

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Mark Shaw
Represented by: Advocate Simon Geall

RESPONDENT: Kings Life Limited
Represented by: Advocate Louise Hall

Decision of the Tribunal Hearing held on 5 September 2008.

Tribunal Members: Ms Georgette Scott
Mr Andrew Vernon
Mr John Guilbert

UNANIMOUS DECISION

Having considered all the evidence presented and representations from both parties and having due regard to all circumstances the Tribunal Preliminary Hearing found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Shaw's employment service with Kings Life Ltd was insufficient to give him the one year qualifying period required, under Section 15(1) of the Employment Protection (Guernsey) Law, 1998 as amended, to make a claim of unfair dismissal.

Georgette Scott.
Signature of the Chairman

9 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 A Hearing was convened before the full Tribunal to determine whether or not Mr Shaw had the Qualifying Period of one year's continuous employment with the Respondent, as required under Section 15 (1) of the Employment Protection (Guernsey) Law, 1998, as amended, in order to make a claim of unfair dismissal.
- 1.2 Advocate Geall claimed that his client had sufficient service, under the law, to qualify for unfair dismissal since his client was entitled to add his contractual notice to his dismissal date.
- 1.3 Advocate Hall disputed the Applicant's claim by asserting that only statutory notice, under the law, could possibly be added to the Applicant's dismissal date, and that this would not be sufficient to provide him with the necessary qualifying period to make a claim of unfair dismissal.
- 1.4 The Applicant's representative provided bundle EE1.
- 1.5 The Respondent's representative provided bundles ER1 and ER2.

2.0 Facts Found by the Tribunal - Preliminary Hearing

- 2.1 Mr Shaw started employment with Kings Life Limited on 23 October 2006 and was summarily dismissed by his employers on 22 July 2007.
- 2.2 The Applicant had signed a contract of employment (EE1 refers).
- 2.3 The Applicant had served nine months with Kings Life Limited upon his dismissal.

3.0 Summary of Parties' Main Submissions

(a) The Respondent's case

Advocate Hall submitted that the "material date" in relation to Section 5 of the Law which defines the effective date of termination was 22 July 2007, the date upon which Mr Shaw was summarily dismissed.

Therefore, in relation to Section 1 (1) of the Law, the statutory notice required was one week (on the basis that the Applicant was employed for a period of one month or more but less than one year); and the effect of adding the statutory notice extended Mr Shaw's service from 22 July 2007 to 29 July 2007.

On this basis, the Applicant would not satisfy the service requirements to bring a complaint of unfair dismissal.

(b) The Applicant's case

Advocate Geall, representing the Applicant, submitted that the provisions of Section 1 (1) of the Law outlining statutory minimum periods of notice was amended in situations where a longer contractual notice was provided, and that Section 1 (8) of the Law provided for the same.

It was further submitted that the Applicant's contractual notice in a case of summary dismissal was three months according to the terms of his contract. The effect of adding three months to Mr Shaw's dismissal date was to take his effective date of termination to 22 October 2007.

The new termination date would provide Mr Shaw with one year of continuous service and provide him with the qualifying period to claim unfair dismissal under the Employment Protection (Guernsey) Law.

4.0 Conclusions

- 4.1 Having considered all the evidence provided and considered in depth the requirements of the Employment Protection (Guernsey) Law, 1998, as amended, the Tribunal looked specifically at the following sections of the Law (in addition to those directed to them by the representatives of the parties) in reaching their conclusions:

Section 1 (4) of the Law allows for either party to treat the contract as terminable without notice by reason of the conduct of the other party.

Section 5 (4) of the Law covering the "effective date of termination" (b) states that "in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect"

Section 5 (5) and Section 5 (6) further provide that where no notice is given then statutory notice may be applied if this extends the date of termination.

- 4.2 The effect of the above references is that the 'material date' remains 22 July 2007 but the effect of Section 5 (5) is to move the effective date of termination, for the purposes of the qualifying period only, to the 29 July 2007.
- 4.3 The panel also considered arguments found in the precedent provided by Fox Maintenance Ltd v Jackson 1978 ICR 110, EAT which noted that an employee will only be entitled to extend the effective date of termination (not disputed in this case by either party) with statutory provisions if the employer has dismissed the employee with no notice or less than the statutory notice.
- 4.4 Having regard to the above the Tribunal found that Mr Shaw was summarily dismissed by his employers and therefore could only rely on the addition of one week notice to his effective date of termination as provided by Section 1 (1) of the Law.

5.0 Decision

- 5.1 Having considered all the evidence presented and representations from both parties and having due regard to all the circumstances the Tribunal found, at the Preliminary Hearing, that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, that Mr Shaw's employment service with Kings Life Ltd was insufficient to allow him the necessary one year qualifying period to make a claim of unfair dismissal.
- 5.2 Whilst the Tribunal recognises that issues relating to the Applicant's dismissal may still be in dispute between the parties, in view of the above decision, those issues are outside of the jurisdiction of this Tribunal.

Signature of the Chairman: Georgette Scott

Date: 9 October 2008