

States of Guernsey

**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

APPLICANT: Mr Joseph Castellino
Represented by: Paul Richardson, Advocate

RESPONDENT: BSI Generali Bank (CI) Limited
Represented by: Christopher Edwards, Advocate

Decision of the Tribunal Hearing held on 22 June 2007.

Tribunal Members: Ms Kathy Tracey
Mr Roger Brookfield and Mr Andrew Vernon

UNANIMOUS DECISION

1. Under the provisions of The Employment Protection (Guernsey) Law 1998, as amended, the Respondent admits unfairly dismissing the Applicant.
2. Under section 22(1)(a) of the Employment Protection (Guernsey) Law, 1998, as amended, the Respondent shall pay to the Applicant an award of £61,500, this being an amount equal to six month's pay.
3. Further, the Respondent shall pay to the Applicant costs totalling £189.40: this being an amount equal to £89.40 travel costs, as provided for under section 4 (c) of The Employment Protection (Recoverable Costs) Order, 2006; plus £100 costs, fees and expenses under section 4 (a) of the same Order.

Ms K Tracey

Signature of the Chairperson

Date

10 July 2007

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

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

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

1.0 Introduction

- 1.1 The Applicant appeared in person and gave witness testimony under oath on his own behalf, which was also supported by documentary evidence, as guided by his representative Advocate Richardson.
- 1.2 The Respondent offered only a prepared statement, which was unsubstantiated, read by Advocate Edwards, who then withdrew from the proceedings. The Respondent did not appear and no witness testimony or documentary evidence was offered.
- 1.3 At the outset of the hearing the parties confirmed that:
 - (a) It was agreed there was a dismissal.
 - (b) It was agreed the effective date of termination was the 14 September 2006.
 - (c) It was agreed that the dismissal was unfair.
 - (d) It was agreed that the salary figures and housing allowance figures are correct as provided in the document bundle (in the form of a Contract Letter) by the Applicant and not on the ET1 and ET2 previously submitted.
 - (e) It was disputed by the Respondent that the housing allowance should make up a part of any award that may be made.
- 1.4 The Respondent's representative asked permission, and was given leave, to read a prepared statement, which contained a number of unsubstantiated claims about Mr Castellino's capability and conduct and stated that Mr Castellino's housing allowance should not make up a part of any award, as Mr Castellino had not relocated to Guernsey from Jersey.
- 1.5 In light of the fact that the tribunal is a public forum, the Tribunal gave the Applicant an opportunity to rebut any key issues. However, the only matters for the tribunal to decide upon were in relation to (e) at 1.3 above.
- 1.6 The Applicant also made an application for costs to be awarded should the Tribunal make an award; the Respondents representative had withdrawn from the proceedings when the application was made.

2.0 Facts as found by the Tribunal

- 2.1 The Applicant, Mr Castellino, was employed by BSI Generali Bank (CI) Limited from 14 June 2004 until 14 September 2006, when he was dismissed.
- 2.2 BSI General Bank (CI) Limited do not dispute that the dismissal was unfair.
- 2.3 In 2006, BSI Generali Bank (CI) Limited was paying Mr Castellino a salary of £88,000 per annum and in addition an annual housing allowance of £35,000; one twelfth of each of these was paid each month.
- 2.4 In a letter from the Head of Human Resources (Generali Worldwide) dated 15 March 2004, Mr Castellino's Terms of Employment are outlined. This confirms his salary and Housing Allowance and also states that he would be "entitled to remain principally resident in Jersey".
- 2.5 A further e-mail submitted in evidence, written by Mr Tradelius of Generali Worldwide (described as the parent company) confirms that although Mr Castellino was expected to be in Guernsey during normal working days, he was not expected to move his family to Guernsey.
- 2.6 The Applicant did not relocate his family to Guernsey, but instead opted to stay on his boat in Beaucette Marina whilst he was working in Guernsey. During this time, Mr Castellino continued to receive his Housing Allowance.
- 2.7 In relation to an application for costs, it was found that the Respondent spent £89.40 on flights to Guernsey; he also spent a day attending the Directions Hearing deemed necessary due to the respondent's non-compliance to requests from the Tribunal Service for the provision of an ET2 (Response Form).

3.0 Conclusions

- 3.1 BSI Generali Bank (CI) Limited was paying the Applicant his Housing Allowance up until the time at which they dismissed him. If he was considered by his employer, not to be adhering to the terms on which this payment was to be made, the Tribunal would expect to have seen evidence of this and arguably a withdrawal of the payment. No such evidence was presented.
- 3.2 The Applicant was unfairly dismissed whilst receiving a monthly pay package, which included a Housing Allowance; the Tribunal considers this to be an integral part of Mr Castellino's remuneration. Taking into account section 34 (1) of the 1998 Law, as amended, which states that:

"pay...means all wages or salary (whether or not earned wholly or in part by way of commission) paid to the employee in question pursuant to his contract of employment, including –

- (a) overtime rates, shift pay and holiday pay; and*
- (b) any other pecuniary benefit paid to him in cash."*

and in the absence of any evidence to the contrary, the Tribunal considers that the Housing allowance should make up a part Mr Castellino's pay for the

purposes of determining the amount of the award for unfair dismissal, as provided for in section 22 (2)(a) of the Law.

- 3.3 The Respondent admitted the unfair dismissal although in its statement to the Tribunal the Respondent claimed that Mr Castellino had some part to play in his own dismissal. As the Tribunal took the view that insufficient evidence had been offered about the issue, it did not feel that *"it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal"* (section 23(2) of the Law).
- 3.4 The case management in this matter was hampered by the Respondents changing of position in relation to a number of issues including the calling of witnesses and indeed in the matter of whether they were going to dispute the unfairness of the dismissal at all. A Directions Hearing was held in order to determine the issues and to clarify the Respondent's position so as to allow the applicant to prepare. The Respondent then failed to comply with the Directions Orders as issued on 24 April 2007.
- 3.5 Mr Castellino had to travel from Jersey for the Directions Hearing. The tribunal therefore considered it appropriate to award costs for this day's travel (Aurigny flight £89.40) and for the amount of £100 to offset his other costs and fees, as set out in the unanimous decision.

Signature of the Chairperson

Ms K Tracey

Date:

10 July 2007