

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Jeffery Partridge

**RESPONDENT:** PVS94

Represented by: Mr Brian Barnes

**Witnesses:** Called by the Respondent:  
Ms Claire Penney

**Decision of the Tribunal Hearing held on 17 November 2010**

**Tribunal Members:** Mrs Tina Le Poidevin (Chairman)  
Mr Norson Harris  
Ms Katie Vidamour

**UNANIMOUS DECISION**

Based on all the evidence presented, the Tribunal found that the Applicant was fairly dismissed under Section 6(2)(b) of the Employment Protection (Guernsey) Law, 1998, as amended.

The claim of unfair dismissal is, therefore, dismissed and no award is made.

Mrs Tina Le Poidevin

20 December 2010

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Signature of the Chairperson

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

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

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

**Extended Reasons**

## **1.0 Introduction**

- 1.1 The Applicant, Mr Jeffery Partridge, claimed that he had been unfairly dismissed as he had not been given any warnings and the Respondent's decision to dismiss him had been taken before further information could be obtained from his doctor, despite the Respondent's imposition of a deadline which was not due to expire until three days after the letter of dismissal had been issued.
- 1.2 The Respondent, PVS94, disputed the claim on the grounds that the Applicant was fairly dismissed as a result of threats and foul language being directed by him to the Respondent's staff.
- 1.3 The Applicant appeared in person and gave witness testimony under oath on his own behalf.
- 1.4 The Applicant's sister, Ms Carol Gibson, initially assisted the Applicant until 10.48 am when she had to leave the hearing.
- 1.5 Form ET1 and a bundle of documents labelled EE1 (containing copies of a signed report from the Applicant's doctor dated 11 November 2010, signed letters from Claire Penney of PVS94 to the Applicant dated 24 and 27 May 2010, the Applicant's payslip for the period 10 March 2010 – 16 March 2010 and an undated signed written statement from Jade Elliott) were presented in evidence.
- 1.6 Mr Brian Barnes appeared for the Respondent, PVS94, and gave witness testimony under oath.
- 1.7 In addition to form ET2, two bundles of documents labelled ER1 and ER2 were presented in evidence. ER1 contained copies of a signed statement from Lee Gallienne dated 24 September 2010; a signed statement from Corrina Tostevin dated 1 September 2010; Facebook correspondence between Corrina Tostevin and Kelly and Jeff Partridge dated 22 and 27 April 2010 and 11 May 2010; an unsigned letter from Mr Brian Barnes of PVS94 to Commerce & Employment dated 26 July 2010; an unsigned transcript of a telephone conversation between Claire Penney and the Applicant on 26 May 2010; a signed statement from Lee Gallienne dated 27 May 2010; an unsigned letter dated 8 May 2010 from Claire Penney of PVS94 to the Applicant; an unsigned note dated 10 March 2010 providing details of a verbal warning given to the Applicant by Mr Brian Barnes of PVS94; a handwritten, signed loan agreement between the Applicant and Mr Barnes dated 28 April 2009; the contract of employment between PVS94 and the Applicant signed and dated 16 June 2009 and the Applicant's payslip for the period 5 May 2010 to 11 May 2010. ER2 contained copies of letters from Claire Penney of PVS94 to the Applicant dated 11, 24 and 27 May 2010 and 10 June 2010; a signed letter from the Applicant dated 3 June 2010 addressed to 'To Whom It May Concern' concerning holiday pay and two payroll reports from PVS94 covering the Applicant's earnings for the periods 1 January 2009 to 31 December 2009 and 1 January 2010 to 15 November 2010. Copies of medical certificates issued to the Applicant were also produced, noting sickness absences on 8 February 2010, 20 April 2010, 30 April to 10 May 2010, 7 May to 17 May 2010, 17 May 2010 for one week and 24 May 2010 for four weeks.
- 1.8 One witness, Ms Claire Penney, appeared for the Respondent and gave witness testimony under affirmation.

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

- 2.1 PVS94, run by two partners, Mr Brian Barnes and Mr Tim Troke, had been trading since 1994 as a small wholesale company servicing restaurants, hotels, pubs, hospitals, etc. Mr Troke was not regularly involved in the day to day running of the business.
- 2.2 The staff complement consisted of five full-time employees and two seasonal employees. Business was very tough due to the recession.
- 2.3 Office based staff were Claire Penney (office manageress and personal assistant) and a part-time person working flexible hours who looked after the purchase ledger.
- 2.4 The Applicant's gross earnings during the last six months of employment were agreed at £6,786.20.
- 2.5 As evidenced by the Contract of Employment, the Applicant commenced employment as a Driver/Storeman on 24 September 2007.
- 2.6 As evidenced by the Respondent's letter to the Applicant dated 27 May 2010, whereby one week's unpaid notice was provided, the Applicant's effective date of termination was 3 June 2010.

## **3.0 The Law**

- 3.1 Section 5(2)(c) of the Law notes that an employee shall be treated as dismissed by his employer if "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 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law notes that "it shall be for the employer to show (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and (b) that it was a reason falling within subsection (2)" and Section 6(2) notes "For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which .... (b) related to the conduct of the employee."

## **4.0 Summary of Parties' Main Submissions**

### **4.1 Respondent**

- 4.1.1 The Applicant had been previously cautioned by the Respondent in relation to his reckless treatment of company vehicles.
- 4.1.2 An incident drawn to Mr Barnes' attention upon return from holiday, whereby an employee had upset the Applicant and another colleague by making an inappropriate remark about their children, had been dealt with by Mr Barnes, despite the Applicant's theory that he had not done so.
- 4.1.3 On 10 March 2010 an official warning was given to the Applicant by Mr Barnes in the presence of Mr Lee Gallienne, the Respondent's Foreman, for filling up a company vehicle with petrol instead of diesel, failing to report it and continuing to drive the vehicle. This resulted in the

deterioration of the engine performance which ultimately cost the Respondent £136.40 to repair. The warning was made quite clear to the Applicant.

- 4.1.4 From that date the Applicant's behaviour was found by the Respondent to be erratic, unusual and worrying.
- 4.1.5 One morning in April 2010 the Applicant left the workplace with a van full of goods destined for the town area on an early delivery. He disappeared for some one and a half hours which resulted in customer complaints being received by the Respondent as their deliveries were late. The Applicant was eventually traced and when asked where he had been he said he had a personal problem which was absolutely nothing to do with the Respondent and he refused to talk about it.
- 4.1.6 When Mr Barnes discovered the reason for the absence at the Tribunal, he stressed to the Applicant that he should have spoken with him at the time as he would have had more sympathy with the situation and he was not an ogre.
- 4.1.7 The Applicant went off sick on 20 April 2010 and produced a medical certificate noting the reason for absence as acute anxiety and depression.
- 4.1.8 Whilst absent, the Applicant was in dialogue on Facebook with a fellow employee, Corrina Tostevin and extracts of these conversations had been voluntarily provided to Mr Barnes. Within this dialogue the Applicant blamed his situation on Mr Barnes and threatened to harm him and possibly another employee. The Applicant also referred to the Respondent's request for permission to obtain information on the Applicant's medical condition and his refusal as the information was private and confidential.
- 4.1.9 The Facebook dialogue became more sinister and more worrying as the Applicant was not only threatening Mr Barnes but also the staff, which was of great concern to the Respondent.
- 4.1.10 The Applicant's contract of employment stated "In the event of absence, the foreman or office staff must be informed within one hour of your starting time on your first day of absence. You must inform them of your likely return date to work. A medical certificate must be produced for all sick leave of three days or more. PVS reserves the right to ask any employee at any stage of absence to produce a medical certificate or undergo a medical examination. A maximum of four weeks sick pay will be paid at the full rate. During this period all monies paid to you from the States Insurance must be repaid to PVS94".
- 4.1.11 Claire Penney wrote to the Applicant on 11 May 2010 asking for the last three weeks' sickness benefit payments from Social Security to be paid to the Respondent.
- 4.1.12 Claire Penney wrote again to the Applicant on 24 May 2010 drawing his attention to the unacceptable length of time taken in reporting his continued absence (citing that a medical certificate dated 17 May was received on 22 May) and referred to three previous requests (which included those made verbally) for Social Security sickness benefit payments to be provided to the Respondent. At that point the Applicant's continuous sickness absence period stood at 35 days.
- 4.1.13 The letter of 24 May 2010 stressed the need for the Applicant to make contact with the Respondent on or before Saturday 29 May 2010 to discuss these points and stressed that

failure to hear from the Applicant by that date would result in the Respondent making decisions in his absence.

- 4.1.14 The Respondent subsequently heard from a third party that the Applicant considered the cheques had absolutely nothing to do with PVS94 because they had his name on them and, as such, the Applicant would be keeping them.
- 4.1.15 The Applicant's letter of 3 June 2010 asking for payment of his entitlement to one and a half weeks' holiday pay made no mention of this being offset by the value of sickness benefit cheques, despite the Applicant's belief that this was the reason why he had not provided the Respondent with the cheques.
- 4.1.16 Claire Penney confirmed that the Applicant had telephoned her on Wednesday 26 May 2010 after receiving her letter of 24 May 2010 and was quite upset as he considered the letter to be threatening and asked if he should get a lawyer. She told him that the letter was not threatening, it was just pointing out issues for discussion and the Respondent needed to contact his doctor to find out how long he would be absent as arrangements had to be put in place to cover his job. She also pointed out that his medical certificates were taking up to a week to be received at the office. The Applicant was upset, agitated and angry.
- 4.1.17 During the telephone conversation, the Applicant clearly stated to Claire Penney that if he came to the premises he would break Brian Barnes' neck by taking him around the corner and both her and Lee Gallienne would get hurt as well. She told the Applicant that the letter was not threatening but she felt that **he** was threatening. Claire Penney also had to ask him to tell his wife to be quiet because she could not hear some of the things he was saying as she was shouting in the background.
- 4.1.18 The telephone call lasted for at least half an hour, was littered with foul and abusive language and Claire Penney and her colleagues took the Applicant's threat seriously.
- 4.1.19 As a consequence of that telephone call, Mr Barnes telephoned his business partner, Mr Troke, and they met on 27 May 2010 with Claire Penney who was asked to repeat the content of her telephone conversation the previous day with the Applicant.
- 4.1.20 After taking into account the failure to return Social Security sickness benefit cheques, the delay in receiving medical certificates and in particular the threats to kill Mr Barnes and harm staff, Messrs Barnes and Troke felt they had no choice in the circumstances but to dismiss the Applicant.
- 4.1.21 The Respondent sought advice from Commerce & Employment and Claire Penney wrote to the Applicant on 27 May 2010 referring to the 26 May 2010 telephone call. She noted that the Applicant's failure to return sickness benefit cheques, his non-compliance with the Respondent's request to liaise with his doctor and his attitude and threatening behaviour during the 26 May 2010 telephone call had left them with no option other than to terminate his employment, giving him one week's unpaid notice as he was still on unpaid sick leave.
- 4.1.22 The day after posting the letter, Claire Penney received a telephone call from the Applicant's wife saying that the Respondent could talk to the Applicant's doctor but this was obviously too late as the decision had been made and the letter sent.

- 4.1.23 Mr Barnes refuted the Applicant's comment within the note from his doctor dated 11 November 2010 that he "felt there was too much work" and "was being forced to work on Sundays against his will", stating that they did work on Sundays - one person in the office and one in the van. He had worked on Sundays with the Applicant but he had never forced him or anyone else to work on Sundays and had certainly not heard the Applicant complain about working on Sundays so considered this to be untrue.
- 4.1.24 The doctor's note also referred to the Applicant being treated in an inappropriate manner, with his very words being that his boss "treated him like dirt". Again Mr Barnes refuted this by saying that he treated staff fairly and equally and referred to a time when the Applicant suffered a family bereavement and was given compassionate leave to travel to England. Also in 2009, as the Applicant wished to purchase a vehicle but could not afford to do so, Mr Barnes provided him with a loan which the Applicant subsequently repaid. These actions were not those of an employer who treated their employees badly.
- 4.1.25 It was difficult as a small company when one person represented 20% of the workforce, to run a business without knowing if the Applicant was coming back to work or not and, if so, when. It was also difficult to get a replacement who was as experienced and knew the job as well as the Applicant.
- 4.1.26 The Respondent had really tried very hard to handle the Applicant's situation correctly but the Facebook and telephone threats constituted acts of gross misconduct.
- 4.1.27 The Respondent had sought advice from Commerce & Employment at an early stage and in particular before drafting the letter of 24 May 2010.
- 4.1.28 The Respondent was sad and disappointed that Claire Penney had been accused of fabricating the content of the telephone conversation with the Applicant on 26 May 2010 as she had not done so.
- 4.1.29 The Respondent had treated the Applicant fairly but he had breached his contract on several occasions. He was in breach of contract for not returning social security cheques, despite constant chasing, and most definitely in breach of contract for gross misconduct in relation to the threats he made on the telephone and Facebook. If the Applicant's illness denied him recall, he was sorry that this was the case but the Respondent was not fabricating events and would not have progressed to this level if this was not true.
- 4.1.30 The decision to dismiss the Applicant was taken on the basis of what was heard, seen and requested but did not receive. The Applicant's inability to attend the office because he might hurt somebody coupled with more veiled threats was gross misconduct and the reason for dismissal.

## **4.2 Applicant**

- 4.2.1 The Applicant did not deny being given a warning on 10 March 2010 for putting the wrong fuel in the company vehicle and trying to cover this up. However, as the employment relationship was strained at that time, he did not know how to tell Mr Barnes without jeopardising his future job security when he had four children to keep.
- 4.2.2 Based on the Applicant's previous experience as a Supervisor at Safeway, he was aware that verbal warnings had to be given in the presence of witnesses and also had to be written down

and signed by the parties. In relation to the 10 March 2010 warning, nothing had been written down about his behaviour, there were no witnesses and nothing was signed.

- 4.2.3 Mr Lee Gallienne's statement was incorrect in that the Applicant had been given a warning about putting the wrong petrol in the company vehicle, not because of his behaviour.
- 4.2.4 Relations were strained between the Applicant and certain members of PVS94 and he was advised by Mr Barnes that if he had any problems, he had to speak to his line manager, Mr Lee Gallienne.
- 4.2.5 The Applicant did approach Mr Gallienne on each occasion when he had a problem but he was reluctant to do anything and the Applicant felt that he was not being listened to.
- 4.2.6 The Applicant cited an issue he had had with a colleague who refused to take loads and he had referred this to Mr Gallienne. The outcome was that the loads were placed in the Applicant's van for him to deliver.
- 4.2.7 The Applicant also referred to other issues which arose during his employment, citing several occasions when he carried both fresh and frozen foods in a non chilled company vehicle, sometimes for periods between 2 and 3 hours. He had also been instructed to pick up garden rubbish and carry this in the van at the same time as carrying fresh and frozen foods. As he knew that these practices carried certain risks, he drew this to Mr Gallienne's attention and was told that if he didn't like it he could always go home.
- 4.2.8 On several occasions the Applicant was told by Mr Barnes to take receipts from other firms whose premises he delivered to so that he could see what they were charging on for goods delivered. The Applicant knew that this was inappropriate.
- 4.2.9 One Sunday the Applicant, together with another employee, spoke with Mr Barnes outside his office as they were not happy about working on a Sunday. Mr Barnes' response was "PVS is a small firm and PVS needs to operate on a Sunday to survive. If you don't want to work on a Sunday you know where the gate is".
- 4.2.10 On one occasion when Mr Barnes was out of the office, an inappropriate remark was made by one of the Applicant's colleagues about his child and the child of another employee which the Applicant and Lee Gallienne brought to the attention of Mr Barnes upon his return to the office. Mr Barnes did nothing about this.
- 4.2.11 There were other instances but they were too numerous to mention.
- 4.2.12 The strain was building up to such an extent that the Applicant's behaviour started to suffer.
- 4.2.13 One day shortly before the Applicant went off sick, Mr Barnes came out of his office, checked both vans and took a half load off one van and put it on to the Applicant's. At that point Mr Partridge could not take any more and sought medical advice.
- 4.2.14 The Applicant was diagnosed as suffering from stress and depression. He had not previously suffered from that condition and his sickness absence record before that time was in the region of three days over the last 12 years.

- 4.2.15 The Applicant knew he was ill as it was out of character for him to behave the way he was doing but depression was a debilitating illness which made people say and do things they would not normally do. He was still taking medication to this day.
- 4.2.16 The Applicant admitted that he had disappeared from work for one and a half hours one day but he had suffered a personal tragedy and was very upset. He knew it was wrong not to make contact with the Respondent but he was also suffering from depression and anxiety and did not know what to do. That day he had just sat in the company van and the last thing on his mind was to telephone anybody.
- 4.2.17 The Applicant was confused by Mr Barnes' comment that the Applicant took too long to pass on his medical certificates as Jade Elliott took the Applicant's wife to the Respondent's office straight after his doctor's appointments to hand deliver the certificates so that they would know he would not be at work. He did not believe that any of the certificates had been posted.
- 4.2.18 The reason why the Applicant had not provided the Respondent with his sickness benefit cheques was because he thought it unwise to take them to the office in view of his illness. He recalled either himself or his wife telephoning Mr Barnes as he was owed one and a half weeks' holiday pay and asked if he could take this in lieu of the cheques. He did not hear anything back from Mr Barnes so assumed this had met with his agreement.
- 4.2.19 Claire Penney had also noted in a letter of 8 May 2010 that the Applicant could keep his sickness benefit cheques, with the Respondent deducting the amount from his wages. The fact that this may not have been done was no fault of the Applicant who assumed that this deduction had been made.
- 4.2.20 After receiving Claire Penney's letter of 24 May 2010 giving a deadline for the Applicant to contact the Respondent by 29 May 2010 to discuss the length of time it took to notify them of his absences, the anticipated length of his absence and his failure to provide the Respondent with his sickness benefit cheques, the Applicant sought advice from Commerce & Employment as he was worried, nervous and suffering from bouts of depression and anxiety.
- 4.2.21 The Applicant was not clear as to the meaning of certain words contained in the letter, namely 'failing to hear from you by this date will result in us making decisions in your absence'.
- 4.2.22 The Applicant was assured by an officer of Commerce & Employment, based upon the information he had outlined to that person, that the correct protocol in these circumstances was to have a verbal warning, written warning and final warning before dismissal.
- 4.2.23 The Applicant was under the impression that he could not be dismissed whilst on certificated sick leave and this had been confirmed to him by the Social Security department.
- 4.2.24 The Applicant had refused to give permission for the Respondent to liaise with his doctor because he thought his medical records were private and confidential and had telephoned his doctor's surgery to clarify the situation. After speaking with the surgery manager he was advised that all the Respondent needed to receive were his medical certificates noting the reason for and period of absence and the Applicant was the only person who could give the Respondent permission to discuss his medical situation.



- 4.2.25 The Applicant's doctor also assured him that all the Respondent would be interested in was whether the Applicant would drive the company van into a brick wall, which he considered that he was not about to do, so suggested that Mr Barnes speak with his doctor so that he could tell him what he wanted to hear.
- 4.2.26 Following receipt of Claire Penney's letter dated 24 May 2010, the Applicant telephoned the office and spoke with Claire Penney on 26 May 2010.
- 4.2.27 The Applicant did not threaten to break Brian Barnes' neck and did not threaten to harm anyone else at PVS94 on the telephone. His anger was aimed at the letter and not the people. The applicant said "I was wrong and I apologise for this but it was my illness". He was angry at receiving the letter because it was threatening and he was suffering from anxiety and depression and, at the time, he did not know what he was saying.
- 4.2.28 He had not made threatening remarks on the telephone. He did not agree with the account of the telephone conversation on 26 May 2010 as the reference to him making threatening remarks was untrue.
- 4.2.29 The Applicant also acknowledged, under questioning, that he had no explanation as to why Claire Penney would lie.
- 4.2.30 The Applicant could not recall Claire Penney saying that she felt threatened by him during the telephone conversation.
- 4.2.31 The Applicant refuted the claim by Claire Penney that he had used foul language, he was probably arguing with her (and so was his wife in the background) but he had not used a tirade of abuse.
- 4.2.32 The Applicant admitted that he had entered into the evidenced dialogue on Facebook with Corrina Tostevin. He had been angry and had not known what he was saying at the time as he was ill and had a lot on his mind. He had not really meant what he had put on Facebook.
- 4.2.33 On 28 May 2010, the Applicant's wife spoke to Claire Penney to say that the Respondent had permission to speak to the Applicant's doctor and she responded by saying "thank you" and put the telephone down.
- 4.2.34 Claire Penney did not bother to contact the Applicant's doctor and when he returned home, a letter dated 27 May 2010 terminating his employment was sitting on his doorstep.
- 4.2.35 The Applicant considered that he had been unfairly dismissed because the decision to terminate his employment was made before the specified 29 May 2010 deadline date.
- 4.2.36 In the 35 days he was off sick, Mr Barnes did not once contact him to ask how he was and the Applicant assumed, until he asked to speak to his doctor, that he was not concerned about his illness.
- 4.2.37 The Applicant referred to a Police visit relating to his alleged threatening behaviour, but, as this visit was made after the dismissal, the details are irrelevant to this case.
- 4.2.38 The Applicant was unsure what relevance the Respondent's loan had on his case as, whilst the loan had been provided to him by the Respondent, he had calculated it to finish on a certain

date only to find that the repayment period was extended beyond this as three or four payments were found to be missing and no effort was made to ascertain where the payments had gone.

## **6.0 Conclusion**

Based on all the evidence presented, the Tribunal concluded that:

- 6.1 The Respondent acted reasonably in dealing with the Applicant's sickness absence, specifically in relation to the request for the Applicant's medical certificates and Social Security payments to be presented to the Respondent in a timely manner together with the Respondent's request to discuss the Applicant's ability to return to work.
  - 6.2 The Applicant considered that he was compliant with the production of medical certificates but did not readily understand the significance of refusing to provide the Respondent with his sickness benefit payments or enter into dialogue with the Respondent whose ultimate aim was to accommodate him back into the workplace.
  - 6.3 Whilst an internal process was under way in relation to the Applicant's ongoing health issues, with a specified deadline date of 29 May 2010 before any decision would be taken, a dismissal on the grounds of capability may or may not have occurred.
  - 6.4 This process was, instead, superseded as a result of the Applicant's conduct which threatened the personal safety of Mr Barnes, Mr Gallienne and Ms Penney.
  - 6.5 Whilst the Applicant denied making verbal threats on the telephone on 26 May 2010, he did not deny making threats on Facebook although he attributes this to his condition and is repentant.
  - 6.6 The Respondent, however, considered that the verbal and written threats made by the Applicant to Mr Barnes and other PVS94 employees were acts of gross misconduct and sufficiently serious to dismiss the Applicant.
  - 6.7 In making its decision, the Tribunal has considered the key responsibility of every employer – that of the duty of care towards its employees and, in this particular case, whether the Applicant intentionally or unintentionally posed a threat to the Respondent's employees is irrelevant. The fact that the Respondent and its employees considered those threats to be real provided sufficient justification for the Respondent's decision to be made.
  - 6.8 The Tribunal has great sympathy towards the Applicant in relation to his health and personal issues, however, based on all the evidence presented, the Tribunal found that the Applicant was fairly dismissed under Section 6(2)(b) of the Employment Protection (Guernsey) Law, 1998, as amended.
2. The claim of unfair dismissal is, therefore, dismissed and no award is made.

Mrs Tina Le Poidevin

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**Signature of the Chairman**

20 December 2010

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**Date**

