

**States of Guernsey****EMPLOYMENT & DISCRIMINATION TRIBUNAL****APPLICANT:** Miss Sonia Rios**RESPONDENT:** Mr N Green and Ms S OakleyDecision of the Tribunal Hearing held on 22 April 2008**Tribunal members:** Ms Caroline D Latham  
Ms Tina Poidevin and Mr John Guilbert**UNANIMOUS DECISION**

The Applicant brought a claim of unfair dismissal, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended (the Law), on the grounds that the Respondents had dismissed her, after failing to supply her with pay slips or a written contract of employment, when she requested them so to do.

The Respondents denied the claim on the grounds that the dismissal was related to the Applicant's conduct, which had resulted in a breakdown in their relationship with her.

**Decision**

The Tribunal recognises that the Applicant was denied the Statutory right to receive payslips from her employer in accordance with 12(1)(b) and 12(4)(b) of the Law and Section 3A(1) of The Conditions of Employment (Guernsey) Law, 1985, as amended; however, it finds that Miss Rios was unfairly dismissed on the grounds that in dismissing the Applicant, there was a failure by the Respondents to follow a proper procedure, in accordance with the Code of Practice, "Disciplinary Practice and Procedures in Employment".

**Amount of Award**

Under Section 22 (1)(a) of the Law, the Respondent shall pay the Applicant an award of £9,000 (Nine Thousand Pounds), this being the sum equal to six months' pay, as determined by the Tribunal.

Ms Caroline Latham  
Chairman20 May 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 ('the Law')**

### **Extended Reasons**

#### **1.0 Introduction**

- 1.1 The Applicant appeared in person and gave witness under oath. She was assisted by Ms Joanna Nascimento, for the purposes of translation when necessary.
- 1.2 In addition to form ET1 (Application Form), the Applicant introduced documentary evidence referenced EE1.
- 1.3 The Respondents, Mr Green and Ms Oakley, appeared in person and gave evidence under oath.
- 1.4 In addition to Form ET2 (Response Form), the Respondents introduced documentary evidence referenced ER1, ER2 and ER3.
- 1.5 The Applicant claimed that she was unfairly dismissed by her employer on 4 February 2008.
- 1.6 The Respondents disputed the claim on the grounds that Miss Rios had been fairly dismissed as a result of a serious breakdown in the relationship between themselves and the Applicant.
- 1.7 There was lack of clarity in the written evidence on Forms ET1 and ET2 in respect of a) Miss Rios' earnings for the previous six months and b) the commencement date of Miss Rios' employment.

#### **2.0 The Law**

- 2.1 Section 3 of the Law states that "every employee shall ... have the right not to be unfairly dismissed by his employer."
- 2.2 The Applicant's dismissal as defined within Section 5(2) (a) of the Law was uncontested.
- 2.3 The Applicant argued that the Respondents dismissed her because she requested payslips from them in connection with her employment; by making such a request, she asserted a statutory right, as noted within Section 12(1)(b) and more specifically within Section 12(4)(b) of the Law. This latter section refers to The Conditions of Employment (Guernsey) Law, 1985, which specifically states within Section 3A(1) that "An employer who is obliged to pay remuneration to an employee shall .... give the employee a statement (a 'statement of pay') which conforms with subsections (2) and (3) of The Conditions of Employment (Guernsey) Law, 1985."
- 2.4 The Respondents contested the claim of unfair dismissal, considering that the serious breakdown in the employment relationship between themselves and the Applicant had

given them reasonable grounds for dismissal in accordance with Section 6(2)(e) of the Law.

- 2.5 A Code of Practice on Disciplinary Practice and Procedures in Employment issued by Commerce and Employment was referred to during the Hearing. Section 31(9) of the Law notes that “A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Law before an adjudicator any code of practice issued under this section shall be admissible in evidence, and if any provision of the code appears to the adjudicator to be relevant to any question arising in the proceedings (including, without limitation, any question as to whether an employer has acted reasonably or unreasonably for the purposes of section 6(3) that provision shall be taken into account in determining that question.”

### **3.0 Facts Found by the Tribunal**

- 3.1 The Respondents had originally employed the Applicant on a part-time basis to assist with house work and baby sitting. Whilst the precise commencement date of these duties could not be identified by the parties, it was generally agreed to have been in excess of four and a half years ago. The Respondents had been happy with the Applicant’s performance of these duties.
- 3.2 When the Respondents decided to recruit a person to assist with general domestic duties and child care, they invited the Applicant to take the position. There was no agreement between the parties as to the exact date when full-time employment commenced but it was generally agreed to have been at the end of 2004, approximately 4.5 years ago.
- 3.3 No written contract of employment was entered into to by the parties. Evidence from both parties established the general terms and conditions of the contractual relationship between them, as shown in the following paragraphs.
- 3.4 The Applicant’s duties were to provide housekeeping and child care services to her employer.
- 3.5 Although the exact number of working hours per week could not be agreed upon by the parties, the general consensus was that the Applicant worked between 45 and 50 hours per week. There was some flexibility in the hours worked according to the needs of the children for whom she cared.
- 3.6 The Respondent paid the Applicant on a monthly basis, deducting Social Security contributions. Such deductions had not been made initially, and there was no evidence presented by either party as to the date on which such deductions commenced.
- 3.7 Income Tax was not deducted by the employer as the Applicant’s employment did not fall within the Guernsey Income Tax E.T.I scheme. The Respondents provided documentary evidence, document ER2, from the Guernsey Income Tax guidance notes to this effect.
- 3.8 There was no agreement between the parties, even after careful questioning, as to whether the monthly salary payments were made Gross or Net of Tax, neither was there any documentary evidence produced by either party to sustain one argument or the other. The Applicant gave evidence that she presumed her monthly pay to be net of both Social Security and Income Tax deductions.

- 3.9 Initially, the Applicant was paid by cheque the sum of £1200 per month, less Social Security contributions. The Respondents gave evidence that the net monthly payment to the Applicant was £1,127 per month. In addition, the Applicant was paid a further £300 each month. This additional payment was made following an approach by the Applicant to the Respondents 'a couple of years' after the commencement of her employment.
- 3.10 The Respondents stated that this payment was to cover 'expenses', such as petrol, purchases of children's clothing, meals out with the children and other incidental expenses. The Applicant was not required to produce receipts to her employer for such expenditure.
- 3.11 The Applicant considered the £300 to be additional 'wages'. She claimed that anything she spent on the children were gifts to them and not a requirement of her employment.
- 3.12 The Applicant was not given a payslip at any time during her employment, not even when one was requested in January 2008.
- 3.13 Evidence supported the fact that the Applicant had been provided with paid holidays during the term of her employment.
- 3.14 The Applicant had the use of a motor vehicle owned by the Respondents.
- 3.15 The Respondents were satisfied with the Applicant's performance until the dispute which is the subject of this claim occurred.
- 3.16 The events giving rise to the dispute arose as a result of the Applicant requesting details of her earnings, including payslips from her employer. This request for information was as a result of the Applicant's claim for assistance with dental treatment from The States of Guernsey during the period December 2007.
- 3.17 The request for information was not obstructed by the employer but the appropriate information, including payslips, were not available because none had ever been issued.
- 3.18 It was at this time that the Applicant became aware that income tax deductions had not been applied to her earnings. The Applicant was anxious about the situation and became fearful of the consequences.
- 3.19 The Respondents did attempt to assist the Applicant by arranging for her to meet with their Accountant so that he could explain the situation.
- 3.20 The Applicant attended the meeting with the Respondents' Accountant in January 2008, but was uncomfortable with the suggested solutions. The Applicant was requested to sign documents including a document for 'new arrivals' to Guernsey. She declined to do so since she had been in Guernsey for a number of years and thought this to be inappropriate.
- 3.21 The Applicant gave evidence that she was unaware of her obligations with regard to Income Tax, had never completed a Tax Return form and believed that her employer was responsible for making deductions for tax.

- 3.22 During January 2008, the Applicant became increasingly concerned with regard to her unpaid tax and expressed concerns that she would be penalised. On a number of occasions she became emotional and claimed that she would face severe penalties.
- 3.23 The Respondents repeatedly said that they would support the Applicant and provide all assistance required to resolve the situation with regard to the payment of tax.
- 3.24 During January 2008 the relationship between the Applicant and Ms Oakley became difficult. The Applicant became increasingly worried about her tax situation. During this period Mr Green was away in South America. Tensions increased and the Applicant claimed that on or about 13 January 2008, that she could 'go to jail' with regard to her tax affairs. Both parties agreed that the relationship between them deteriorated thereafter.
- 3.25 Towards the end of January 2008 Mr Green left Guernsey again to fly to Peru. He informed the Applicant that he would attend to her requests for payslips and a written contract of employment on his return.
- 3.26 The Applicant became increasingly concerned and Ms Oakley tried to reassure her that assistance would be given to resolve her tax situation as soon as Mr Green returned. Ms Oakley claimed that arguments started to break out between the Applicant and herself in the presence of the children, a situation that, the Respondents argued, they found intolerable; the Applicant, however, vehemently denied that any arguments had taken place in front of the children. What seemed apparent however was that the relationship between Ms Oakley and the Applicant had deteriorated to the point that they were unable to communicate effectively.
- 3.27 During the period commencing 28 January 2008, Ms Oakley had drafted a letter terminating the Applicant's employment. She explained that she had contacted the Advisory Service at the Department of Commerce and Employment with regard to the wording of the letter.
- 3.28 The Applicant and Ms Oakley agreed that a meeting would take place, to resolve matters, on Friday, 1 February, after the children had been taken to school. Due to the illness of one of the children this meeting did not take place.
- 3.29 On Monday, 4 February 2008, Ms Oakley met with the Applicant and according to the Respondent's evidence, gave her a hug and offered her a cup of tea. Ms Oakley handed the Applicant a letter terminating her employment with immediate effect. She also read this letter out loud to her to ensure she understood its content. Ms Oakley asked for the keys to the house and the Applicant walked away.
- 3.30 When asked whether the Applicant had been given any warning of the nature of the meeting that was to take place on either 1 Friday (later rearranged to 4 February) Ms Oakley responded that 'it was pretty obvious'. Ms Oakley offered no evidence to the effect that the Applicant had been informed that it was a disciplinary meeting.
- 3.31 The Respondents did not provide any evidence that a proper process was followed with regard to the dismissal of the Applicant.

## **4.0 Conclusions**

- 4.1 The Applicant claimed unfair dismissal. The Tribunal finds that it needs to have regard to the Respondent's adherence to the procedural processes leading to the dismissal of the Applicant.
- 4.2 Fair and frank evidence was given by both parties with regard to the circumstances leading to the dismissal.
- 4.3 The Tribunal finds that there was no written Contract of Employment between the parties.
- 4.4 At no time during the period of employment was the Applicant provided with a payslip.
- 4.5 The situation with regard to the Applicant's Income Tax arose as a result of a lack of knowledge by both parties. This failure to understand the Law is no excuse. Towards the end of 2007 / beginning of 2008, the Income Tax situation for the Applicant was clarified and the consequences of this lead to a fundamental breakdown in the relationship between the parties.
- 4.6 The relationships in this domestic employment situation were informal. However, it is reasonable to expect the Respondents to have communicated standards of conduct for the Applicant to adhere to whilst at work, and also to provide a fair process of dealing with alleged failures to observe them.
- 4.7 Clear guidance is given by both the Discipline at Work Advisory booklet and the Code of Practice (Disciplinary Practice and Procedures in Employment) as to the reasonable behaviour and procedures by an employer in the dismissal of an employee. These are both freely available from The Commerce and Employment Department. The guidance is applicable to all employment situations. The Tribunal is surprised that even though the Respondents made contact with the Department the Respondents did not avail themselves of the information available.
- 4.8 The Tribunal accepts that, in this situation, certain formalities that would apply to a large employer cannot be used as a comparison.
- 4.9 However, the Tribunal has compared the processes of the Applicant's dismissal with the Code of Practice and has concluded that even the most fundamental procedures to ensure natural justice for the Applicant were not followed. At the very least, the Applicant should have been given proper and explicit reasons for the meeting that eventually took place on 4 February 2008. She should also have been afforded the opportunity to be accompanied and given the ability to appeal the decision of that meeting. None of these was made available to the Applicant.
- 4.10 In the absence of conclusive evidence, documentary (payslips) or other evidence the Tribunal concludes that, on the balance of probabilities, the gross earnings of the Applicant for the six months preceding her dismissal were £1,500 per calendar month.

## **5.0 Decision**

- 5.1 The decision of the Tribunal had to take into account the relevant Law and the Code of Practice (Disciplinary Practice and Procedures in Employment).

- 5.2 The Tribunal recognises that the Applicant was denied the Statutory right to receive pay slips from her employer in accordance with 12(1)(b) and 12(4)(b) of the Law and Section 3A(1) of The Conditions of Employment (Guernsey) Law, 1985, as amended.
- 5.3 However, the Tribunal finds that Miss Rios was unfairly dismissed on the grounds that in dismissing the Applicant, there was a failure by the Respondents to follow a proper procedure, in accordance with the Code of Practice, “Disciplinary Practice and Procedures in Employment”.
- 5.4 Under Section 22(1)(a) of the Law, the Respondent shall pay the Applicant an award of £9,000 (Nine Thousand Pounds), this being the sum equal to six months’ pay, as determined by the Tribunal.

Ms Caroline Latham  
Chairman

20 May 2008  
Date