



**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, (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 30 September 2002**

**between**

**Employee: Mr. P Gilliver**

**and**

**Employer: CBR Developments Ltd**

**Adjudicator: Ms P Lancaster**

**Nature of Dispute:**

Mr. Gilliver claimed:

- 1) Unfair Dismissal.
- 2) Failure to be provided, on request, with a written statement of reason(s) for dismissal.

**Adjudicator's Decision:**

Having considered the submissions of both parties and the evidence of the Complainant:

- 1) I find that the claimant, Mr P Gilliver was unfairly dismissed. I am satisfied that there were insufficient grounds for dismissal under Section 6(3) of the Employment Protection (Guernsey) Law 1998.
- 2) The second claim of failure to be provided, on request, with a written statement of reason(s) for dismissal by Mr M. Robert, of CBR Developments Ltd., is upheld. Mr Gilliver did not receive it within the statutory period of time under section 2(1)(b) of the Law.

**Amount of Award (if applicable): £6505.36** in respect of unfair dismissal and a further **£1000.82** in respect of failure to be provided, on request, with written reason(s) for dismissal.

Signature of Adjudicator

Mr P Lancaster

Date 10.10.02

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

The detailed reasons for the Adjudicator's Decision are available on application to the Secretary to the Adjudicators, 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 Complainant made two claims under the law arising from his employment, by Mr M. Robert of CBR Developments Ltd., as a carpenter. The period of employment was 6 September 1999 to 6<sup>th</sup> June 2002.

- 1.1 Unfair Dismissal and

- 1.2 Failure to be provided with a written reason(s), upon request, for dismissal.

- 2 The respondent was not present and no evidence other than the original submission was submitted on his behalf. I was satisfied that Mr Robert was fully aware of the place, date and time of the hearing, as required under section 25(1)(j) of the Employment Protection (Guernsey) Law, 1998.

- 3 **Witnesses**

- 3.1 Evidence was given on his own behalf by the complainant.

- 3.2 Also present was Advocate A Merrien, legal representative for the complainant.

- 4 **Documents**

- 4.1 For the Complainant

- the original submission, (Emprot 1)
- employee's bundle (EE1)

- 4.2 For the Respondent

- the original submission, (Emprot 2)
- letter from Mr Robert confirming his non-attendance at the hearing (ER1)

## **5. The Main Issues**

I judged the main issues of this case to be:

- 5.1 Whether the employer acted reasonably or unreasonably in treating Mr Gilliver's conduct as sufficient reason for dismissing him, and
- 5.2 The failure to provide a written reason(s) for his dismissal, within the statutory time, as required in Section 2(1)(b) of the law.

## **6. The Complainant's Case**

- 6.1 Mr Gilliver stated that CBR Developments Ltd. had employed him since 6 September 1999. He was employed as a carpenter. He also stated that he had never, at any time, been employed as a site foreman; although he had on occasion looked after different sites while Mr Robert was on holiday and had been happy to take on the extra responsibility without the extra pay.
- 6.2 Mr Gilliver had cause to inform Mr Robert that he was finding it too much to continue working in excess of his standard working week, 39 hours, as agreed upon employment. He also explained the reason for the request for this reduction was due to tiredness and that his family life was suffering as a result. Mr Gilliver stated that he had looked upon Mr Robert as a friend and that both he and his wife had attended his wedding.
- 6.3 The claimant stated that he had been employed by J. W. Rihoy for 11.5 years when he was asked to join Mr Robert of CBR Developments Ltd.
- 6.4 On the day of dismissal, Thursday 6 June 2002, Mr Gilliver stated that he was taking a call on his mobile phone from his wife. A private matter. Mr Robert arrived at the site to collect the timesheets. He was aware of Mr Robert and did not wish to make him wait so walked over to him to deliver the timesheet.
- 6.5 As he walked away to finish his telephone conversation Mr Robert remarked "come on Tiger keep the time down on the phone to her". Mr Gilliver went on to explain the it was well known by all employees that when Mr Robert used the word 'tiger' that it indicated that he was not in a good mood. Realising this, he quickly finished the call and returned to work.
- 6.6 Mr Gilliver then went on to describe how, after this exchange he had commented to Mr Robert that it was only a phone call, leading to a verbal confrontation about the telephone call and including comments about a third party regarding mess in the workshop. This resulted in Mr Robert shouting at him and informing him that he was sacked. The

conversation continued with arrangements being made for the collection of the works van.

- 6.7 Mr Gilliver confirmed that at no time was he asked to work a period of notice and although asked for, in writing, given no reason for dismissal until after the required time limits had expired. He did ask for two weeks pay in lieu of notice and for any holiday pay owing to be paid. He confirmed the receipt of these payments, but that the payment had been paid 12 days later.
- 6.8 When questioned, Mr Gilliver stated that at no time had he ever received a verbal warning regarding his behaviour or the use of his mobile phone to take personal calls. Upon further questioning Mr Gilliver also stated that he had never been given, even in a friendly conversation, any indication that his behaviour was unacceptable. Therefore, he was totally unaware that Mr Robert had a problem regarding the employment of Mr Gilliver and that when he informed him that he was sacked it came as a real shock.

## **7. The Respondent's Case**

- 7.1 The respondent - Mr M. Robert of CBR Developments declined to attend the hearing. The only evidence was the original submission (Emprot 2) which included:
- letter to the Secretary to the Adjudicators
  - letter to Mr Gilliver, giving reasons for dismissal
  - letter from Mr Falla to CBR Developments Ltd.
- 7.2 In his written submission, the respondent indicated that Mr Gilliver's ongoing family problems over a period of twelve months had led to an increasing number of private phone calls and text messaging and to some bad feeling amongst his colleagues.
- 7.3 On 6 June, Mr Robert had arrived on site to find Mr Gilliver on his mobile phone and had asked him to leave it and get on with his work, this led to an argument which left him with no alternative but to ask him to leave.

## **8. Adjudicator's Judgement**

- 8.1 Firstly, although I am satisfied that a written statement of the reason for the dismissal was written, as a copy was presented in both submissions dated 18<sup>th</sup> June, I do not believe that every action was taken to ensure the receipt within the specified time. The postmark on the envelope was that of the 19<sup>th</sup> June, therefore the written statement was received out of the required time.

- 8.2 Mr Gilliver assured me, when questioned, that at no time within his employment did he receive a verbal warning regarding any aspect of his behaviour or the use of his mobile telephone to make or receive personal calls.
- 8.3 It would appear from Mr Gilliver's evidence that the company, CBR Developments Ltd. has no formal procedure for the handling of disciplinary issues. No disciplinary meetings appear to have been held, nor was there any consultation with the employee with regards to termination of employment.
- 8.4 I find that Mr Gilliver was not given the opportunity to put his case forward. It appears that no thorough investigation was entered into on the part of Mr Robert, so as to ascertain the nature of the said behavioural problems, which may have identified a reason to the claim of attitude and performance and that Mr Gilliver was at times difficult to deal with.

#### **9. Adjudicators Decision**

- 9.1 Having considered the submission of both parties and the evidence of the complainant:
- 9.2 I find that the employer failed to follow any proper disciplinary procedure and therefore acted unreasonably in treating Mr Gilliver's conduct as sufficient ground for dismissal, under Section 6(3) of the Employment Protection (Guernsey) Law, 1998.
- 9.3 I am not satisfied that everything was done to ensure the receipt of the letter, before the time required by law. Therefore, I uphold the complainant's claim of failure to be provided with written reason(s) for his dismissal, as the evidence clearly shows that the letter was received out of time, s required under Section 2(1)(b) of the Law.

Signature of Adjudicator

Mr P Lancaster

Date

10.10.02