

States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

APPLICANT: Mr Marcus Laurence
Represented by: Self represented

RESPONDENT: Guernsey Post Limited
Represented by: Advocate Jessica Roland

Witnesses:**Called by the Applicant**

Mr Ricky Bryce
Mr Roger James
Mr Gordon Steel
Mr Steven White

Called by the Respondent

Ms Kathy Armstrong
Ms Tina Duquemin
Mr Colin Gontier
Mr Martin Johnson
Mr Shaun Lihou
Mr Boley Smillie
Mr Steve Shepherd
Mr Sean Smith
Mr Steve Rains
Ms Mary Hurrell submitted a witness statement

Decision of the Tribunal Hearing held on 15, 16 and 20 May 2008.**Tribunal Members:**

Mr Peter Woodward
Mr Andrew Vernon
Ms Caroline Latham

UNANIMOUS 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, 1998 as amended, Mr Marcus Laurence was not, as alleged, unfairly dismissed.

Award (If applicable): Not applicable

Mr Peter Woodward
Chairman

25 June 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 gave witness testimony under oath, which was also supported by documentary evidence (EE1 refers)

1.2 The Respondent was represented by Advocate Jessica Roland.

1.3 Advocate Roland called the following witnesses to give testimony:

Ms Kathy Armstrong
Ms Tina Duquemin
Mr Colin Gontier
Mr Martin Johnson
Mr Shaun Lihou
Mr Boley Smillie
Mr Steve Shepherd
Mr Sean Smith
Mr Steve Rains

Ms Mary Hurrell submitted a witness statement

These witnesses were supported by documentary evidence (ER1-4 refers)

1.4 Marcus Laurence called the following witnesses to give testimony:

Mr Ricky Bryce
Mr Roger James
Mr Gordon Steel
Mr Steven White

These witnesses were supported by documentary evidence (EE1 refers)

1.5 At the outset of the hearing the parties confirmed that:

1.5.1. It was agreed that the effective date of termination was 11 October 2007.

1.5.2 The salary figures as detailed in the Applicant's ET1 were agreed by the Respondent.

1.5.3 It was disputed by the Respondent that the Applicant had been unfairly dismissed as alleged in his ET1.

2.0 Facts Found

- 2.1 Marcus Laurence commenced his employment with the Respondent as a Postman in December 2002 and his Effective Date of Termination was 11 October 2007.
- 2.2 Mr Laurence made a formal complaint on Friday 16 March 2007 alleging that Mr Ricky Bryce, a first line manager, had bullied and harassed him.
- 2.3 Mr John Bougourd investigated this complaint and in a letter dated 23 April 2007 confirmed that in his opinion this allegation of bullying and harassment had not been established. (ER1 233 refers)
- 2.4 Ms Tina Duquemin in her role as an acting supervisor submitted a formal complaint to her manager on 20 March 2007 alleging that Mr Laurence had failed to obey a reasonable instruction to include certain items of mail on his delivery round on that date. (ER1 231 / 232 refer)
- 2.5 Acting on this complaint Mr John Bougourd, a more senior manager, decided that it was proven and issued a formal oral warning on 17 April 2007. This warning included mention of Mr Laurence's right to appeal against this decision with. (ER1 230 refers)
- 2.6 An altercation occurred between Mr Laurence and a member of the HMT warehouse staff, on their premises, on 18 April 2007. A formal complaint was made to Guernsey Post as to Marcus Laurence alleging a poor attitude, foul and abusive language, and aggressive behaviour towards a member of HMT staff. This complaint was supported by Mr Neil Walker HMT Health and Safety Manager in an e-mail dated 23 April 2007. (ER1 227 / 228 refer)
- 2.7 Mr Laurence was requested in writing on 27 April 2007 by Mr Shaun Lihou, Guernsey Post Head of Operations, to provide a written explanation as to his account of this incident; this was duly provided on the same day with Mr Laurence making a counter allegation that it was the employee at HMT who had threatened him in the first instance. This account in turn was acknowledged on the same day by Shaun Lihou indicating that further investigation would follow. (ER1 223 / 225 refer)
- 2.8 On the 1 May 2007 Shaun Lihou met with employees of HMT including two who had witnessed the altercation; these witnesses alleged that Mr Laurence had initiated the confrontation. (ER1 222 refers)
- 2.9 On 11 May 2007 Mr Laurence made a formal complaint to the Human Resources Manager in writing that the issue remained unresolved and again alleging that it was he that had been verbally abused and exposed to physical threats in this incident. (ER1 220 refers)
- 2.10 On 16 May 2007 Mr Laurence was invited to the disciplinary hearing scheduled for Monday 21 May 2007 indicating he could be represented or accompanied by a CWU (Communication Workers' Union) representative or a work colleague. It was also indicated to Mr Laurence that he was entitled to call a witness or witnesses to the hearing in support of his case. (ER1 218 refers)
- 2.11 On 17 May 2007 Mr Laurence wrote to Shaun Lihou indicating his uncertainty as to whether he would attend the meeting on 21 May alleging that the process of investigation had been tardy, and biased against him. Mr Laurence further requested in

this letter that Mr Neil Walker from HMV should attend the disciplinary hearing on the 21st May. (ER1 217 refers)

- 2.12 The Human Resources Manager Mary Hurrell responded in writing on the same day indicating that she had investigated the reasons for any delay and that in the interests of a full investigation time needed to be taken. (ER1 216 refers)
- 2.13 On 21 May 2007 the disciplinary hearing took place attended by Marcus Laurence, Steven White (the CWU representative), Shaun Lihou and Mary Hurrell. At the hearing it was alleged that Mr Laurence had been abrupt and rude to a member of the HMV staff on 18 April and that further he had had a confrontation with two other HMV staff members where his behaviour was deemed as threatening with the possibility of physical violence. Evidence of his alleged behaviour was presented to Mr Laurence and he in turn alleged he had not initiated any confrontation with the HMV employee. The meeting was adjourned for three hours and once it was reconvened Shaun Lihou stated that he was persuaded that the incidents had occurred as alleged by HMV employees and consequently Mr Laurence would be issued with a written warning and that further he would be banned from doing the HMV duty for the duration of this warning. This was duly confirmed in writing to Mr Laurence on 22 May 2007 indicating that the formal of written warning would have a duration of 24 months and during that time he would not be permitted to have any contact with HMV within his role as an employee of Guernsey Post Ltd; the letter also indicated specific behavioural improvements required of him during the period of the Written Warning. It was indicated that Mr Laurence had the right to appeal against decision provided he did so within three working days and that his appeal was in writing. (ER1 205 / 213 refer)
- 2.14 On 23 May 2007 the Human Resources Manager Mary Hurrell wrote to Mr Laurence stating that the company had taken account of a number of issues raised by him in relation to postal routines at HMV and these issues were still under review. On the same day Mr Gordon Steel, Chief Executive of Guernsey Post also wrote a letter to Mr Laurence indicating that he noted the complaint made by him (Marcus Laurence) and that he would be meeting with the Human Resources Manager during the next week to be briefed on the situation. (ER1 203 / 204 refer)
- 2.15 On 29 May 2007 the Human Resources Manager sent an e-mail to a number of senior management staff indicating that Mr Laurence had made a formal appeal against his written warning and was supported by the CWU. The grounds for the appeal were that the punishment handed out was excessive, some of the evidence was to be challenged, that there were serious concerns over security when picking up packages from HMV, and liaison between HMV staff and Guernsey Post staff needed improvement. On the same day the Human Resources Manager wrote to Mr Laurence indicating that the appeal hearing would be held on Tuesday 19 June in the presence of Mr Joe Domican, Operations Director, and Mrs Kathy Armstrong, Director of Human Resources. It was also stated that Shaun Lihou, the Operations Manager would be present to submit the management case. (ER1 202 refers)
- 2.16 The disciplinary appeal hearing was held on 19 June 2007 with Mr Laurence being supported by Steven White from the CWU. The managers hearing the appeal considered submissions on all four points; and whilst conceding some operational deficiencies, upheld the written warning, however it was decided to reduce the period of the HMV ban for Mr Laurence from 24 to 12 months whilst still requiring the other behavioural requirements as detailed in the original warning. This ruling was subsequently confirmed in writing to Mr Laurence on 22 June. (ER1 192 / 197 refer)

- 2.17 On 16 July 2007 Tina Duquemin was contacted by a member of the public who stated that whilst at home he had heard a loud bang and subsequently saw a post office van driving away and he noticed that the lamp post in his neighbour's garden had been damaged. Ms Duquemin stated in her report to Shaun Lihou that when Marcus Laurence arrived back at the depot on that day he did not report any incident to her. She had duly reported the incident to Mr Sean Smith, the Parcels Manager, who was responsible for the delivery vans. Sean Smith subsequently sought a formal meeting with Mr Laurence together with CWU representative Steven White in attendance; this meeting took place on 20 July 2007 and Mr Laurence conceded that he may have hit a signpost with house name on it but that he didn't know he had hit a lamp post. Mr Laurence was shown photographs of the broken lamp post and the meeting came to an end with the agreement that Mr Laurence would submit a written report of what in his opinion had happened. (ER1 188 / 190 refer)
- 2.18 On 23 July 2007 Sean Smith wrote to Shaun Lihou informing him of the incident and also alleging dishonesty by Mr Laurence in not reporting the incident, and subsequently denying that he had been responsible for the damage. (ER1 186 /187 refer)
- 2.19 After considering the written report from Mr Laurence it was decided by Shaun Lihou that a disciplinary hearing should take place to consider the issues involved and that this hearing would take place on 7 August 2007 and would be heard by Shaun Lihou. This was confirmed to Mr Laurence in writing on 3 August 2007 indicating that he could be represented or accompanied by a CWU representative or by a work colleague; further he could call a witness or witnesses in the support of his case. (ER1 184 / 185 refer)
- 2.20 Mr Laurence responded to this letter by requesting in writing a deferral due to temporary ill-health and he also indicated in the same communication that he was going to write to Gordon Steel to request that someone other than Shaun Lihou should hear the case. (ER1 182 / 183 refer)
- 2.21 Mr Steel responded in writing on 7 August 2007 stating that he could find no reason for Shaun Lihou not to manage the hearing and subsequently it was arranged that it would be conducted on the 13 August. (ER1 180 refers)
- 2.22 During the hearing of 13 August 2007 it was alleged that Mr Laurence had reversed into the lamp post and caused damage, that he failed to report the incident to his line manager and that he was dishonest when questioned about the incident by that same line manager. Present at the hearing were Marcus Laurence, his CWU representative Steven White, Shaun Lihou and Human Resources Manager, Mary Hurrell. Mr Lihou ruled that he did not think Marcus Laurence had been dishonest. However, he did believe that he had been negligent in his actions and therefore decided, on the basis of prior warnings and the gravity of this issue, as he saw it, that he would apply a final written warning to Mr Laurence. This decision was subsequently communicated in writing on 13 August 2007 together with a list of stated improvements expected from Mr Laurence in his overall conduct, attitude and approach to work. As with previous warnings Mr Laurence was informed of his rights to appeal against the decision provided this was done in writing and within three working days of that letter. (ER1 174 / 179 refer)
- 2.23 Mr Laurence indicated in a communication on the 16 August 2007 that he would wish to appeal against the decision however he subsequently withdrew this appeal on 24 August 2007. (ER1 170 / 173 refer)

- 2.24 On 3 September 2007 Mr Laurence wrote a letter to Mr John Bougourd alleging threatening behaviour toward him by a fellow employee, Jonathan Thorne, and that this amounted, in the words of the complaint, to an “ongoing tirade of harassment”. (ER1 169 refers)
- 2.25 Mr Thorne responded to the complaint by Mr Laurence by alleging in writing on 5 September 2007 that it was aggressive behaviour by Mr Laurence rather than him which was the issue. (ER1 166 / 167 refer)
- 2.26 Shaun Lihou conducted a “Fact Finding” meeting with Marcus Laurence on 7 September 2007 in the presence of Janine Lane, Learning and Development Manager. On the same day he also conducted a series of “Fact Finding” meetings with Jonathan Thorne, Paul Bourgaize, and Steve Shepherd, all in the presence of Janine Lane. (ER1 154 / 165 refer)
- 2.27 On 19 September 2007 Jonathan Thorne wrote a letter to Shaun Lihou elaborating on the working relationship with Marcus Laurence and this was subsequently followed by a second “Fact Finding” interview with Mr Laurence in the presence of a CWU representative and the Human Resources Manager. Mr Laurence refused to sign the minutes of the meeting as a true and fair record, and subsequently made a written submission challenging allegations as to his alleged conduct. On the same day a “Fact Finding” interview was conducted with Ricky Bryce as to the alleged issues between Jonathan Thorne and Mr Laurence. (ER1 147 / 153 refer)
- 2.28 On 28 September 2007 Mr Laurence was requested in writing to attend a disciplinary hearing scheduled for Friday 5 October 2007 and informed that this hearing would be conducted by the Operations Director, Boley Smillie. The letter stated that this Hearing would consider if he had provoked an altercation and whether this constituted his alleged continuing harassment of another member of staff. (ER1 77 refers)
- 2.29 Following discussions with Mr Laurence on the 1 October 2007 Boley Smillie decided to invoke a suspension from work on a “precautionary basis”. (ER1 75 / 76 refer)
- 2.30 On 2 October 2007 Mr Laurence wrote to the Human Resources Manager alleging racial discrimination against him by fellow workers, this was subsequently added to with a written list of grievances submitted on 4 October 2007 alleging that investigations into his behaviour had not been conducted correctly by the HR and Management members. Some 15 points were listed in this submission. On that same day Mr Laurence met with Joe De Garis, Director of Marketing and Regulatory Affairs who considered a number of these grievances and wrote on 5 October 2007 stating that he could not uphold these. However under the grievance procedure Mr Laurence had a right of appeal against this decision. (ER1 112 / 146 refer).
- 2.31 The Applicant exercised this right of appeal and investigations were primarily conducted by Steve Rains, at that time in the post of Employee Relations Manager. This investigation culminated in a “final stage” grievance appeal conducted by CEO Gordon Steel in the presence of Mr Laurence, Steven White and Steve Rains on 11 October 2007. Mr Steel confirmed in a letter of that same date that he had decided not to uphold the grievances and that the grievance procedure was now at an end. (ER1 78 / 111 refer)

- 2.32 A notice of a Disciplinary Hearing was issued to Mr Laurence on 8 October 2007. (ER1 72 Refers)
- 2.33 A Disciplinary Hearing was conducted on 11 October 2007 by Boley Smillie with Mr Laurence in attendance, George Jennings his CWU representative, as well as Shaun Lihou and Mary Hurrell. After hearing evidence from both sides the meeting was adjourned and when reconvened Boley Smillie confirmed his decision that Marcus Laurence would be dismissed from his employment. This was subsequently confirmed in writing on the same day with provision for an appeal. (ER1 52 / 66 refer)
- 2.34 Mr Laurence subsequently appealed and an appeal panel was convened under the leadership of Martin Johnson, Financial Director. Mr Laurence was represented by George Jennings from the CWU. The Appeal panel upheld the decision to dismiss and communicated this by letter on 29 October 2007. (ER1 41 / 51 refer)

3.0 The Law

- 3.1 Marcus Laurence claimed that he had been unfairly dismissed within the meaning of paragraph 5 (2) (a) of the Employment Protection (Guernsey) Law, 1998 as amended; i.e. - *“the contract under which he is employed is terminated by the employer, whether it is so terminated by notice or without notice”* and under the provisions of paragraph 6 of the Law relating to fairness of dismissal.

4.0 Testimony from Mr Gordon Steel

- 4.1 Mr Steel, CEO of Guernsey Post confirmed that he was aware of the policies that dictate how Guernsey Post should manage discipline issues however he was not able to confirm the level of management at which the sanction to dismiss was allowed.
- 4.2 He confirmed that he had dismissed in writing the allegation by Mr Laurence that Shaun Lihou might be biased in either his conduct of the investigation into the Applicant's behaviour or in the conducting of subsequent Hearings.
- 4.3 Mr Steel confirmed the documentary evidence that he had heard a final stage grievance appeal from Mr Laurence but had not been directly involved in either the decision to dismiss Mr Laurence or in the rejection of his final appeal against this decision.

5.0 Testimony Ms Tina Duquemin

- 5.1 Ms Duquemin confirmed she had been in an acting first line management role for a number of years and that on any given day she might have direct first line responsibility for up to eighty postal staff.
- 5.2 Testimony from Ms Duquemin confirmed that as cards are often very personal, and date sensitive, that her request to Mr Laurence to deliver a bundle of these on 19 March 2007 as part of his normal round, was a reasonable request even though the Applicant was already “bagged up” His “refusal” to comply with this request, leaving the cards in the sorting office, and his subsequent failure to report to Ms Duquemin on his return to the depot as requested, resulted in her recommending to John Bougourd, Delivery Manager, that a sanction under the disciplinary code should be invoked; in the event this led to the formal oral warning described in paragraph 2.5.

- 5.3 In response to questions from Mr Laurence the witness denied that she was trying in some way to bully or harass him, she stated in a nearly all male environment a female supervisor might find it “hard to bully large men”.
- 5.4 Ms Duquemin confirmed her role in reporting the damaged lamp post to Sean Smith and stated that to her knowledge Guernsey Post never took disciplinary action if an employee owned up promptly to any vehicle accident and completed an appropriate report. The witness denied that she had deliberately withheld the accusation from Mr Laurence in the days following the incident; rather she wanted to give him time to own up of his own accord.
- 5.5 In relation to his nickname “Yank” the witness stated that she was aware that Mr Laurence did not like this term, however she denied that she had colluded with others in harassing him in this way, She commented that some of the staff seemed to take a “delight” in “winding up” others but this was not the way she conducted herself.

6.0 Testimony from Mr Shaun Lihou

- 6.1 Mr Lihou confirmed that he was a long service member of Guernsey Post and he had been Head of Operations since late 2006 and reported to the Operations Director Boley Smillie. In this role he controlled all inward and outward communications and had a team of first line managers to support him.
- 6.2 The witness confirmed that he had no involvement with the Formal Oral Warning issued in March 2007.
- 6.3 Turning to the HMV event he stated that Marcus Laurence had come to see him about the altercation of his own accord and requested that the event did not get “blown out of all proportion”. However Mr Lihou stated that HMV was a key account and it was necessary to follow through with HMV and establish what had occurred.
- 6.4 Referring to his letter of the 27 April 2007 to the Applicant (ER1 226 refers) he stated this was not written in haste and that he had tried to establish if other Guernsey Post staff had had problems with staff at the HMV warehouse. He also indicated that his meeting with HMV employees on 1 May 2007 (ER1 222 refers) did not indicate any antipathy to the Applicant but should be seen as evidence of systematic exploration of evidence.
- 6.5 The witness stated that it was well understood that in the event of any “difficulties” with customers that Post staff should “disengage” and report back to the depot, this was part of the customer code covered in the induction and training of postal staff.
- 6.6 Mr Lihou responded to a question from the Applicant that it was within the Guernsey Post disciplinary procedure for him to both conduct an investigation and then hold a subsequent hearing; particularly as at his level such an investigation would not lead to dismissal of an employee. He denied that he had come to a prior decision over the HMV incident and felt that his power to issue a formal written warning could be mitigated or indeed not invoked if the employee gave a satisfactory account of his actions. He denied the allegation by the Applicant that he had deliberately withheld information as to the progress of his investigation and whilst the original complaint was poorly presented he still had a responsibility to conduct a thorough investigation.

- 6.7 The witness denied that he had “rushed to judgment” at the HMV hearing, the adjournment between testimony and decision had been some three hours. He also stated that he had no issue that the penalty of a 24 month ban had been reduced to 12 months on appeal; he thought it was a balanced judgement.
- 6.8 In relation the lamp post issue he rejected the assertion by the Applicant that he was biased by his previous disciplinary decision, he stated it was not uncommon for him to handle multiple disciplinary hearings for individual postmen. He confirmed the testimony given by Ms Duquemin that it was not the policy of Guernsey Post to discipline employees re accidental vehicle damage provided they owned up to events.
- 6.9 With reference to the Final Written Warning issued to the Applicant on 13 August 2007 the witness had little doubt that Marcus Laurence understood the seriousness of the warning.
- 6.10 Turning to the counter claims by Jonathan Thorne and Mr Laurence in relation to the alleged altercation at the beginning of September the witness denied he sided with Mr Thorne, however, he did state that information from the witnesses to the incident led him to believe that Mr Thorne was the wronged party and his decision that disciplinary proceedings should follow was confirmed after he had interviewed Ricky Bryce. However it was also decided at this time to conduct a disciplinary process with Mr Thorne.
- 6.11 The witness confirmed his role as investigating manager for the dismissal hearing and testified as to the robust defence mounted by George Jennings, the CWU representative. During the adjournment he had no contact with Mr Smillie and testified that he did not seek to influence him in his decision making process; similarly he had nothing to do with the subsequent appeal process. He stated that given the complexity of the investigations in September 2007 that he did not think the delays were exceptional and he certainly denied that there was any collusion between Union and Management to act against the Applicant.

7.0 Testimony from Mr Sean Smith

- 7.1 Mr Smith confirmed he held the role of a First Line Manager, Parcels and Packets and in this role it was the practice of Marcus Laurence to work for him one week in seven as a delivery driver. He confirmed previous testimony that it was accepted with such a fleet of vans that accidents would occur and that the drivers had an obligation to report such incidents for insurance, safety purposes and similar. In return for this openness it was the policy not to use the discipline code for such incidents.
- 7.2 He was alerted to the lamp post incident by Tina Duquemin and subsequently visited the site of the accident, took pictures of the damage and obtained a witness statement from the neighbour who apparently knew it was Marcus Laurence who had driven away in the Guernsey Post van. Mr Smith formed the opinion that the lamp post was of such a size that it would have been hard for Marcus Laurence not to realise he had hit it. (ER1 187 / 189 refer)
- 7.3 On Wednesday 18 July he met with Marcus Laurence and asked if he had been responsible for the damage and Mr Laurence denied knowledge of any such incident. Subsequently Mr Smith arranged a formal meeting with Marcus Laurence and a Union representative at which Mr Laurence admitted hitting a house sign and giving the lamp

post a “tap”. It was agreed that Mr Laurence would prepare a written statement as to what occurred. (ER1 190 refers)

- 7.4 Mr Smith stated that he had formed the view that Mr Laurence had been dishonest in his denials and given this was a serious allegation he passed the issue to Shaun Lihou, he stated he had no further input or influence on the subsequent actions taken by Shaun Lihou.
- 7.5 In cross examination the witness confirmed that prior to the lamp post issue he had never had occasion to discipline Marcus Laurence either formally or informally. He stated that once he had been informed of the incident he had a duty to investigate in the way that he did.
- 7.6 In answer to questions from the Tribunal the witness described the mirrors on the van and its general dimensions in relation to the size of the lamp post, he stated that despite the damage to the lamp post he would not expect to see any particular damage to the van.

8.0 Testimony from Mrs Kathy Armstrong

- 8.1 The witness stated she was Director of Human Resources at Guernsey Post during the period October 2004 to October 2007. In this role Mrs Armstrong had prime responsibility for good conduct standards for employees and the implementation of best practice. She observed that Marcus Laurence was on her ‘radar’ as someone who had ‘issues’; particularly as the Guernsey Post had implemented 'a balanced scorecard system ' to assess whether the postal staff were eligible for the collective bonus. Quality targets were set at for all postal workers who were encouraged to achieve these prescribed standards and in return, if successful, would receive a bonus, Marcus Laurence had been a participant in this scheme.
- 8.2 Commenting on the relationship of Guernsey Post with the CWU Mrs Armstrong stated that it was a well established union at Guernsey Post and union representatives received training in their duties from the Union in the UK. It was her belief that the CWU had been proactive in defending Marcus Laurence throughout the disciplinary process that occurred in 2007.
- 8.3 Mrs Armstrong stated that whilst Guernsey Post did not have an Employee Handbook in 2007 it was the practice of management to issue a copy of the conduct code prior to any disciplinary hearing and to ensure that a member of the HR team was available to give support. In addition the CWU had been assigned a room on the sorting floor in order that they were close to the working environment and available to give advice and counsel to employees on a day to day basis.
- 8.4 Commenting on the disciplinary processes that had been applied to Marcus Laurence Mrs Armstrong believed the process had been both fair and equitable, she stated he was well aware of the allegations at each stage and had time to prepare his defence and he also exercised his right to appeal on a number of occasions.
- 8.5 In cross examination Mrs Armstrong conceded that it was best practice for management to separate the investigation role versus the discipline hearing role and assign these to two different managers; thus the process “was less than perfect”, however she believed that Sean Lihou had been fair and balanced in his approach and whilst the process was not perfect it had been fit for purpose.

- 8.6 The witness confirmed in response to a question from Mr Laurence that the hand a written note (ER1 171 refers) had been written by her in response to his question - whether at appeal a penalty could be increased as well maintained or indeed mitigated. Mrs Armstrong stated that she had gone through past documentation and could not find a definitive answer and that is why she had written the note to Mr Laurence at the time. She stated she was prepared at the time to do more investigative work and had indeed suggested to Mr Laurence that they could talk further on the issue if he so wished.
- 8.7 Mrs Armstrong stated that it was not uncommon for there to be a period of six or seven days between an employee request in an appeal against a disciplinary decision and Guernsey Post responding with a definitive time and place for such an appeal. She stated that given the possible complexity of these issues plus the need to schedule managers and others to such a meeting this was not an unreasonable delay.

9.0 Testimony from Steve Shepherd

- 9.1 Mr Shepherd is a postman and he worked alongside Marcus Laurence in 2007; he confirmed that on 29 August 2007 he had seen Mr Laurence 'whack' a bundle of mail back to Mr Jonathan Thorne and that there had been subsequent confrontation between them. Under cross-examination Mr Shepherd insisted that he had been sitting in such a position that he had a full view of the incident.

10.0 Testimony from Colin Gontier

- 10.1 Mr Gontier confirmed that he was a member of the postal staff, had been with Guernsey Post 11 years, and was an Assistant Secretary in the local CWU team. He thought that he had had a reasonable working relationship with Marcus Laurence. As a Union Representative he had supported him, in early 2007, during conversations between Mr Laurence and Mr Smillie, concerning the requirement for Mr Laurence to improve his performance standard.
- 10.2 Turning to the events of 29 August 2007 he testified that he had observed Marcus Laurence "prodding" the bundle of letters into Jonathan Thorne's chest. Subsequently he had tried to calm down these two individuals after their confrontation on the sorting floor; he held the view that had he not intervened that they were going to physically fight each other. In the event he had led Jonathan Thorne away from the scene of the confrontation. He had thought that Jonathan had needed time and space and that he had been both depressed and under personal pressures in recent times.
- 10.3 The witness stated that by early October 2007 the relationship between himself and Marcus Laurence had deteriorated. The Applicant had accused him of lying about events between himself and Jonathan Thorne and in the event he thought fit to complain to Sean Lihou.
- 10.4 Mr Gontier refuted allegations by the Applicant that he had conspired with Mr Shepherd and others to lie as to Mr Laurence's actions in relation to Mr Thorne. The witness stated there was no benefit in lying and that he was not aware of any conspiracy between Guernsey Post Management and the CWU Union to gang up on Mr Laurence.
- 10.5 Responding to questions from the Tribunal the witness stated that the CWU had become "fed up" with Marcus Laurence, particularly in his "winding up" of other employees or calling these colleagues off work in his union role; however the witness

contradicted himself during his testimony stating that Marcus Laurence was a member of the Union Committee in August 2007 and then stating that he had lost his Union position in March 2007.

- 10.6 Under cross examination the witness disagreed with the Applicant that he could not have seen the confrontation that occurred on 29 August 2007.

11.0 Testimony from Boley Smillie

- 11.1 Mr Smillie has held the post of Operations Director since June 2006, and prior to this was a Programme Manager. In July 2007 he had informally advised Marcus Laurence of some areas of personal performance requiring improvement; but the witness argued that this did not mean that he was in any way discriminating against the Applicant. The witness also testified that his decision to suspend the Applicant in early October was intended as a neutral act and the Applicant had understood his rationale for this action.
- 11.2 The witness stated that he had never sought a voluntary resignation from the Applicant and in fact had counselled him against such an action.
- 11.3 Mr Smillie conceded that during the disciplinary hearing of 11 October the witnesses to the altercation between Marcus Laurence and Jonathan Thorne had described the incident in different words but he preferred their evidence to that of the Applicant and under cross examination he amplified this statement by stating that the consistent element in their testimony was that the Applicant had used physical force.
- 11.4 It was his opinion, having heard the testimony from both sides, that Marcus Laurence had breached express terms of the final written warning issued on 13 August 2007 and it was his decision to sanction a dismissal. He contended that whilst Mr Thorne was also found to be at fault that his lesser disciplinary penalty was appropriate given no past record of formal warnings.
- 11.5 Mr Smillie stated that he had subsequently given evidence at the final appeal stage and thought that his process was fair and robust, he denied the allegation that the management and the CWU had conspired together against the Applicant.

12.0 Testimony from Steve Raines

- 12.1 The witness commenced employment on 1 October 2007 as an interim employee relations manager and subsequently on 1 April 2008 was appointed HR director.
- 12.2 The witness was questioned on the issue of a potential increase of penalty in the event of an appeal by an employee against a disciplinary action by Guernsey Post. He stated that this practice had ceased in the Royal Mail some 20 years ago but it was still the case that Guernsey Post could apply a greater penalty in such a situation.
- 12.3 Mr Raines confirmed that in early October he had undertaken investigations into the grievances raised by the Applicant and concluded that there had been no discrimination on grounds of race; the use of the word "Yank" toward the Applicant did not seem sufficient reason for such a claim to be upheld.
- 12.4 The witness also commented on the issue of banter on the sorting floor and in his opinion some of the banter directed toward Marcus Laurence reflected the view that he was unpopular with his work colleagues; he commented that the overall issue of unsuitable banter was now being dealt with by a 'Dignity at Work' programme.

- 12.5 The witness stated that in his opinion the Guernsey Post responses to the various alleged infractions by Marcus Laurence had been lenient; for example the wilful delay of mail is considered as a very serious issue in the UK postal system and could possibly be considered as a criminal act.

13.0 Testimony from Martin Johnson.

- 13.1 Mr Johnson had held the post of Finance Director in Guernsey Post Ltd since 2004. He chaired the appeal panel following the dismissal of the Applicant (ER1 43 to 49 refers) and this panel considered both the evidence given in the dismissal hearing and the severity of sanction applied to the Applicant.
- 13.2 In response to questions from the Tribunal the witness stated that the appeal was heard within the terms of reference set by the CWU and these terms of reference were not challenged by management. In consequence the appeal panel did not review the circumstances leading to the application of the final written warning, that is the HMTV incident and the damage to the lamp post. The witness confirmed that he had heard previous appeals against the disciplinary sanctions and was familiar with the Guernsey Post disciplinary code.
- 13.3 The witness stated in his opinion the CWU had robustly defended Marcus Laurence during the appeal hearing and there was no evidence of any conspiracy between management and union to have the Applicant dismissed.
- 13.4 In the event the appeal panel upheld Boley Smillie's decision based on the evidence presented, and on the balance of probabilities. The appeal panel therefore upheld the sanction of dismissal.

14.0 Witness Statement from Mary Hurrell

- 14.1 The witness statement was read and the primary conclusions to be drawn were her opinions that Shaun Lihou had not been biased against the Applicant and that a balanced approach had been adopted by Guernsey Post Management in deciding to discipline Mr Thorne as well as dismissing the Applicant.

15.0 Testimony from Steven White

- 15.1 The witness confirmed that he was the chairman of the Guernsey branch of the CWU and described in some detail the roles played by the Union officials and management at various stages of the disciplinary process.
- 15.2 The witness testified that normally management separated the role of investigating manager from the role of disciplinary hearing manager. However, under cross examination he confirmed that whilst Sean Lihou had undertaken both roles in relation to the Applicant the CWU had not challenged process at that time and he stated that in his opinion Mr Lihou was not biased in his approach to the disciplinary process.
- 15.3 Mr White confirmed that he had misgivings as to the postal procedures in relation to HMTV and that in his opinion these could lead to conflict between Guernsey Post and HMTV employees. In the event he thought it was correct that Guernsey Post had reduced the ban on the Applicant delivering mail to HMTV from two years to one year.

- 15.4 The witness confirmed that it was normal practice for the CWU to formulate the grounds for appeal in a disciplinary situation and that these were not shaped or determined in any way by Guernsey Post management; however the management normally accepted the terms of reference as reasonable.
- 15.5 Mr White testified that in his opinion the Applicant had goaded other employees in a confrontational manner and that he did not take kindly to instructions from others: although, having challenged instructions, he would then normally then perform the role required. Under cross examination he agreed that Mr Gontier had stated that he was 'fed up ' with Marcus Laurence, in a witness statement given to management; however Mr White stated it was not a formal CWU opinion.
- 15.6 Mr White stated he was not aware of any harassment of Marcus Laurence whilst in the employment of Guernsey Post and that the sanction on the final written warning was appropriate in August 2007; however he felt the confrontation between the Applicant and Mr Thorne fell short of the dismissible offence. He confirmed that under the current disciplinary code an appeal on the disciplinary penalty can result in penalty being reduced, held at current level, or increased. Under cross examination he confirmed that in his opinion the disciplinary process had been conducted at an appropriate pace given the complexity of the issues under consideration.

16.0 Testimony from Richard Bryce

- 16.1 Mr Bryce held the role of a first line supervisor in March 2007 and confirmed that in his experience it was a common occurrence for mail to be left over after the “bagging up” process and then to ask postman to include this mail on their round.
- 16.2 The witness denied that there had been any targeted harassment toward the Applicant whilst he was in employment and contested the allegation by the Applicant that he had made deliberate physical contact with him in early 2007 in order to restrain him.
- 16.3 Under cross examination the witness testified that to his knowledge there was no concerted effort by employees of Guernsey Post to oust Marcus Laurence from his post.
- 16.4 The witness confirmed that in his opinion experienced staff should not require close supervision and should know what is expected of them; in the event that they do not follow Company procedures it is appropriate for management to take corrective action.

17.0 Testimony from Roger James

- 17.1 Mr James confirmed that he was a supervisor at the HMT warehouse and that he had made a complaint on behalf of his company in April 2007 as to alleged unacceptable behaviour by the Applicant on their premises. The witness explained how he had gathered statements as to the alleged events and how this had been communicated to Guernsey Post.
- 17.2 Responding to questions from the Tribunal the witness recalled the events of the alleged altercation with the Applicant and testified that the company had good relationships with all other postal staff. It was his belief that none of the HMT employees involved in the altercation had any 'agenda' against Marcus Laurence.
- 17.3 The witness explained the security procedures at the site and indicated that whilst there was a formal access procedure it was also possible to enter the building via an open

loading area. Under examination by the Applicant the witness expressed the opinion that the Applicant should have known the correct procedure on arriving on the HMV site and should have followed it.

18.0 Testimony from Marcus Laurence

- 18.1 The witness had previously read out an opening statement and was now requested to respond to questions from the Tribunal on each of the alleged disciplinary infractions that occurred between March 2007 and September 2007.
- 18.2 Referring to the bundle of mail that had not been delivered as requested by Tina Duquemin in March 2007 Mr Laurence stated that there might have been a second bundle of post and therefore a possible confusion between which bundle should have been added to the round. He recalled finding some cards on top of his postal bag and thought that these had been the cards to which Tina Duquemin had been referring. He also stated that he had been under time pressure to 'catch a ride' to his delivery round.
- 18.3 The witness in testifying to the HMV incident stated that he could not remember whether he rang the doorbell at the warehouse but did remember that the mail he was required to collect was in a different place from normal. He was confronted by a very aggressive HMV employee and was verbally abused; he agreed he responded in like language. In retrospect he realised that he should have withdrawn from the situation and come straight back to the Post Office, however, he thought it was his responsibility to follow through and collect the mail. Mr Laurence further testified that it had been past practice for two members of Guernsey Post staff to make the collections at HMV however it had been reduced to a one-person routine some time previously to April 2007.
- 18.4 In relation to the accident with a lamp post Mr Laurence gave contradictory testimony as to whether he actually got out of the van or not at the time. He did state that in hindsight it had been a mistake not to report the incident immediately to his management.
- 18.5 Recalling the altercation with Mr Thorne the Applicant maintained the position that he had never thrust the letters into the chest of Mr Thorne; rather he had placed them on a desk nearby. He testified that he had subsequently made a written apology to Jonathan Thorne apologising for any misunderstanding. Mr Laurence was adamant that he had never said anything about Mr Thorne's father and that the allegation had been manufactured by Mr Thorne.
- 18.6 Under cross-examination the Applicant agreed that there were four witness statements from employees stating that he had been the aggressor during the altercation with Mr Thorne. He also agreed that it was difficult to assert a negative bias toward him from Shaun Lihou without sustaining evidence.
- 18.7 Referring to his suspension from work in October 2007 Mr Laurence repeated his assertion that he had never seen the letter from Mr Smillie (ER1 74 refers) explaining the rationale for this suspension and had only become aware of the letter a week before the Tribunal hearing.
- 18.8 Mr Laurence confirmed that he had been in agreement at the time with the grounds for his final appeal in October 2007 as set out by the CWU.

19.0 Closing Statement Respondent

- 19.1 Advocate Roland reminded the Tribunal that it was not their role to substitute their own judgment on the dismissal, rather, had the employer acted on the balance of probabilities and within a range of reasonableness? She stated the employer's view that at each stage of the disciplinary process the employer had made a careful and considered investigation and had shown leniency in setting aside allegations or mitigating the penalties to be applied.
- 19.2 At each stage of the disciplinary process clear standards of improvement were set out in writing to the Applicant and it was also evident from testimony by other Guernsey Post employees that Company policies and conduct expectations had been systematically communicated throughout the company.
- 19.3 Testimony from the union representatives indicated that a fair and rigorous approach had been taken throughout and there was no evidence of the alleged conspiracy between the union and management. In the event it was a reasonable response by the employer to dismiss and it was a fair dismissal within the meaning ascribed to this under the employment protection legislation.

20.0 Closing Statement Applicant

- 20.1 Mr Laurence drew that attention of the Tribunal to testimony from Kathy Armstrong who had said the process was less than perfect and that in his opinion the disciplinary processes had not been timely.
- 20.2 Mr Laurence stated that it had been unfair of Guernsey Post to have him continue to work with somebody in September 2007 who he alleged had made threats towards him. He also stated that Colin Gontier was demonstrably biased against him and had conspired with management to ensure a negative view was taken toward his alleged conduct issues. It was his belief that during his testimony Mr Gontier had reduced his credibility as both as a witness and a Union Representative.
- 20.3 The Tribunal should be cautious in accepting the witness statements as to his alleged role in the altercation with Jonathan Thorne; they varied in their description of the event and there was an indication that these employees had lined up against him.
- 20.4 The Applicant stated that throughout the three days of the hearing he had described process discrepancies in the way that Guernsey Post handled its business and whilst he was not blameless management had been over zealous and abused their own company code in their pursuit of his alleged wrong doings.
- 20.5 At no time had he provoked Mr Thorne or made physical contact with him and thus his dismissal had been unfair.

21.0 Conclusions

- 21.1 The Tribunal concludes that whilst an ostensibly rigorous process was followed there were some shortcomings in the application of the disciplinary code by Guernsey Post Ltd in relation to this particular dismissal. For example the Tribunal was surprised that in his testimony the Chief Executive did not know at what level of management the sanction of dismissal could be invoked, nor could the then HR Director give a clear

ruling to the Applicant as to whether disciplinary penalties could be increased on appeal.

- 21.2 The Tribunal was also disappointed that there were issues in relation to the credibility of some of the witness testimony although this critique could also be applied to some of the testimony given by the Applicant.
- 21.3 Turning to the issue of Shaun Lihou conducting both an investigation and a subsequent disciplinary hearing the Tribunal has formed the view that whilst it is firmly of the opinion that he sought to avoid any personal bias the employer was a sufficiently large organisation to avoid this potential conflict of duties.
- 21.4 Finally the practice of management accepting the terms of an appeal to the disciplinary decision as defined by CWU and consequently not looking beyond these terms of reference had the potential to turn an ostensibly fair process into an unfair process.
- 21.5 Despite these reservations The Tribunal has formed the view that there was a significant level of consistency in each stage of the disciplinary process. There were apparently rigorous investigations; hearings were conducted in accordance with the Company Conduct Code, and appeals offered at every stage.
- 21.6 The Tribunal is persuaded that there was a consistency of behavioural requirements set out in writing which linked each stage of a progressive disciplinary process; the Tribunal is also persuaded that the employer drew the reasonable conclusion that these requirements had been breached at each stage.
- 21.7 The Tribunal is satisfied that the disciplinary processes leading up to dismissal were conducted by the Respondent in a timescale that can be considered to fall within a band of reasonableness.
- 21.8 The Tribunal notes that allegations of racial discrimination by co-workers were made by the Applicant and subject to an internal investigation; the Tribunal has no jurisdiction at this present time to consider these issues as a separate complaint.
- 21.9 In summary the Tribunal accept that the employer attempted to follow a fair and balanced process within a range of reasonableness and was entitled to dismiss the employee fairly.

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, 1998 as amended, that the Applicant was subject to a fair dismissal, and therefore make no award.

Signature of the Chairman:	Mr Peter Woodward
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Date: 25 June 2008
