



EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998  
NOTIFICATION OF ADJUDICATOR'S DECISION

On a complaint of unfair dismissal, suffering a detriment for refusing, or proposing to refuse, to work on a Sunday or failure by an employer to provide a written statement of reason(s) for dismissal, this award, (subject to the rights of appeal to the Royal Court, as set out in the Law), is legally binding and is the final decision of the Adjudicator.

Adjudication Hearing held on 31/03/2006 and 27/04/2006

between

**Applicant: Mr Peter Du Port and**

**Respondent: The Transport & General Workers' Union (TGWU)**

**Adjudicator: Mr Peter Woodward**

**Nature of Dispute:**

Mr Du Port claimed in his EMPROT 1 (Application Form) that he had been unfairly dismissed.

The TGWU denied the claim in their EMPROT 2 (Response Form) on the grounds that:

- 1) There had been conduct by Mr Du Port leading a breakdown in his relationship with the union; and
- 2) Mr Du Port's refusal to perform the contract led to frustration of contract.

**Adjudicator's Decision:**

After carefully considering all the evidence of both parties and their submissions, I find that that the TGWU failed to demonstrate a fair and objective process for the dismissal of Mr. Du Port. I therefore find that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Du Port's complaint is upheld.

**Amount of Award (if applicable) : £7,695.45**

I therefore award £7,695.45 in respect of unfair dismissal; this being the amount agreed by both parties that Mr Du Port earned in the three months immediately preceding the effective date of termination, and in compliance with Section 20 (2) of The Employment Protection (Guernsey) Law, 1998, as amended.

NOTE: Any award made by an Adjudicator may be liable to Income Tax

Any costs relating to the recovery of this award are to be borne by the Employer

Signature of Adjudicator

Mr P Woodward

Date: 8 May 2006

The detailed reasons for the Adjudicator's Decision are available on application to the Secretary to the Adjudicators, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF



EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998  
REASONS FOR ADJUDICATOR'S DECISION

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

**1 The Claim**

- 1.1 The claim was brought, by Mr Peter Du Port, against the Transport and General Workers' Union (TGWU), the Respondent, for unfair dismissal.
- 1.2 Mr Du Port claimed in his EMPROT 1 (Application Form) that he had been unfairly dismissed.
- 1.3 The TGWU denied the claim in their EMPROT 2 (Response Form) on the grounds that:
  - 1.3.1 There had been conduct by Mr Du Port leading a breakdown in relationship with the union;  
and
  - 1.3.2 Mr Du Port's refusal to perform the contract led to frustration of contract

**2.0 Representatives**

- 2.1 Advocate J. Roland represented Mr Du Port.
- 2.2 Advocate C. Green represented the TGWU.

**3.0 Witnesses**

**3.1 For the Applicant**

- 3.1.1 Mr Macarthur Hamel
- 3.1.2 Mr Peter Du Port

**3.2 For the Respondent**

- 3.2.1 Mr Andrew Frampton

**4.0 Documents**

- 4.1 For the Applicant:- a bundle of documents identified as EE1, EE2, EE3, EE4, EE5, EE6 and EE7
- 4.2 For the Respondent:- a bundle of documents identified as ER1, ER2 and ER3

## **5.0 Preliminary Issues**

The Hearing was convened at 9.40 on the morning of the 31 March 2006 and Advocate Green immediately made an open offer to Mr Du Port equivalent to that which he might gain if his claim for unfair dismissal should be upheld, but without the respondent admitting any liability. In light of this offer, Advocate Green proposed that if Mr Du Port were to request that the hearing still proceed that this would amount to a vexatious claim. Further that if the hearing was to proceed that it should be heard in camera as Mr Du Port would seek to "sling mud" at the Union.

Advocate Roland on behalf of her client claimed that there was a fundamental principle in law that Mr Du Port had the right to have his case heard and heard in public; it was not just a question of monetary recompense but also that of Mr Du Port's reputation and good name.

Having considered these representations, the Adjudicator decided that it was appropriate that the Hearing should still proceed and in public, with the proviso that should he believe it appropriate he would exercise his discretion to go into camera.

## **6 Evidence and submissions**

### **6.1 Evidence given by Mr Frampton**

- 6.1.1 Mr Frampton read from a witness statement, ER3 refers. He stated that he was the Regional Secretary for the South West region for the TGWU. He had been in this role since February 2002 and had been an officer in the union since 1990. His current role covered 12 separate districts, some 31 Regional Officers and some other 70 staff. He stated that of the 12 districts under his remit Guernsey was the smallest.
- 6.1.2 Mr Frampton stated that Mr Du Port had been appointed to the role of Guernsey District Officer in 2001. He had replaced Mr John Guilbert who had held this role for some 25 years. He noted that Mr Guilbert had managed to hold this job down for this period, without apparently feeling overworked or without the need to ask continually for extra help and assistance in fulfilling his obligations.
- 6.1.3 Mr Frampton stated that it was in the January 2004 that he had received a complaint from members of the Guernsey St. John Ambulance and Rescue Service as to the conduct of Mr Du Port. On receipt of this complaint Mr Frampton requested, the Deputy Regional Secretary, Mr Alan Beynon, to conduct an investigation into this complaint. It soon became clear that 31 members of the ambulance and rescue service had left the union and joined the Association of Professional Ambulance Personnel. The evidence pointed to the fact that it had been Mr Du Port's conduct that had led to this situation. The complaint was that Mr Du Port had held meetings with management without lay representatives being present from the union and they were not informed of the results of those discussions. They further complained that they had found it difficult to get hold of Mr Du Port over several months.
- 6.1.4 Whilst this investigation was being conducted Mr Frampton stated that he received a letter from Mr Du Port criticising the union's policies and structures and complaining that he had been invited to union meetings in Bristol, which he thought were wasteful of his time and further that he was having problems coping with his workload.
- 6.1.5 In light of the findings from the investigation and with his concerns as to alleged excess workload in Guernsey, Mr Frampton decided to hold a meeting with Mr Du Port on the 18 of February 2004. This meeting took place in Southampton in the presence of Mr Beynon and Mr Du Port's representative.

- 6.1.6 During the course of this meeting, Mr Frampton asked Mr Du Port if his job was affecting his health, and he replied, that indeed it was. Mr Du Port stated that he had contacted his GP on a number of occasions, as he was suffering chest pains. In light of these issues. Mr Frampton decided that as he had a duty of care toward Mr Du Port to safeguard his health and safety in his job that he would ask him to refrain from working, and attend a medical assessment. However, Mr Frampton stated that he had not suspended Mr Du Port from work.
- 6.1.7 Mr Frampton stated that Mr Du Port had attended his medical assessment in the UK on the 21 April 2004, and that the subsequent report was received in May 2004. In the same period Mr Frampton filed a report on Mr Du Port to the General Secretary of the Union in London; this report was passed to Mr Ray Collins, the Assistant General Secretary, who was subsequently involved in considering Mr Du Port's perceived lack of capability. The report included reference to complaints such as the way Mr Du Port had dealt with the issue of the "Agenda for Change"; this involved the revaluation of jobs in the Health Service, and all TGWU Regions balloted their members on the issue as to whether they supported it or not. Mr Du Port, exceptionally, had chosen not to ballot his members and simply accepted the "Agenda for Change without such a mandate. Another complaint against Mr Du Port was that he spent insufficient time on organising and recruiting new members; rather he spent far too much time speaking to the media dealing with poverty campaigns and talking to politicians.
- 6.1.8 Further meetings took place between Mr Frampton and Mr Du Port in July 2004; Mr Collins was present as was a colleague of Mr Du Port but there was no resolution to the outstanding issue. Further meetings took place in October and November 2004 with Mr Du Port still being requested not to attend his workplace. At no time did Mr Du Port or his colleague raise objections concerning the time it was taking to deal with the issues.
- 6.1.9 In October 2004 Mr Beynon, who had been providing cover as the Union Officer for Guernsey district in the absence of Mr Du Port, produced a report indicating that he was able to undertake the duties of Mr Du Port on a part-time basis and was not experiencing any particular problems in discharging his duties. It was after the production of this report that Mr Frampton decided that matters were so serious that he should write to the General Secretary in London; a letter was sent on the 20 December 2004. Subsequently the Deputy General Secretary, Mr Jack Dromey, was appointed as the "Investigating Officer" and he interviewed both Mr Beynon and Mr Frampton
- 6.1.10 Mr Frampton concluded his testimony by stating that he was aware that Mr Du Port had alleged his role in the initial disciplinary procedure was ambiguous, but in his opinion he had only taken on the role of an "Investigating Officer" and had never been the "Disciplining Officer", neither had he suspended Mr Du Port, his actions were only taken with regard to the health and safety of Mr Du Port. Finally, he was of the opinion that the mobility clause in the employment contract of Mr Du Port could only be waived by the General Executive Council of the Union; ultimately it was Mr Du Port's failure to follow instruction with regard to a move back to the UK (on a temporary, albeit extended basis) that led to his dismissal.

#### **Cross-examination by Advocate Roland**

- 6.1.11 Mr Frampton refuted the assertion by Advocate Roland that he could not act both as the Line Manager of Mr Du Port and impartial Investigating Officer into "capability" issues.
- 6.1.12 Advocate Roland then questioned Mr Frampton on the subject of the report that was sent to the General Secretary (Tony Woodley) in May 2004 (ER1 Tab 5 refers). This report indicated an option, as one of three available to the Union, that Mr Du Port should be dismissed. Mr Frampton did not agree that this report indicated that he had already made a decision at this time as to how the situation should be resolved. However, he did believe that the situation was serious and would not be easily resolved. Mr Frampton could not account as to how this letter would fit together with the Union Disciplinary Policy

- 6.1.13 Mr Frampton could not be sure if Mr Du Port had been issued with this report (ER1 Tab 5) at the time of its production. He stated that many documents had been issued to Mr Du Port during the period he was no longer attending his workplace.
- 6.1.14 Mr Frampton in responding to questions put by Advocate Roland repeatedly denied that he had taken any disciplinary action against Mr Du Port or that any of his actions could have been construed as those of a "Disciplining Officer". He also denied that any action he had taken could be seen as a blurring of the roles of that on Investigating Officer versus a Disciplining Officer in contravention of the Officer Disciplinary Procedure (EE1 Tab 1 refers).
- 6.1.15 He could not account why pages six and seven, of the May 2004 report to the Union's General Secretary, were missing from the dossier of documents in EE1 Tab 44 (Section 9 refers) compiled by him in December 2004 and supplied to Mr Du Port at that time.
- 6.1.16 Mr Frampton stated that he was of the opinion that the allegations against Mr Du Port were such that it would not have been appropriate to seek the counselling route as suggested in the Union Disciplinary policy, consequently he never offered it as an option to Mr Du Port.
- 6.1.17 Mr Frampton stated that his continued insistence that Mr Du Port refrain from attending the Union office from March 2004 was purely on the grounds of his concern for Mr Du Port's health.
- 6.1.18 Mr Frampton confirmed that he had asked Mr Du Port to attend an independent psychological examination as well as a physical examination, despite Mr Du Port's assertion that he had only discussed physical health issues with Mr Frampton (EE1 Tab 26 refers). When asked if either of the two independent medical practitioners used by the Union for these assessments had advised that Mr Du Port refrain from working, Mr Frampton stated he did not know the answer to this question. However, Mr Frampton stated that he continued to require Mr Du Port to refrain from attendance at work as he had a duty of care toward Mr Du Port.
- 6.1.19 Advocate Roland stated that Mr Du Port would testify that his representative was approached on the 22 July 2004 with the offer of a sum of £30,000 if Mr Du Port were to voluntarily offer his resignation. Mr Frampton stated that he was not aware of this offer, although he agreed with Advocate Roland that he had attended the meeting at which had the offer was issued.
- 6.1.20 Mr Frampton agreed that he had not been part of the interviewing team that had appointed Mr Du Port and therefore could not contradict Mr Du Port's assertion that a waiver to the mobility clause had been offered at that time, although he stated it would be highly unusual. His attention was drawn to an email from Mr Kavanagh, who had been the Union Regional Officer in Jersey, and who stated in this email that he had been given a similar waiver by the then Union General Secretary, Ron Todd. (EE1 tab 54 refers).
- 6.1.21 Mr Frampton was asked why he had not responded to repeated questions and emails from Mr Du Port on the practical issues of a transfer to Bristol; he stated that he referred all such questions to the Union central office in London.
- 6.1.22 Mr Frampton did not agree that the loss of the St Johns Ambulance staff from TGWU membership was due to tardy responses from the UK, as asserted by the Applicant, rather that this loss of membership was totally attributable to the incorrect actions of Mr Du Port.
- 6.1.23 Mr Frampton believed that Mr Du Port had been spending too much time on the Guernsey Poverty Campaign, even though Mr Bill Morris (the previous Union General Secretary) had given his public support. Mr Frampton expressed his disagreement with the stance taken by Mr Morris.

- 6.1.24 When questioned by the Adjudicator on the lack of a "Capability" policy or procedure to deal with the alleged issues Mr Frampton stated that the union disciplinary policy was a satisfactory mechanism for dealing with such issues

#### **Testimony given by Mr Hamel**

- 6.1.25 Mr Hamel had been a member of the TGWU since 1991 and has held a number of union roles in Guernsey including those of Chair of the States Negotiating Committee and a member of the Union District Committee.
- 6.1.26 Mr Hamel expressed the opinion that Mr Du Port faced a significant challenge on his appointment as the TGWU Officer for Guernsey in 2001; he was replacing Mr John Guilbert who had been in the role for some 25 years.
- 6.1.27 Mr Hamel expressed the opinion that the local office had to rely on temporary staff and that the Regional Office in Bristol or the London office was only offering minimal support to the Guernsey branch. In comparison the equivalent officer in Jersey was receiving States funded support from that jurisdiction.
- 6.1.28 Mr Hamel stated that during the period of Mr Du Port's apparently enforced absence from the office that he and his colleagues had written twice to the Union General Secretary, Mr Tony Woodley, but there was no response, not even formal acknowledgement that these communications had been received. Mr Hamel was of the opinion that Mr Du Port was in good health and capable of resuming his duties. Unfortunately, Mr Hamel stated, this lack of communication with Head Office served to feed the "rumour mill" and exacerbated an already difficult situation.

#### **Cross Examination by Advocate Green**

- 6.1.29 Mr Hamel repeated his assertion that in his opinion Mr Du Port had been fit to return to work and did have the support of both him and his District Committee.

#### **Evidence given by Mr Du Port**

- 6.1.30 Prior to being appointed, Mr Du Port had been interviewed by Mr Ashman, a TGWU Regional Secretary and a Mrs Prosser, a senior union official from London. During the interview he had obtained the verbal assurance that the mobility clause in his contract would be waived and asserted that his Jersey counterpart, Mr Kavanagh, had been given a similar assurance.
- 6.1.31 Mr Du Port agreed that he was now aware that the documentation he received upon appointment did not comply with The Conditions of Employment (Guernsey) Law, 1985.
- 6.1.32 Mr Du Port refuted the allegation, by Mr Frampton, that he turned down opportunities to be trained. Rather he had put himself forward for training to assist him in contesting critical local issues such as minimum wage and equality issues.
- 6.1.33 Mr Du Port stated that he had never received pages six and seven of the May 27, 2004 letter (ER1 Tab 5 refers) which had been sent to Tony Woodley by Mr Frampton and which included as an option that Mr Du Port might be dismissed. Mr Du Port stated that he only had sight of these two pages on the 30 of March 2006, the day before this Hearing when he was reviewing the Respondents documentation for the Hearing.
- 6.1.34 Mr Du Port stated that he had not been provided with information on the Union sick pay policy and had to request it. He testified he was on "sick leave" for 620 days prior to his dismissal; although, in his opinion, he was fit to work throughout this period.

- 6.1.35 Mr Du Port was of the opinion that communication between himself and Mr Frampton was only in one direction. For example Mr Du Port stated that he submitted full and detailed quarterly reports (example to be found in EE1 Tab 4) but Mr Frampton never gave feedback on the issues he raised.
- 6.1.36 Mr Du Port expressed the opinion that his desire to maintain a good relationship with Mr Frampton was complicated by an alleged affair between Mr Frampton and one of the Guernsey Union Office staff. This caused some tensions in the local office but Mr Du Port desisted from raising them with Mr Frampton, as he did not wish to damage an already difficult relationship between himself and Mr Frampton.
- 6.1.37 Mr Du Port confirmed that, at no time throughout the disciplinary process period, was he ever offered "counselling", as recommended in the Union Disciplinary Policy (EE1 Tab 1 refers).
- 6.1.38 Mr Du Port stated that the first formal event of the Disciplinary process took place in February 2004 when he was requested to attend a formal meeting by letter with Mr Frampton and Regional Organiser Alun Beynon (EE1 Tab 20 refers). The wording of the letter was quite explicit that this meeting was being conducted under the Union Disciplinary Procedure. The meeting subsequently took place on the 18<sup>th</sup> February in Southampton. Mr Beynon seemed to take the role of "Assisting Officer" and Mr Frampton appeared to take the role of "Deciding Officer".
- 6.1.39 During the meeting of the 18 February, the issue of health arose. Mr Du Port claimed that whilst he had volunteered the information that he took cholesterol-reducing medication that he had never stated that he could not cope with the job. Indeed, since his appointment until that date he never had a day off sick. Mr Du Port alleged that there seemed to be a complete misunderstanding by Mr Frampton, and with hindsight he thought this might have been deliberately affected by Mr Frampton to start a process that would ease him out of employment.
- 6.1.40 Subsequently Mr Du Port consulted with two union appointed doctors, one a generalist and the other specialising in psychiatric medicine, as well as consulting his own GP. By May 2004 it was his opinion that none of these three medical practitioners had pronounced him unfit for work. However, Mr Frampton still insisted that he stay away from the workplace and indeed set restrictions on his contact with Union staff.
- 6.1.41 Although Mr Du Port believed himself totally capable of returning to work, after the three medical assessments, time passed without any definitive action by the Union. Mr Terry Woodhouse, who was acting as a colleague and representative for Mr Du Port, wrote a letter, dated 15 June 2004, to Mr Frampton; this letter stressed the impact on Mr Du Port of his enforced absence and requested early resolution (EE1 Tab 28 refers). In response to this letter a date of 22 July was set for a meeting (EE1 Tab 29 refers). Meantime, on 9 July 2004, a letter was sent to Mr Du Port by a Mr Ray Collins, an Assistant General Secretary, stating that Mr Frampton had been requested to prepare a full report on the situation to date and that Mr Collins would wish to meet with Mr Du Port personally on the 22 July 2004 to discuss this report and all related issues.
- 6.1.42 Mr Du Port attended the meeting on the 22 July 2004 with Mr Frampton and Mr Collins, however he was allowed no opportunity to review the report prepared by Mr Frampton ahead of the meeting. Mr Du Port also stated that in an email dated 21 July Mr Frampton repeated his instruction to Mr Du Port that he may not visit the local office without agreeing a time and date with Mr Frampton, however this restriction was not accompanied by any justification or rationale (EE1 Tab 32 refers), and Mr Du Port did not know if this exclusion was based on health grounds or for disciplinary issues.
- 6.1.43 The meeting of the 22 July 2004 was inconclusive, however Mr Du Port stated that he was offered £30,000 to resign during the course of the day and he refused this offer.

- 6.1.44 Following the 22 July 2004 letters were sent to the Union General Secretary from the Guernsey District Committee and from Mr Terry Woodhouse requesting that the situation be resolved and Mr Du Port reinstated (EE1 Tabs 35 and 36 refer). Neither of these letters received reply or acknowledgement.
- 6.1.45 On the 16 September 2004, Mr Frampton sent a letter to Mr Du Port requiring him to attend a meeting on the 26 October 2004 at which Mr Alun Beynon would also be present. Mr Frampton stated in the letter that this was a reconvening of the meeting held on the 22 July (EE1 Tab 37 refers). Mr Du Port asked Mr Frampton why there should be such a delay until the 26 October and was told this was due to holiday and conference commitments.
- 6.1.46 On the 11 October, Mr Frampton sent Mr Du Port a letter stating that the meeting of the 26 October was a Disciplinary hearing and could lead to a recommendation by Mr Frampton to Mr Woodley that Mr Du Port be dismissed.
- 6.1.47 The meeting took place on the 26 October, Mr Du Port stated that the allegations that were raised, such as his alleged failure to deal effectively with "Agenda for Change", did not have substance. Mr Frampton agreed in writing to drop this allegation, however it was subsequently included in his report to Mr Woodley (EE1 Tab 4.3 refers).
- 6.1.48 Following the meeting on the 26 October Mr Frampton advised Mr Du Port in writing on the 17 November that it was his conclusion that the matters reviewed during the meeting had been serious, and that the possible sanctions could include dismissal. In that letter Mr Frampton stated that the Union had now decided that Mr Woodley, the General Secretary, would take on the role of Disciplining Officer (EE1 Tab 43 refers).
- 6.1.49 On the 20 December 2004, Mr Frampton submitted an extensive bundle of documents to Mr Woodley relating to Mr Du Port, and in a covering letter stated that in his opinion Mr Du Port was incapable of performing the role of Union Officer for Guernsey (EE1 Tab 44 refers).
- 6.1.50 In mid January, Mr Du Port received a letter from Mr Jack Dromey stating that he had been appointed as "Investigating Officer", that he would require Mr Du Port to attend a meeting in London and that Mr Du Port would be provided with a copy of the of the documentation submitted to Mr Woodley. (EE1 Tab 46 refers.)
- 6.1.51 In response to this letter, Mr Du Port requested that supporting witnesses attend this meeting on his behalf but there was no response to this request (EE1 Tab 47 refers) from Mr Dromey.
- 6.1.52 The meeting with Mr Dromey took place on the 21 February 2005 and a transcription of the meeting was made. Mr Dromey seemed to indicate that within two weeks this report would be submitted to Mr Woodley and action decided, however it was nearly three months later, on the 23 May 2005, that Mr Woodley sent a letter to Mr Du Port stating that having reviewed the report from Mr Dromey that he was persuaded that there was a capability issue and that Mr Du Port must transfer for at least a year to the Bristol office and undergo a training development programme. (EE1 Tab 51 refers).
- 6.1.53 On receipt of this letter Mr Du Port wrote on the 28 May to both Mr Woodley and Mr Frampton registering formal grievances. The grievance submitted to Mr Woodley alleged that Mr Frampton had failed to properly investigate the initial allegations against him and then had made additional allegations at subsequent disciplinary hearings without providing Mr Du Port with notice of these issues and without investigation. Included in this grievance was a formal complaint by Mr Du Port that an alleged affair between Mr Frampton and one of the union office staff in Guernsey had affected the working relationship between himself and Mr Frampton. The grievance submitted to Mr Frampton alleged that Mr Beynon had failed to undertake full and fair investigations and that a review of available documentation would confirm this. (EE1 Tab 52 refers). Neither of these



communications was acknowledged or replied to by the Union.

- 6.1.54 Mr Du Port also wrote on the 28 May 2005 in a separate letter to Mr Woodley challenging the ability of the Union to transfer him to Bristol as he had been given assurances prior to his appointment by Regional Secretary John Ashman and Deputy General Secretary Margaret Prosser that the requirement to work outside of Guernsey would not apply to him, and that this waiver had been applied to previous Channel Island appointees and in some other jurisdictions. (EE1 Tab55 refers). The union did not respond to this letter.
- 6.1.55 Mr Du Port wrote again to Mr Frampton on the 2 June 2005 requesting clarification on his personal situation. Mr Du Port referring to the letter he had received from Mr Woodley noted that in it there was a statement that it would not be appropriate to commence disciplinary proceedings on the grounds of gross misconduct. Given this statement he requested that Mr Frampton would confirm that he was not guilty of any disciplinary offences, that after his training period in Bristol he would return to Guernsey and that his return to work would be supported by Mr Frampton (EE1 Tab 53 refers). This letter was apparently passed to the London office of the union but was not responded to.
- 6.1.56 Mr Du Port wrote to Mr Frampton on the 7 June requesting advice and support on a range of issues relating to a transfer from Guernsey to Bristol such as allowance for travel time, health cover, transport, leave entitlement and social security as well as requesting details of the training and development programme which would need to be undertaken. (EE1 Tab 55 refers) There was no response to this letter from the Union indicating how these matters would be dealt with.
- 6.1.57 On the 19 June 2005 Mr Du Port wrote yet again to Mr Woodley with a formal grievance against the charge of lack of capability which had been asserted by Mr Dromey and on which charge Mr Woodley had recommended transfer of Mr Du Port to Bristol. (EE1 tab 56 refers)
- 6.1.58 On the 27 June 2005 Mr Woodley sent a letter to Mr Du Port asserting that the Disciplinary process had not been employed against Mr Du Port and that as no disciplinary hearing had been held or disciplinary sanction applied and stated that there is "obviously nothing to appeal against". However the issue of lack of capability according to Mr Woodley was proven and that the only solution was an enforced transfer to Bristol under the mobility clause included in Mr Du Port's contract of employment. Mr Woodley went on to state that failure to comply with his instruction might be considered a deliberate breach of contract by Mr Du Port. (EE1 Tab 57 refers.)
- 6.1.59 Mr Du Port responded to this letter on the 29 June 2005 asserting that in his mind there was no doubt that he had been subjected to a disciplinary process and that the letters, meetings and verbal communications with Mr Frampton and Mr Dromey had made it abundantly clear that he had been subject to a disciplinary process. As these proceedings had led to require a forced transfer of jurisdiction that surely the charge of lack of capability was within the context of the disciplinary process. Mr Du Port also drew attention to his repeated assertions of maladministration in the disciplinary process and which had relied on a non-existent or flawed investigatory process, which had not been addressed by the Union. Finally Mr Du Port drew attention to the ACAS code of conduct and that in his opinion the Union was in contravention of the code by not allowing appeals against any of the grievances he had raised or the decision to transfer him. Mr Du Port alleged that the fundamental issue was the flawed management practices of the Regional Officer Mr Frampton. (EE1 Tab 58 refers.)
- 6.1.60 Mr Woodley wrote to Mr Du Port on the 20 July 2005 and in this letter insisted that Mr Du Port must commit to the transfer and that if he did not he would be dismissed on 31 October 2005; Mr Woodley stated that Mr Du Port did have the right to appeal against this decision (EE1 Tab 59 refers).

- 6.1.61 Mr Du Port responded by letter on the 25 July stating that he had already lodged an appeal and in addition pointing out that he still had received no responses to his practical questions surrounding the transfer (EE1 Tab 60 refers).
- 6.1.62 Subsequently an appeal was heard by a panel drawn from the senior Union officers, however, it limited the grounds of appeal to the refusal to transfer and would not consider any other of the issues raised by Mr Du Port in relation to the alleged flawed and biased investigations. The Secretary to the Appeals Panel confirmed in writing on the 24 October that the decision to dismiss would be upheld effective 31 October 2005 (EE1 tabs 62 and 63 refer).

#### **Cross Examination by Advocate Green**

- 6.1.63 Mr Du Port was asked why he had not obtained a written waiver to the mobility clause in his contract at the time of his appointment and responded that he somewhat foolishly thought this commitment would be honoured and that he was aware that other officers had been given the same assurance.
- 6.1.64 Mr Du Port admitted that there were some grounds to confirm that he had not dealt with the St Johns ambulance complaint as he should, however this was the only complaint; it should be noted that his District Committee had made no complaint against him neither had any individual member and that the fundamental reason for the loss to the membership of the St Johns Ambulance staff was due to lack of response from the UK Union office after he had been suspended.
- 6.1.65 Mr Du Port repeated his assertion that he had never admitted any health problem that would prevent him performing his role and that his 100% work attendance record confirmed his fitness to handle his duties.
- 6.1.66 Referring to EE1 Tab 49 Advocate Green asserted that this demonstrated that Mr Dromey had not only given a full and fair Hearing to Mr Du Port but had given him as much time as he needed to present his side of the events that had led to this Hearing. Advocate Green asked was it was not reasonable that Mr Dromey might arrive at the conclusions detailed in his letter to Mr Woodley of the 13 May 2005 as to the capability issues currently observed in Mr Du Ports discharge of his duties. In response to this question Mr Du Port stated that Mr Dromey had indeed given time and attention to him, however he had not conducted a personal first hand investigation, but rather had depended on the flawed and biased investigatory reports from Mr Frampton and Mr Beynon.
- 6.1.67 Advocate Green pressed Mr Du Port on his contractual obligation to comply with Mr Woodley's instruction to transfer. In response to this Mr Du Port reiterated the verbal assurances he had received on appointment that this clause would be waived, also that it was a very and narrow legalistic view of the contract and that a reasonable employer would have facilitated the move by helping out with the practical issues of transferring from one jurisdiction to another. The Union had patently not responded to these practical questions and were therefore in breach of their duty of care and undermined his confidence that the transfer was supported by Mr Frampton or that he would enjoy a productive working relationship with Mr Frampton once in Bristol. Finally as Mr Frampton had already stated to staff in the Guernsey Union office that Mr Du Port would never return to Guernsey how could he accept that this transfer was being undertaken in good faith?
- 6.1.68 Advocate Green asserted that the issue was simply one of refusal to obey a reasonable order and that Mr Du Port had never been subject to a disciplinary process. In response Mr Du Port stated that there was overwhelming evidence that Mr Frampton and Mr Dromey were operating within the Disciplinary process and given the extremely protracted nature of the investigations, hearings etc. he could not conceive that the forced transfer on capability grounds was not a disciplinary action by the Union.

6.1.69 Advocate Green noted that Mr Du Port had included the "Hendy Report" in his bundle yet would he not agree that as the recommendations were not accepted by the Union or implemented as Union policy that they had no relevance to these proceedings. Mr Du Port responded that the report was relevant, in that it was written by a renowned QC in relation to a previous disciplinary issue relating to Union Officers in Northern Ireland and had recommended substantial improvements to the disciplinary policy, which apparently had not been implemented.

6.1.70 Mr Du Port insisted he had never refused to comply with the order to transfer but could not see how he could do this without support and advice from the Union.

#### **Re Examination by Advocate Roland**

6.1.71 Mr Du Port confirmed that the loss to the union membership of the St Johns Ambulance members in Guernsey was probably as late as December 2005, some 22 months after his suspension, and after his eventual dismissal.

### **7.0 Closing Statements**

#### **Advocate Green**

7.1 Advocate Green advised that the hearing should rely on the evidence given by Mr Frampton and the fair process followed by Mr Dromey and Mr Woodley. If there had been any defect in the process prior to December 2004 it had been rectified by the conduct of these two senior officers in the following nine months.

7.2 Mr Du Port had been subject to a lawful order and was given significant time to comply.

7.3 The waiver to the mobility clause could not be proven by Mr Du Port, and apart from an email from a retired Jersey union official there is no corroboration that waivers were offered. Indeed such waivers can only be granted by the Executive Council of the Union.

7.4 The inaction of Mr Du Port amounted to breach of contract and therefore left no possibility to the Union other than to dismiss.

7.5 The Appeal and the process adopted by the Union to conduct the appeal on the 20 October 2005 (EE1 Tab 63 refers) were constituted in strict compliance with laid down procedures and was fairly conducted.

7.6 Contrary to the assertions of Mr Du Port the offer to retrain him had been genuine.

#### **Advocate Roland**

7.7 The Union had not produced a witness who could refute that the waiver to contract had not occurred.

7.8 Mr Woodley had acted outside of his powers, only the Executive Council had the authority to enforce the transfer; also the mobility clause specifically mentions that it will only be invoked to undertake service in connection with any other Trade Group, District or Region of the Union (ER2 Tab2 refers).

7.9 Any test of reasonableness would indicate that the Union was very unreasonable, and whilst one would expect exemplary conduct by the Union in the discharge of disciplinary proceedings this had not been the case. The disciplinary process was elongated, biased and unfair.

- 7.10 The Applicant strongly disagreed that the actions of Mr Woodley and Mr Dromey from 20 December 2004 rectified any defects that might have been alleged in the disciplinary process before this date.
- 7.11 Mr Dromey did not conduct a first-hand investigation; rather he produced a “cut and paste” report taken from the flawed and biased reports of Mr Frampton and Mr Beynon.
- 7.12 Mr Du Port only discovered on the 30 March 2006 that, on inspecting the bundle of documents submitted by the Respondent, Mr Frampton had written to Mr Woodley on the 27 May 2004 with a report that included the option to dismiss Mr Du Port. How could the employer pretend that the issue had not been passed to Mr Woodley until December 2004 and then on the basis that Mr Woodley would take the role of an independent “Disciplining Officer”? In addition Mr Frampton could offer no explanation as to why Mr Du Port had not received the full report submitted by him to Mr Woodley on the 27 May 2004.
- 7.13 Mr Du Port wrote many letters indicating that the process was flawed and requesting that the formal grievance procedure be invoked. The Union either ignored these requests or took the position that as no disciplinary proceedings had taken place that no grievance could be raised; despite the fact that it was patently obvious from the documentation that a disciplinary process was in place from February 2004. It should be noted that the union documents contained in EE1 (sections 20,24,25,27,37,39 and 40) and covering the period 3 February 2004 to 26 October 2004 all stated that these proceedings were under the union disciplinary process
- 7.14 Mr Du Port strongly refutes the allegation that he was not capable to perform his duties and asserts that the Union did not have a proper capability procedure
- 7.15 Mr Frampton would appear to have taken both the role of ‘Investigating Officer’ and ‘Disciplining Officer’, in contravention of the Union Disciplinary Procedure.
- 7.16 Mr Du Port was not afforded a personal Hearing before Mr Woodley nor given the opportunity to make any submissions; this would seem to be contrary to any rules of natural justice.
- 7.17 If Mr Du Port was required to comply with the order to transfer to Bristol then his employer owed him an implied duty of cooperation. The UK Employment Appeal Tribunal (EAT) ruling in *United Bank v Akhtar* in 1989 gives valuable guidance, where the EAT judgement ruled that the operation of a mobility clause was limited by the implied duty of cooperation placed upon the employer who had a duty not to frustrate the party’s attempt to perform the contract.

## **8.0 Conclusions**

- 8.1. Whilst the Adjudicator accepts that Mr Frampton had some genuine concerns as to where Mr Du Port was focusing his time and energy his reaction to the complaint from the St Johns Ambulance members would seem rather excessive. The Adjudicator is persuaded that there was an error of judgement by Mr Du Port in this affair but from the testimony given by Mr Hamel it could also be argued that Mr Du Port was generally conducting himself appropriately and serving his membership. The quarterly reports submitted to Mr Frampton by Mr Du Port and evidenced in the Applicants bundle would also seem to confirm this view (EE1 Tab4 refers).
- 8.2. The Adjudicator has several concerns as to the conduct of the disciplinary process mounted against Mr Du Port, as follows:-
- 8.3. Given the wealth of documents in the document bundles, signed by Mr Frampton, referring to the disciplinary procedure, the Adjudicator finds it difficult to reconcile this with the testimony from

Mr Frampton that he was not conducting a disciplinary process against Mr Du Port in 2004.

- 8.4. Similarly, the Adjudicator is not persuaded by the letter of the 27 June 2005, from Mr Woodley, that as no disciplinary hearings had been held, and that as no disciplinary sanctions had been applied that there were “obviously” no grounds for appeal. It would seem to the Adjudicator that Mr Du Port had made it abundantly clear that he was questioning the fairness and independence of the prior investigations, which preceded the Hearing conducted by Mr Dromey. The employer’s position would seem to be rather disingenuous and effectively denied Mr Du Port the opportunity to challenge the fairness of these investigations. The Adjudicator is not persuaded by Advocate Green that whatever the defects in the disciplinary process in 2004 these were “cured” by the actions of Mr Dromey and Mr Woodley in 2005. The Commerce and Employment Code of Practice, Disciplinary Practices and Procedures in Employment (the “Code”) emphasises the need to make provision for appeals, and it would seem that the only appeal to be held by the Union focussed on Mr Du Port’s refusal to transfer to Bristol, thus ignoring his clearly stated requests that other perceived significant flaws in the disciplinary process should be appealed.
- 8.5. The testimony from both sides would seem to support the view that Mr Frampton and Mr Du Port had some form of personality clash, and when Mr Du Port volunteered the information he was somewhat stressed and on medication Mr Frampton would appear to have seized on this issue to suspend Mr Du Port from his duties. The Adjudicator notes that neither party referred to it as a formal suspension however the requirement that Mr Du Port could not enter the union office nor have contact with certain union staff seems to be a gross overreaction particularly if the only concern was for Mr Du Port’s health, as alleged by Mr Frampton.
- 8.6. The investigations by Mr Frampton and Mr Beynon into the alleged deficiencies of Mr Du Port do not seem to have been conducted in accordance with the Union Disciplinary Procedure or were or not undertaken at all. Also it would appear that the “Code” was again not observed in that Mr Frampton both conducted investigations and also conducted the disciplinary hearings in 2004.
- 8.7. The Adjudicator finds the timescale for these proceedings to be oppressive. The “Code” emphasises that disciplinary procedures should be dealt with quickly, and internal union memoranda in EE1 Tab 1 emphasise the ACAS requirements for prompt and effective process in any disciplinary proceedings within the Union. The totality of the process was conducted over some 620 days, not far short of two years. Whilst the Adjudicator accepts that such serious issues need time for consideration and fair process there is a point where one might conclude that the process is being extended in the hope that a resignation would be forthcoming from Mr Du Port.
- 8.8. The Adjudicator notes that the employer had no apparent policy or procedure to deal with capability allegations; and the employer documentation and evidence demonstrates a confused approach to the issue. On the one hand, with the employer asserting it was being dealt with under the disciplinary process and on the other hand asserting that no disciplinary process had been invoked.
- 8.9. Turning to other issues, it would seem to the Adjudicator that if the offer to transfer was genuine that the very important and practical issues being raised by Mr Du Port in transferring to another jurisdiction deserved some response from the union. It would seem to the Adjudicator that the 7 June 2005 memo to Mr Frampton from Mr Du Port was a rational and reasonable request for support in this area (EE1 Tab 55 refers). However, neither Mr Frampton nor any other member of the union chose to respond to these questions and Mr Woodley insisted that Mr Du Port transfer, without these issues being resolved. This would not seem to be the actions of a reasonable employer exercising their implied duty of cooperation.
- 8.10. In summary, the Adjudicator does not believe that the employer followed a fair and reasonable process in dismissing Mr Du Port.

- 8.11. Finally the Adjudicator would also wish to draw attention to the employer that the employment contract given to Mr Du Port was not in compliance with the Conditions of Employment (Guernsey) Law 1985. It would be advisable for the employer to check the contracts of other employees on their Guernsey payroll for compliance, if it had not already done so.

**9.0 Decision**

- 9.1 After carefully considering all the evidence of both parties and their submissions, I find that that the TGWU failed to demonstrate a fair and objective process for the dismissal of Mr. Du Port. I therefore find that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the dismissal of Mr Du Port was unfair.
- 9.2 I therefore award £7,695.45 in respect of unfair dismissal; this being the amount agreed by both parties that Mr Du Port earned in the three months immediately preceding the effective date of termination, and in compliance with section 20 (2) of The Employment Protection (Guernsey) Law, 1998 as amended.

Signature of Adjudicator:

Mr P Woodward

Date: 8 May 2006