr Le Brun's mobile telephone) largely between himself and the Applicant but also with Mr Glen Horne; a copy of an email message from Jody Horne of Perfect Measure Limited to Mr Le Brun on 27 January 2012; a Fuel Supplies (CI) Limited order form to Mole Excavating dated 18 November 2011; and a copy of a letter to Labour Force from Mr Rob Phillips of R G Phillips & Son Ltd dated 30 November 2011) were presented in evidence and were taken as read.
- 1.9 As the Applicant's pay details had varied on the ET1 and ET2 forms, the Tribunal determined the value of 26 weeks' pay from the Respondent's written evidence as being £7,263.

2.0 Facts Found by the Tribunal

- 2.1 Labour Force Guernsey is a small company that supplies temporary labourers to other businesses. It works closely with the Social Security Department to source appropriate labour and sub-contracts that labour to other businesses as the need arises.
- 2.2 The Applicant commenced employment as a labourer with the Respondent on 2 August 2010.
- 2.3 The Applicant's effective date of termination was 11 November 2011.
- 2.4 The Applicant signed a written statement of terms of employment which noted that he had 'no standard hours of work', the Respondent could 'terminate an Assignment at any time for operational reasons' and the Applicant would 'have no entitlement to be paid for any hours lost as a result of the early termination of an Assignment.' It was effectively a 'zero hours' contract.
- 2.5 During the Applicant's employment, he had been sub-contracted to work as a labourer at R G Phillips & Son Ltd for the dates and times he was required.
- 2.6 At 4.30 pm on 10 November 2011, Mr Le Brun received an email from Mr Rob Phillips of R G Phillips & Son Ltd advising him that he would not need the Applicant after Friday 11 November 2011.
- 2.7 Mr Le Brun telephoned the Applicant to advise him of the situation, explaining that Friday 11 November 2011 would be his last day at R G Phillips but he should listen out for his next assignment.
- 2.8 On 10 November 2011, Mr Le Brun made attempts to find the Applicant alternative work at Perfect Measure Limited.

- 2.9 On 11 November 2011, the Applicant failed to attend R G Phillips for the last day of his assignment and at 9.49 am that day the Applicant sent Mr Le Brun a text message saying that he would not be in today as he was visiting some places for job forms.
- 2.10 Mr Le Brun sent a text message in response saying that the Applicant should have alternatively made some calls whilst at work but he had now lost a day's pay and probably annoyed Mr Phillips by his absence, particularly as he may have needed him again soon.
- 2.11 Mr Le Brun subsequently discovered from work sheets that the Applicant had also absented himself from work at R G Phillips the previous day, 10 November 2011.
- 2.12 As Mr Le Brun owned another business, Mole Excavating, he contacted the Applicant via text message on 15 November 2011 at 5.50 pm saying that he might have a few days the following weekend helping him.
- 2.13 The Applicant responded to Mr Le Brun by text message at 5.59 pm on 15 November 2011 saying "sound".
- 2.14 At 8.02 am on 23 November 2011 Mr Le Brun telephoned the Applicant to give him details of the assignment with Mole Excavating but the Applicant did not respond.
- 2.15 At 8.04 am that day, Mr Le Brun sent a text message to the Applicant saying "phone me I need to talk to you about Friday" but the Applicant did not respond.
- 2.16 At 10.10 am that day, 23 November 2011, Mr Le Brun received notification from the Commerce & Employment Department that the Applicant had registered a complaint of unfair dismissal.

3.0 The Law

- 3.1 Section 5(2)(a) of the Law notes that an employee shall be treated as dismissed by his employer if "the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice".
- 3.2 In determining whether the dismissal of an employee is fair or unfair, Section 6(1) of the Law notes that "it shall be for the employer to show (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and (b) that it was a reason falling within subsection (2)" and Section 6(2) notes "For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which (c) was that the employee was redundant".

4.0 Summary of Parties' Main Submissions

4.1 Applicant

- 4.1.1 As the Applicant failed to attend the Hearing, his submission could only be taken as noted on the Applicant's ET1 form and from the 27 January 2012 Case Management Meeting.

- 4.1.2 The Applicant agreed at the Case Management Meeting that his employment with Labour Force Guernsey as a labourer commenced on 2 August 2010 when he was immediately sub-contracted to R G Phillips & Son.
- 4.1.3 He was paid by Labour Force Guernsey and was not on a fixed contract.
- 4.1.4 On Thursday 10 November 2011 Mr Le Brun telephoned the Applicant at approximately 7.30 pm to inform him that R G Phillips did not wish to renew its contract with Labour Force Guernsey and Mr Le Brun informed the Applicant that neither he nor R G Phillips and Son Ltd had any work so as of Friday 11 November his contract with Labour Force was terminated.
- 4.1.5 The Applicant subsequently claimed unfair dismissal against Labour Force Guernsey stating that they had not followed any redundancy procedure before dismissing him. There had been no consideration of alternative work, no consultation process, no selection procedure and his dismissal was not fair.

4.2 Respondent

- 4.2.1 The Respondent worked in conjunction with the Social Security Department by offering work to unemployed labourers who were happy to take what was on offer.
- 4.2.2 The temporary nature of the work and the terms of the Applicant's employment were fully explained to him by the Respondent and a Social Security Department employee right at the outset before the commencement of his employment.
- 4.2.3 There was no doubt in the Respondent's mind that the Applicant fully understood the circumstances under which he was being employed. He knew it was temporary work.
- 4.2.4 The Applicant undertook various assignments for R G Phillips and Son Ltd – he was not on one continuous assignment with that company during his employment with the Respondent.
- 4.2.5 The Respondent recalled the Applicant also undertaking an assignment with an English firm called Zelex where the Applicant undertook one day's work at each of two sites – one in the Rohais and one at Admiral Park.
- 4.2.6 The Applicant was an unreliable employee in that he would go missing for a couple of weeks at a time and text messaging was often used to make contact with him because he did not answer his 'phone and was a 'nightmare' to get hold of.
- 4.2.7 The Respondent referred to the Applicant as being a 'weekend warrior' – a slang term used for someone who didn't turn up to work after the weekend. The Respondent had to beg Mr Rob Phillips of R G Phillips and Son Ltd to keep him on there.
- 4.2.8 On 10 November 2011 the Respondent received a telephone call from Mr Rob Phillips saying that after 11 November R G Phillips and Son Ltd would not be needing the Applicant any more as it had run out of work.

- 4.2.9 This had not happened before with R G Phillips and Son Ltd. There had been a fairly good flow of work from August 2010.
- 4.2.10 The Respondent telephoned the Applicant as soon as he had heard from Mr Rob Phillips to tell him that he would finish at R G Phillips and Son Ltd after 11 November and asked him to listen out for his next assignment.
- 4.2.11 When the Applicant responded saying 'sound' to the prospect of alternative work, this evidenced that the Applicant knew he was still in employment with Labour Force Guernsey and had not been dismissed.
- 4.2.12 As soon as the Respondent could confirm that an alternative assignment had been found at Mole Excavating (the job evidenced by the work order contained within ER1), he sent a text to the Applicant and followed this up with two telephone calls, one at 9 am and another at 9.59 am that day, 23 November 2011. The Applicant did not respond by text or telephone.
- 4.2.13 Until the claim for unfair dismissal came in the post, the Respondent had thought that the Applicant was still in his employment.
- 4.2.14 The Respondent always tried to give his employees as much notice as possible and they were aware that their assignments would only last as long as there was work for them to do.
- 4.2.15 The Respondent noted that Advocate Louise Hall from A O Hall had assisted him in the drafting of his contracts to make them as tight as possible.
- 4.2.16 The Respondent made a claim for costs amounting to £541 for loss of earnings and administrative expenses incurred as a result of the Applicant's claim.

5.0 Conclusion

- 5.1 In a case where dismissal is disputed, the burden of proof is on the Applicant to establish that there has been a dismissal before the Tribunal can consider whether the dismissal was fair or unfair.
- 5.2 In this case, the Applicant failed to comply with the orders of the Case Management Meeting held on 27 January 2012 and he also failed to attend the Hearing to present his case.
- 5.3 The Respondent advised the Applicant immediately after he knew that his assignment at R G Phillips & Son Ltd would come to an end after 11 November 2011 and started to seek an alternative assignment for the Applicant. This is evidenced by his contact with Perfect Measure Limited.
- 5.4 The Respondent's actions in seeking an alternative assignment for the Applicant were very reasonable, particularly as the Applicant had proved to be unreliable in absenting himself from work on 10 and 11 November 2011.

- 5.5 The Respondent felt confident that he would find an alternative assignment for the Applicant and advised him of this (as evidenced by his text message on 15 November 2011 at 1750 hrs).
- 5.6 The Applicant's response "sound" reasonably led the Respondent to believe that he was interested and, more importantly, still employed.
- 5.7 When the Respondent could finally confirm details of the Applicant's alternative assignment (the work order for Mole Excavating being evidenced by the Fuel Supplies (C.I.) Limited order form) , he telephoned and sent text messages to the Applicant, all of which were ignored.
- 5.8 The Respondent at no time told the Applicant that his employment with Labour Force Guernsey was terminated. Only the assignment with R G Phillips & Son Ltd had ceased after 11 November 2011.
- 5.9 The Tribunal concluded that the Respondent did everything he reasonably could to secure an alternative assignment and thus continue to provide employment for the Applicant.

6.0 Decision

- 6.1 Having considered all the written and oral evidence produced in connection with this claim, the Tribunal determined that the Applicant, Mr Billien, was not dismissed within the meaning of Section 5(2)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, but rather he resigned without notice in breach of his contract. The Applicant's claim is, therefore, dismissed and no award is made.
- 6.2 In response to the Respondent's application for costs representing loss of earnings and administrative expenses incurred, the Tribunal ruled that an order would be made against the Applicant in accordance with Section 4(a) of The Employment Protection (Recoverable Costs) Order, 2006, in the sum of £100 that being the maximum award the Tribunal could apply.

Mrs Tina Le Poidevin

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Signature of the Chairman

8 March 2012

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Date