

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Tobias Benford
Represented by Mr Lawrence Benford

RESPONDENT: Mr Paul Le Cheminant and Mr Jason Le Cheminant,
trading as Chemmy's Roofing
Represented by Self represented

Witnesses:
For the Applicant: Mr Tobias Benford
Mr Lawrence Benford

For the Respondent: Mr Paul Le Cheminant
Mr Jason Le Cheminant

Decision of the Tribunal Hearing held on 31 July 2008

Tribunal Members: Ms Helen Martin
Mr Peter Woodward and Mr Roger Brookfield

UNANIMOUS DECISION

Having considered all the evidence presented and representations from both parties and having due regard to all circumstances the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Tobias Benford was not, as alleged, unfairly dismissed.

Ms H Martin
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Signature of the Chairman

8 September 2008
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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 claimed that:

- He was employed by the Respondent as a Labourer/Roofer between July 2006 and March 2008;
- He was unfairly dismissed on 16 March 2008.

1.2 The Respondent disputed the claim on the grounds that:

- The Applicant was not unfairly dismissed.

1.3 The following witnesses gave evidence on behalf of the Applicant:

- Mr T. Benford (the Applicant).
- Mr L. Benford.

1.4 The following witnesses gave evidence on behalf of the Respondent:

- Mr P. Le Cheminant.
- Mr J. Le Cheminant.

2.0 Facts found by the Tribunal

2.1 Chemmy's Roofing, is a roofing company founded by Mr Paul Le Cheminant and his brother, Mr Jason Le Cheminant.

2.2 The Applicant was employed by the Respondent as a labourer from March 2006, following a six week period of work experience from school. His work had progressed from that of a labourer to fitting roofing materials on occasions.

2.3 The Applicant had signed a contract of employment. (ER1 refers).

2.4 The Applicant commenced each working day by meeting his employers at 'Meadowcroft', the Respondent's home and a storage facility for Chemmy's Roofing. 'Meadowcroft' was also the home of the Respondent's wife and his daughter, Sinead Le Cheminant.

2.5 The Applicant had undertaken work previously at 'Meadowcroft.' Specifically, he had dug a water trench, cleared leaves from the driveway and loaded items into a skip.

- 2.6 The Applicant had been in a relationship with the Respondent's daughter, Sinead Le Cheminant and this relationship ended on 6 February, 2008. The relationship lasted approximately two and a half years.
- 2.7 The Applicant's work had been satisfactory up until the end of his relationship with Sinead Le Cheminant.
- 2.8 There were two incidents when the Applicant had allegedly left the site during working hours due to the breakdown of his relationship with Sinead Le Cheminant. On one such occasion, he allegedly left work to seek access to the Respondent's daughter at the College of Further Education resulting in the Applicant's mother being called by the Respondent to collect him.
- 2.9 The Applicant was arrested some four or five times over the period of the breakdown of his relationship with Sinead Le Cheminant.
- 2.10 Following the breakdown in his relationship with the Respondent's daughter, it was alleged that the Applicant sent offensive text messages and made offensive telephone calls to the daughter and wife of the Respondent.
- 2.11 The Applicant allegedly hid in the bushes of the garden of 'Meadowcroft', the Respondent's home for approximately three hours during one night.
- 2.12 On 15 March 2008 the Applicant attended Sinead Le Cheminant's place of work and the police were called as a result of the Applicant's inappropriate behaviour.
- 2.13 On the morning of 16 March 2008 the Applicant was arrested following damage that had been inflicted to Sinead Le Cheminant's car in the early hours of 16 March 2008. The car had sustained £2000 worth of damage and the Respondent had attended the scene of the crime in the early hours of 16 March 2008.
- 2.14 A harassment order was served upon the Applicant on 16 March 2008, (ET 1 refers), following a complaint made by the Respondent and Sinead Le Cheminant, the daughter of the Respondent. The harassment order was made in relation to Sinead Le Cheminant, there was no mention of the immediate family of Sinead Le Cheminant in the document.
- 2.15 The Applicant was currently serving a nine month probation order for one of the alleged offences that occurred after the breakdown of his relationship with the Respondent's daughter.
- 2.16 The decision to dismiss the Applicant was communicated by P.C. Williams to the Applicant on Sunday 16 March 2008 at the Police Station. The Applicant was told to avoid all contact with Sinead Le Cheminant and advised that he must not make contact with her via any other person.
- 2.17 The Applicant received a letter from the Respondent confirming the reasons for his dismissal dated 2 April 2008. The Respondent advised the Applicant in this letter that he had been dismissed by reason of gross misconduct following the application of a harassment order against the Applicant on 16 March 2008.

3.0 Testimony from Mr Jason Le Cheminant

- 3.1 Jason Le Cheminant, brother of the Respondent and partner in the business known as Chemmy's Roofing, told the Tribunal he had observed deterioration in the Applicant's work following the breakdown of his relationship with Sinead Le Cheminant, the Respondent's daughter.
- 3.2 The witness described the two occasions when the Applicant had left the place of work allegedly as a result of the breakdown in his relationship with Sinead Le Cheminant.

4.0 Testimony from Mr Lawrence Benford

- 4.1 Lawrence Benford told the Tribunal about two occasions when he was called to collect the Applicant from the Croix Guerin Café, Sinead Le Cheminant's place of work because of his son's inappropriate behaviour.
- 4.2 The witness told the Tribunal that both sets of parents had been "stuck in the middle" in trying to appease both the Applicant and daughter of the Respondent. Lawrence Benford advised the Tribunal that the Respondent had treated the Applicant very well during the course of his employment and expressed regret that matters had ended in this way.

5.0 Conclusions

- 5.1 The Respondent's lack of written disciplinary procedure was noted. Furthermore, the Code of Practice (Disciplinary Practice and Procedures in Employment) had not been followed. However, the circumstances outlined to the Tribunal in this case persuaded the Tribunal that this was not a disciplinary issue.
- 5.2 The Tribunal was satisfied that the Respondent had a potentially fair reason for dismissing the Applicant under the provisions of the Employment Protection (Guernsey) Law, 1998, Section 6 (2) (e), that there was 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held'.
- 5.3 On consideration of all the evidence, the Tribunal was persuaded that the Applicant's persistent serious misconduct and most importantly, the proximity of that misconduct to 'Meadowcroft', the permanent residency of the Respondent and the Respondent's immediate family was a major issue for the Respondent. In forming this view, the Tribunal took into account that 'Meadowcroft' was a storage facility for the Respondent's business and that the Applicant had previously undertaken work related duties at this location.
- 5.4 The Tribunal preferred the testimony of the Respondent in relation to the Applicant's arrests and alleged offences that were attributed to the breakdown of his relationship with the Respondent's daughter and subsequently led to the breakdown in the working relationship between employer and employee.
- 5.5 The Applicant did not contest the view that he had a good working relationship with the Respondent up until the alleged offences and arrests associated with the breakdown of his relationship with the Respondent's daughter. The Tribunal noted that the summary dismissal happened forty days after the breakdown of the relationship, and that this only

occurred after the alleged serious incidences that led to a harassment order being served upon the Applicant.

- 5.7 The Tribunal concluded that the Respondent acted within the range of reasonable responses and could not be expected to continue to work with the Applicant.
- 5.8 In summary, the Tribunal was persuaded that given that Sinead Le Cheminant resided at 'Meadowcroft' with her father, the Respondent, that the Applicant's continuing employment became untenable following the alleged offences that led to a harassment order being served upon the Applicant on 16 March 2008.
- 5.9 In conclusion, the Tribunal found that the Respondent's decision to dismiss the Applicant was reasonable in all the circumstances, given the proximity of the misconduct to the Respondent's home and immediate family. In this instance, the Applicant's conduct in his private life was inextricably linked with his working life.

6.0 Decision

- 6.1 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, 1988 , as amended, that the Applicant was subject to a fair dismissal and therefore make no award.

Signature of the Chairman:	Ms H Martin
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Date:	8 September 2008
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