

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

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

**Adjudication Hearing held on Thursday 12 September 2002
between**

Employee: Mr Terence Dodd **and Employer:** Guernsey Electricity

Adjudicator: Mr B Ferguson

Nature of Dispute:

Mr Terence Dodd alleged that he was constructively dismissed because of the actions of his employer, Guernsey Electricity, effectively as defined in Section 5 (2) (c) of the Employment Protection (Guernsey) Law, 1998, as amended.

Guernsey Electricity deny such unfair dismissal.

Adjudicator's Decision:

Having considered all the evidence put before me, I can find nothing to deduce from that evidence to enable me to conclude that Guernsey Electricity had broken a fundamental term of Mr Dodd's contract of employment, which would have enabled him to claim constructive dismissal.

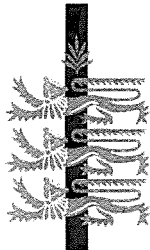
Amount of Award (if applicable) : n/a

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 B Ferguson

Date



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

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

1 THE CLAIM

- 1.1 The claim is brought by Mr Terence Dodd, the Employee, against Guernsey Electricity, the Employer, for unfair dismissal.
- 1.2 Mr Dodd alleged that he was constructively dismissed because of the actions of his employer, Guernsey Electricity, as defined in Section 5 (2) (c) of the Law.
- 1.3 Guernsey Electricity deny such unfair dismissal.

2 REPRESENTATIVES

- 2.1 Mr Dodd represented himself.
- 2.2 Guernsey Electricity were represented by Advocate Claire Tee, Mr Alan Chubb, Personnel and Safety Manager and Mr David Smart, Senior Operations Engineer.

3 WITNESSES

- 3.1 Mr Dodd did not call any witnesses.
- 3.2 Guernsey Electricity called the following witnesses:
 - Mr Alan Chubb
 - Mr David Smart

4 DOCUMENTS

- 4.1 Mr Dodd tabled one document: EE1.
- 4.2 Guernsey Electricity tabled the following documents: ER1, ER2, ER3 and ER4.

5 THE BACKGROUND

- 5.1 Mr Terence Dodd had been employed by Guernsey Electricity since 1978. Initially he was a labourer who progressed to low voltage jointing in 1986. From 1987 Mr Dodd had been constructing high voltage joints for Guernsey Electricity.
- 5.2 Mr Dodd was employed by Guernsey Electricity under the terms and conditions given in the Industrial Agreement and since commercialisation of Guernsey Electricity in February 2002 had chosen to remain on that contract.
- 5.3 The terms and conditions of service include provisions for a Grievance Procedure.
- 5.4 From the evidence submitted to me, prior to a failure of a high voltage joint that had been constructed on 12th April 2002, Mr Dodd's record as a High Voltage Jointer was considered by Mr Michael Dowding (Distribution Engineer – Guernsey Electricity) as one of the best.

6 THE EVIDENCE

- 6.1 Mr Dodd gave his version of a meeting called by Mr David Smart on 15th May 2002. It followed a breakdown of a high voltage joint at the Camp du Roi on the 14th May 2002 that Mr Dodd had constructed.
- 6.2 Questioned by Advocate Tee, Mr Dodd admitted that his workmanship had contributed to the breakdown and that the supply of electricity had been jeopardised as a consequence of the breakdown.
- 6.3 Mr Dodd also admitted that on the 12th April 2002 there was a similar failure of a high voltage joint which he had constructed at Le Gele Road. Mr Dodd confirmed that a Mr Michael Dowding (Distribution Engineer) had investigated this failure and had spoken to him and emphasised the need for care when undertaking the jointing procedure.
- 6.4 Mr Alan Chubb, Personnel and Safety Manager, introduced his evidence.
- 6.5 It contained technical details for joint making and the procedure that was followed when joints failed.

- 6.6 Reports from Mr Michael Dowding (2.3 of ER1) and Mr Steven Morris (2.4 of ER1) were read and noted.
- 6.7 The details from the Industrial Agreement under which Mr Dodd was employed that were relevant to this case (ER1 1.2) (ER1 1.7) and (ER1 3.3) were also read, noted and considered.
- 6.8 Mr Chubb's overview of the sequence of events that led to Mr Dodd's letter of resignation was questioned. Neither side had material evidence to support their assertions.
- 6.9 Mr Chubb submitted that after Mr Dodd's resignation two more joints constructed by Mr Dodd had also failed. I elected to take no note because these failures did not come to light until after Mr Dodd's resignation.
- 6.10 Mr David Smart, Senior Operations Engineer, gave his evidence with regard to the jointing procedures introduced by Guernsey Electricity in 2001 and the failure of two particular joints constructed by Mr Dodd at Le Gele Road and the Camp du Roi.
- 6.11 Following the failure at Le Gele Road Mr Michael Dowding (Distribution Engineer) was asked to investigate the circumstances of the failure and instructed by Mr Smart to remind Mr Dodd of the need for care when undertaking the high voltage jointing procedures. This was followed up by Mr Smart speaking to Mr Dodd informally about the matter.
- 6.12 Mr Smart detailed the dismantling of the Camp du Roi joint and the conclusions that he drew from this investigation. He requested that Mr Dodd should meet him in his office to discuss the failure of the Camp du Roi joint. The meeting took place on the 15th May 2002 and Mr Dodd accepted high voltage joint failures were expensive and inconvenient.
- 6.13 Mr Smart's remedy was that Mr Dodd should undergo a programme of refresher training to familiarise himself with recommended manufacturers jointing procedures.
- 6.14 Initially Mr Smart said this re-training would be undertaken off-island at Guernsey Electricity's expense. Mr Dodd's refusal to consider this option was described as robust and that he, Mr Dodd, would rather resign than do training.
- 6.15 Mr Smart then explained to Mr Dodd that without the required re-training Mr Dodd would no longer be allowed to undertake high voltage jointing and emphasised that low voltage jointing would have a consequent salary reduction. This reduction in salary would be achieved in stages under the "phase-down" agreement and would occur over a 3 year period.

- 6.16 At some stage during this meeting Mr Smart intimated that it may be possible for the refresher training to be undertaken in Guernsey.
- 6.17 Mr Smart asked Mr Dodd to reconsider his position and the meeting closed.
- 6.18 The following morning, 16th May 2002, Mr Dodd handed in his letter of resignation giving the required two weeks notice.
- 6.19 Mr Smart visited Mr Dodd on site that afternoon to confirm that re-training could be done locally and to ensure that Mr Dodd had carefully considered all his options. Mr Dodd's decision stood – "it was time for a change".
- 6.20 Whilst the detail of the two meetings was questioned, as no contemporaneous material was available or could be obtained, I could only make a judgement of the sequence of exchanges.

7 CONSIDERATIONS

- 7.1 Mr Dodd had been constructing high voltage joints since 1987. I am sure it was considered reasonable to conclude that an employee with a previously good record of high voltage jointing had allowed his standards of work to slip with this failure.
- 7.2 This failure was, however, followed by a second one and Mr Smart instructed that this failed joint should be removed from the trench and brought to a workshop for examination and dismantling. This was undertaken by a team of engineers and they concluded that Mr Dodd had not been following the manufacturers jointing recommendations.
- 7.3 Management had quite properly identified Mr Dodd's misconceptions with the jointing procedure and Mr Smart asked Mr Dodd to meet him in his office to discuss this matter on 15th May 2002. Mr Smart had intended that the meeting would be conducted informally. His evidence maintained that it was not a disciplinary matter and that he used procedures which had previously been agreed with the workforce for handling such issues.
- 7.4 That having been said, I was surprised that Mr Smart had no contemporaneous material to support the evidence he presented to me.

- 7.5 In summary Mr Smart submitted that Mr Dodd declined the initial offer of re-training to correct his, Mr Dodd's, misconceptions with the new jointing process because this involved attendance at a suppliers training centre off-island. Mr Dodd told Mr Smart that he would prefer to resign than to re-train. With no agreement on re-training Mr Smart then outlined the consequences of a continued refusal to re-train. Ultimately this would have salary implications through the "phase-down" agreement as Mr Dodd would only be offered low voltage jointing work as the ramifications of allowing Mr Dodd to continue to join high voltage cables without adequate re-training were potentially very damaging to himself, Mr Dodd, Guernsey Electricity and the consumers. At some stage Mr Dodd was then asked to consider the option of some form of re-training on-island if this could be arranged. This matter, in my judgement, was not confirmed at this meeting. Mr Dodd was asked to consider his options carefully before the meeting closed but there was no timetable set for it to be re-convened.
- 7.6 Mr Dodd's letter of resignation was furnished the following morning, 16th May 2002. In response to this Mr Smart sought a meeting on site with Mr Dodd on the afternoon of 16th May 2002 to firstly confirm that the offer of refresher training could be arranged in Guernsey and then to enquire if Mr Dodd's letter of resignation was final.
- 7.7 As the Adjudicator I asked Mr Smart how this latter question was put to Mr Dodd. I wanted to know if he, Mr Smart, had offered to specifically tear up the resignation letter to allow Mr Dodd to consider this confirmed alternative re-training proposal. Mr Smart replied "not in those terms" and when Advocate Tee interjected on Mr Smart's behalf he agreed that the offer to tear up the resignation letter had only been "inferred". I believe that in the interest of best practice relating to such sensitive matters the simpler the language used the better.

8 CONCLUSIONS

- 8.1 My responsibility as the Adjudicator was to decide as to whether Mr Dodd was dismissed and if so was such dismissal fair or unfair.
- 8.2 I have taken into consideration the provisions of Clause 5 (2) (c) of the Law particularly relating to constructive dismissal.
- 8.3 I have considered case law in the matter of constructive dismissal and in particular the case of *Western Excavating Ltd v Sharp* (1978).

8.4 In this case Lord Denning set out that to succeed in a complaint of constructive dismissal the employee must establish:

- that there was a fundamental breach of contract on the part of the employer;
- that the employer's breach caused the employee to resign;
and
- that the employee did not delay too long before resigning,
thus affirming the contract and losing the right to claim unfair dismissal.

8.5 The consequence of this judgement is that the act of an employer provoking an employee's resignation must be a serious one, not simply something which the employee finds inconvenient or even unreasonable UNLESS a fundamental term of the contract has been broken.

8.6 Mr Dodd's letter of resignation gave the required notice in accordance with the terms and conditions of the Industrial Agreement under which he was employed. Neither in this letter or in his evidence in person did Mr Dodd assert that his resignation was as a consequence of the phased reduction in his wages. The only reason which I could deduce for Mr Dodd's resignation was submitted by Mr Smart's evidence – that Mr Dodd would rather resign than undertake refresher training.

8.7 My decision on this matter recognises that Mr Dodd was clearly very unhappy with a management decision that seemed to him, Mr Dodd, to be most unreasonable. However, from the written evidence and that given in person, Mr Dodd did not establish that a fundamental term of his contract of employment had been broken by Guernsey Electricity which would have allowed him to claim constructive dismissal in line with the criteria set down previously.

8.8 I therefore consider that Mr Dodd was not unfairly dismissed and make no award to Mr Dodd in this matter.

Signature of Adjudicator

Mr B Ferguson

Date