

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Miss Allison Kirk

Represented by: Mr Trevor Kirk

RESPONDENT: Activehair Limited

Represented by: Anthony Williams

Witnesses

For the Applicant: Miss Allison Kirk
Mr Trevor Kirk

For the Respondent: Mr Christopher Monk
Miss Miriam Clark

Decision of the Tribunal Hearing held on 4th September 2007.

Tribunal Members: Ms Kathy Tracey
Mr Roger Brookfield and Ms Georgette Scott

UNANIMOUS DECISION

The Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Miss Allison Kirk was not, as alleged, unfairly dismissed nor was she constructively dismissed. No Award is therefore made.

Amount of Award (if applicable): N/A

Ms K Tracey
Signature of the Chairman

1 October 2008
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 appeared in person and gave witness testimony under oath on her own behalf. Mr Trevor Kirk was sworn in as a witness and also represented Miss Kirk. A bundle of documents (marked EE1) was presented, included in the bundle were a number of written witness statements, however, these were not substantiated by witness testimony therefore they were not available for cross-examination. Mr Kirk also presented a closing statement (marked EE2).
- 1.2 The Respondent was represented by Mr Christopher Monk, owner and manager of Activehair Limited. Legal representation was provided by Mr Anthony Williams. Miss Miriam Clark provided witness testimony in person under oath on behalf of the Respondent. The Respondent also entered a bundle of documents in evidence (marked ER1).
- 1.3 At the outset of the hearing:
 - 1.3.1 The effective date of termination was not agreed, nor was the correct final salary figure. However during the course of the proceedings agreement was reached between the parties, therefore these issues required no further consideration by the Tribunal. The effective date of termination was agreed between the parties as 22 November 2007, and remuneration for outstanding wages were given to Miss Kirk.
 - 1.3.2 It was disputed by the Respondent that the Applicant had been dismissed or constructively dismissed. The Respondent asserted that the Applicant had resigned on the 22 November 2007.
 - 1.3.3 It was asserted by the Applicant that she was either pressured to leave by Mr Monk, which she argued amounted to an actual dismissal, or alternatively she was constructively dismissed by virtue of alleged bullying and harassment in the workplace.

2.0 Facts as found by the Tribunal

- 2.1 Miss Kirk was employed by Activehair from 21 January 2003 as an apprentice hairdresser.
- 2.2 Miss Kirk had qualified as a colourist but not as a cutter.
- 2.3 Miss Kirk had a 'falling out' with Miss Miriam Clarke over the suitability of Miss Kirk's boyfriend. There were a number of very unpleasant incidents

- between the two employees which, from time to time, involved other members of staff.
- 2.4 Miss Clarke was not senior to Miss Kirk in the organisation, even though she had achieved her cutting qualification.
- 2.5 On two separate occasions Mr Monk attempted to ease the tension between the colleagues by calling a meeting with them and explaining the need to act professionally in the salon.
- 2.6 The first of these meetings was in or around mid 2006. At the end of this meeting Miss Clarke and Miss Kirk agreed to put their differences aside and resume their friendship. They agreed that at this time they did become friends again, albeit not such close friends as previously.
- 2.7 The second of these meetings was agreed to have been during or around January 2007. At the end of this meeting Mr Monk left the two employees together to 'talk things through'. Mr Monk claimed he did not want to be involved in 'the details'. After the meeting they told him they had agreed not to discuss their private lives at work, and that they could act professionally although they would never be best friends again.
- 2.8 At no time were the words bullying and harassment used by any of the parties.
- 2.9 Mr Monk did not keep any records of these meetings.
- 2.10 On 22 November 2007 Mr Monk called a meeting with Miss Kirk to discuss a performance issue. At the beginning of the meeting Miss Kirk said that before he said anything, she wanted to tell him that she was thinking of resigning.
- 2.11 At Mr Monk's request Miss Kirk wrote a letter of resignation dated 26 November 2007.

3.0 Conclusions

- 3.1 The Tribunal concluded that Mr Monk acted within the bounds of reasonable behaviour as an employer when he tried to address the conflict which was apparent to him between Miss Kirk and Miss Clarke.
- 3.2 The Applicant's case hinged on presenting evidence of alleged bullying and harassment in the workplace, yet at no time during the course of her employment did Miss Kirk complain to Mr Monk of bullying or harassment. However, she gave evidence that she had had a good relationship with Mr Monk and could talk to him about most things. It was therefore reasonable for Mr Monk to assume that she would have brought the matter to his attention if she felt she was being bullied or harassed.
- 3.3 Mr Monk took action which he reasonably believed had resolved the conflict, and which both parties agreed, at that time, had resolved the situation. The Tribunal finds therefore that he was not in breach of his duty of care.

- 3.4 In considering the case for constructive dismissal the Tribunal found that the Applicant failed the tests which should be applied in dealing with Section 5 (2) (c) of the Law. Namely, that the employer had fundamentally breached the employment contract; that the applicant had terminated their employment in response to that breach; and that they did not delay in doing so. There was a significant delay - a period of approximately 11 months - between the second meeting of Miss Kirk and Miss Clark and the meeting when Miss Kirk spoke to Mr Monk about resigning. The Tribunal was persuaded that sufficient time had elapsed for Mr Monk to be able to reasonably believe that the matter was resolved and that Miss Kirk had accepted the situation.
- 3.5 The Tribunal preferred the evidence of Mr Monk in that when asking for the Applicant's resignation to be put in writing, he was asking her to formalise her verbal statement, which he had been surprised by, and that he was not coercing her to resign.

4.0 Decision

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, and subject to Section 6 of the Law, there was no dismissal, and that the Applicant resigned of her own volition. Therefore no award is made.

Signature of the Chairman: Ms K Tracey

Date: 1 October 2008
