

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Miss Jennifer Wilson  
Represented by: Advocate Paul Richardson

**RESPONDENT:** Beauty and the East Limited  
Represented by: Unrepresented

**Decision of the Tribunal Hearing held on Tuesday, 26 February 2008**

**Tribunal Members:** Mr Stephen Jones  
Ms Georgette Scott  
Mr Peter Woodward

**UNANIMOUS DECISION**

The Applicant was claiming Constructive Dismissal, the Tribunal therefore had to consider if there had been a fundamental breach of Miss Wilson's employment contract, which led to her resignation, and whether she took action within a reasonable timescale. The Tribunal determined that the non-payment of salary was indeed a fundamental breach of contract and that the Applicant had promptly taken action on each occasion.

The Tribunal took into consideration the fact that Miss Wilson did not resign until some 21 months after the first incident, but it accepted that the two occasions of cheques not being honoured in both July and August 2007 had convinced Miss Wilson that she had no option other than to resign and that, at this point, her trust and confidence in her employer had broken down.

In light of the above and having considered the evidence presented in the Application Form (ET1) and Response Form (ET2) and in the submitted documents, referenced EE1 and EE2, along with the representations made on behalf of the Applicant and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Miss Wilson was unfairly dismissed by reason of Constructive Dismissal.

Under Section 22(1)(a) of the Law, the Respondent shall pay the Applicant an award of £9,389.46, this being the amount equal to six month's pay, as determined by the Tribunal.

Stephen Jones  
Signature of the Chairman

6 March 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 After the Tribunal had been opened and a general introduction had taken place the Tribunal was adjourned at 9:37 am so that the Members could consider the question of the absence of any representative of the Respondent at the Hearing.
- 1.2 The Tribunal re-convened at 9:47 am. The Chairman confirmed that, having considered the service of documents as set out in Sections 37 (1) and (8) of the Law, and having inspected the file of correspondence held by the Secretary to the Tribunal, the Tribunal was satisfied that the respondent had been properly notified of the place, date and time of the Hearing and that the Tribunal would therefore proceed.
- 1.3 The Applicant gave witness testimony under oath, which was also supported by documentary evidence (EE1 and EE2 refer), as guided by her representative Advocate Richardson.
- 1.4 The Tribunal concluded that the effective date of termination was 29 September 2007.
- 1.5 The Applicant claimed that she had been Constructively Dismissed on the grounds that there had been a fundamental breach of contract because of the non-payment of wages for work done.
- 1.6 Neither the form ET1 nor ET2 clearly stated the gross earnings for the last six months of Miss Wilson’s employment, so no amount had been agreed by the parties.

#### **2.0 Facts as Found by the Tribunal**

- 2.1 The Applicant, Miss Wilson, was employed by the Respondent, Beauty and the East Limited, for the period from September 2003 until 29 September 2007, as a Beauty Therapist.
- 2.2 Miss Wilson tendered her resignation in a letter to the Respondent (EE2 refers) dated 18 September 2007.
- 2.3 The Respondent acknowledged Miss Wilson’s resignation in its letter of 25 October 2007, confirming that there had been ongoing financial difficulties.

### **3.0 The Law**

- 3.1 The Applicant claimed that she had been Constructively Dismissed within the meaning of Section 5(2)(c) of the Law i.e.:- “the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.”
- 3.2 For Miss Wilson to succeed in her complaint of Constructive Dismissal, within the meaning of Section 5(2)(c) of the Law, it was necessary for her to demonstrate:-
  - 3.2.1 That the behaviour of her employer was such that it could be held as a fundamental breach of the employment contract.
  - 3.2.2 That the breach led directly to her resignation.
  - 3.2.3 That she took action within a reasonable timescale following the alleged breach.

### **4.0 Testimony from the Applicant**

- 4.1 Miss Wilson gave evidence of four occasions in 2006 and seven occasions in 2007 when her salary cheques had been returned to her marked “Refer to Drawer.”
- 4.2 Miss Wilson confirmed that it was not a minor issue of a couple of days before she obtained value for the “bouncing” cheques and sometimes the cheques had to be re-presented two or three times with a delay of up to 30 days before good value was received.
- 4.3 Miss Wilson confirmed that on each occasion she referred the matter to her Manager and was aware that the same situation was occurring with other employees.
- 4.4 Miss Wilson confirmed that she was paid a salary based on hours worked with additional commission and that her average gross earnings over the last two years were £19,000 per annum; she explained that on some occasions her commission was paid separately from her basic pay and did not always show up on her pay slip.
- 4.5 Evidence was given that, in order to obtain payment for her final salary cheque dated 2 October 2007, Miss Wilson had to take the Respondent to the Petty Debts Court. However, this took place after the date of her resignation and was not, therefore, taken into consideration by the Tribunal when reaching its decision.
- 4.6 Miss Wilson confirmed that in all other respects, apart from the non-payment of wages, she enjoyed her work with the Respondent.

- 4.7 The Applicant confirmed that at no time did the Managing Director of the Respondent offer any explanation for the non-payment of salary cheques.

## **5.0 Testimony from the Respondent**

- 5.1 In the absence of a representative of the Respondent the only evidence was as contained in the original Response Form (ET2); this included a copy of a letter, from the Managing Director of the Respondent, to Commerce & Employment dated 25 October 2007. This letter acknowledged the ongoing financial difficulties of the company.
- 5.2 The letter confirmed that they considered Miss Wilson had been a valued member of staff and that at no time had they done anything to make her feel uncomfortable or unwanted.
- 5.3 The letter further confirmed that Miss Wilson had left of her own volition and that there would always be a job for her at Beauty and the East should she choose to return.

## **6.0 Closing Statement of the Applicant**

- 6.1 Advocate Richardson presented his closing statement and summarised the details of the Applicant's case. He stated that:
- 6.1.1 There had been a fundamental breach of contract by not paying wages for work done which had undermined Miss Wilson's confidence in her employer.
- 6.1.2 That the breach had been prolonged, even though the Applicant had raised the issues on each occasion in a proper and timely manner.
- 6.1.3 That the Managing Director of the Respondent had made no attempt to engage with Miss Wilson about the non-payment or to sort it out and therefore acted unfairly and unreasonably.

## **7.0 Closing Statement of the Respondent**

- 7.1 There was no representative of the respondent present at the Tribunal

## **8.0 Conclusions**

- 8.1 The Tribunal was satisfied that all necessary action had been taken to inform the Respondent of the Hearing and whilst it is not preferable to carry out a Hearing with one party not represented, it was justified in doing so on this occasion.
- 8.2 The testimony under oath presented by the Applicant was sufficiently compelling to convince the Tribunal that salary payments had been erratic

over a long period, making it difficult for the Applicant to deal with arrangements for her own personal financial matters.

- 8.3 The Tribunal considered that the non-payment of wages for work done was a breach of the terms of the employment contract and that the Applicant had taken sufficient steps by reporting the incidents to her Manager on each occasion.
- 8.4 The practical effect of the frequent non-payment was that Miss Wilson could no longer have trust or confidence in her employer that they would discharge their contractual responsibilities making it difficult to plan her own finances.
- 8.5 The Respondent did not refute the financial difficulties of the company nor offer any improvement in the arrangements for salary payments, even when informed of the difficulties being experienced by the Applicant and even though they appeared to value her work.
- 8.6 The Tribunal considered the amount of any potential award, given the lack of facts regarding the gross pay for the last six months. Documentary evidence provided by the Applicant contained copies of six pay slips for 2007, but it was acknowledged that these were incomplete, as two of them did not show any commission payments.
- 8.7 The Tribunal decided to gross up the four most representative monthly gross pay amounts, as shown on the pay slips, to equate to a full year and to take one-half of the resulting figure as a sum equal to six month's pay as the amount of any award, as set out in Section 22 of the Law.

## **9.0 Decision**

- 9.1 The Applicant was claiming Constructive Dismissal, the Tribunal therefore had to consider if there had been a fundamental breach of Miss Wilson's employment contract, which led to her resignation, and whether she took action within a reasonable timescale. The Tribunal determined that the non-payment of salary was indeed a fundamental breach of contract and that the Applicant had promptly taken action on each occasion.
- 9.2 The Tribunal took into consideration the fact that Miss Wilson did not resign until some 21 months after the first incident, but it accepted that the two occasions of cheques not being honoured in both July and August 2007 had convinced Miss Wilson that she had no option other than to resign and that, at this point, her trust and confidence in her employer had broken down.
- 9.3 In light of the above, and having considered the evidence presented in the Application Form (ET1) and Response Form (ET2) and in the submitted documents, referenced EE1 and EE2, along with the representations made on behalf of the Applicant and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Miss Wilson was unfairly dismissed by reason of Constructive Dismissal.

- 9.4 Under Section 22(1)(a) of the Law, the Respondent shall pay the Applicant an award of £9,389.46, this being the amount equal to six month's pay, as determined by the Tribunal.

**Signature of the Chairman: Stephen Jones**

**Date: 6 March 2008**