



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 Monday 23 September 2002

between

Employee: Mr Norman Watson **and Employer:** Royal Guernsey Golf Club

Adjudicator: Mr G Wherry

Nature of Dispute: Mr Watson claimed that he had been unfairly dismissed in that he had only become aware that his conduct had been brought into question to such an extent that it was likely that he would face dismissal, at the time that he was dismissed.

Adjudicator's Decision: I find that Mr Watson was unfairly dismissed. Despite presenting evidence that there were grounds for dismissal under Section 6(2)b of the Employment Protection (Guernsey) Law, 1998, the failure of the Respondents to implement a formal disciplinary procedure prejudiced the Applicant's ability to defend himself. I therefore award Mr Watson three month's pay.

Amount of Award (if applicable) : £5,325.64

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 G Wherry

Date

8/10/02

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 Claim

- 1.1 The claim is brought by Mr Norman Watson, the Applicant, against the Royal Guernsey Golf Club, the Respondent, for unfair dismissal.
- 1.2 The Respondent confirmed that the Applicant had been dismissed and that the main reason for his dismissal had been his failure to manage his staff in order to ensure the smooth running of the Golf Club.

2 The main issue

- 2.1 I judged the main issue to be whether or not the Respondent had acted reasonably in dismissing the Applicant on grounds of conduct (Section 6 (2)(b) of the Law), and whether the dismissal had been fair.

3 Representatives

- 3.1 Mr Watson represented himself.
- 3.2 The Royal Guernsey Golf Club was represented by Mr M. de Laune, Club Manager/Secretary.

4 Witnesses

- 4.1 Neither the Applicant nor the Respondent called any witnesses.

5 Documents

- 5.1 The Applicant produced a set of five letters, (marked EE1).
- 5.2 The Respondent produced a bundle of documents, (marked ER1).

6 The Applicant's Evidence

- 6.1 Mr Watson brought to my attention the fact that, at a meeting he had had with Mr de Laune, the Club Manager, on Monday 8 July 2002, whereby he was dismissed, he had not been given written reasons for his dismissal. He had then requested written reasons, and subsequently received the reasons in a letter dated 8 July 2002. However, he stated that the reasons in writing were not the same as those given verbally by Mr de Laune at the meeting on the 8 July. Mr Watson said that the decision to dismiss him had been made at the Bar and Catering Committee meeting on 1 July 2002, and stated that he should have been informed of this decision by the following day at the latest.
- 6.2 He stated that the meeting of 8 July 2002 with Mr de Laune, in Mr de Laune's office, was the first intimation that he had had of his dismissal and that at this time he was given four weeks notice.
- 6.3 Mr Watson drew my attention to a letter he had received from Mr de Laune, dated 17 April 2002, (included along with the Application form, form Emprot1), whereby he had been awarded a 5% pay rise, which the letter stated was 'in recognition of the good work that you have carried out in your post as Head Chef'. The letter also stated that he would be awarded a bonus of £500.00 at the end of September, provided that he had satisfactorily implemented an agreement, the details of which were attached to the letter.
- 6.4 It was Mr Watson's contention that he had been expected to present and price menus one week ahead of requirement, giving a 50% profit margin. He said that once passed to Mr de Laune, the menus were then discussed with the Bar and Catering Committee, a Club sub-committee responsible for decisions affecting the Bar and Catering Department. He said that on a regular basis the menus were marked down, in order to benefit the club members, thereby reducing his profit margin, which in turn was detrimental to his yearly figures on costing.
- 6.5 I was directed to a letter, which had been included as part of Mr Watson's Application, dated 2 July 2002, with the name 'Zoe' printed at the bottom, (it was accepted that writer was a Miss Zoe Riley, previously employed by the Royal Guernsey Golf Club, hereafter referred to as the 'Club'). Mr Watson stated that Miss Riley, who had been employed as an 'Assistant Chef', had left her employment due to dissatisfaction with the way that the Club had been run and that this indicated the Club Manager's inability to manage the staff.
- 6.6 Mr Watson stated that on more than one occasion Mr de Laune had used foul language towards himself and towards other members of staff, and he found this unacceptable.

- 6.7 It was stated that things had come to a head over an incident, (the date of which was unclear but seems to have taken place sometime between April and July of 2002), whereby the Second Chef, Mr Ross Wallis, had received a request from one of the Club members for pate on toast. This item had not been listed on the menu and in any case the kitchen had none in stock, therefore Mr Wallis had not prepared the order. Subsequently the member had complained and Mr Watson and Mr Wallis had been called to Mr de Laune's office to explain the situation and Mr Watson had stood by the decision of the Second Chef. He said that Mr de Laune had not been interested in their explanation and had used foul language.
- 6.8 A further incident was mentioned whereby, on 2 July 2002 Mr de Laune had entered the kitchen area and found that Mr Wallis, the Second Chef had been occupied with a private telephone call. Mr Watson stated that the rude manner in which Mr de Laune then spoke to Mr Ross, telling him to get off the phone, resulted in Mr Ross finishing his telephone call and then walking out of his employment. Mr Watson said it was not against Club rules for staff to make private calls.
- 6.9 Mr Watson chose to comment on points made by Mr de Laune, listed in a letter attached to the Employer's Response Form, Form Emprot2, which were highlighted as points that led to the decision to terminate Mr Watson's employment.
- 6.10 He stated that regarding an incident which took place on 29 June 2002, where he had been accused of being under the influence of alcohol whilst on duty, he had in fact been taking medication, prescribed for a long-standing medical condition, which would have accounted for his appearance.
- 6.11 With regard to the point in Mr de Laune's letter where he considered that additional work undertaken by Mr Watson, doing an early morning delivery job for a fruit and vegetable company, had had an effect on his ability to do his job, Mr Watson stated that he was 'an insomniac' and needed only a few hours sleep a night. Therefore, this early morning work would have had no effect on his main employment. He went on to point out that a sick note stating that he was unfit for work due to exhaustion, as referred to in Mr de Laune's letter, attached to Emprot2, was made out on 3 July 2002, which was after the date of the Bar and Catering Committee meeting, held on 1 July 2002, during which it had been decided that he was to be dismissed.

7 Respondent's Evidence

- 7.1 With regard to Mr Watson's comments on his letter of reasons for dismissal, Mr de Laune stated that at the meeting of 8 July 2002 in his office he had been trying to explain why it had been decided to terminate Mr Watson's employment but Mr Watson had walked out of the meeting before he had finished speaking.

- 7.2 In relation to the letter Mr Watson had produced showing that he had been awarded a pay rise, Mr de Laune said that this had been done bearing in mind the problems the Club had faced in recruiting new staff and also the Club had considered this award to be a positive step on their part to try to motivate Mr Watson and was given on the understanding that Mr Watson achieved certain required improvements.
- 7.3 With regard to Mr Watson's point that the practice of marking down the price of the menus he had submitted was detrimental to his yearly figures on costing, Mr de Laune stated that the few occasions throughout the year when this was done would have a minimal effect on these figures, and the effect was taken into account.
- 7.4 Mr de Laune stated that the kitchen staff consisted of the Head Chef, Mr Watson, also a Second Chef, Assistant Chef and Kitchen Porter all of whom Mr Watson was responsible for. He presented letters of complaint from Club members concerning the standard of food that had been produced by the kitchen and stated that he had also had to deal with a number of verbal complaints.
- 7.5 Mr de Laune refuted allegations made regarding his management skills. He referred to the letter from Miss Zoe Riley, mentioned in Mr Watson's evidence, attached to form Emprot1, saying that this served to highlight the fact that there had been a problem with Mr Watson's management skills in that he was not reporting information back to his staff and that if he and his staff had problems, he was not bringing those points to Mr de Laune to address or refer to the Committee. He referred to the 'pate incident' and said that on looking into the matter, after the member's complaint, at no time had Mr Watson or Mr Wallis told him that there was no pate in stock. Mr de Laune said that it was understood that if a request was made and the kitchen had the staff and resources to accommodate it then it would be unreasonable to refuse to prepare an order.
- 7.6 With regard to the incident that took place on 2 July 2002, where Mr de Laune had received a complaint that sandwich orders were taking an unreasonably long time, he had entered the kitchen to find that none of the Chefs were engaged in sandwich preparation, which was their responsibility, and Mr Ross was involved with a private telephone call. This was unacceptable and he viewed this as another occasion where Mr Watson should have used his authority to ensure that the staff were doing the work they were employed to do. He stated that Mr Ross had been working his notice and that since he and Miss Riley had resigned, as they were both taking up alternative employment in Alderney, Mr Ross's commitment to his work had not been fully satisfactory.
- 7.7 Included in the bundle of documents, marked ER1, presented by Mr de Laune, was a statement from a Mr N. Ponte, the Restaurant Manager, giving details of Mr Watson's behaviour at a Club function on the evening of Saturday 29 June 2002. Further mention of details concerning the events of this evening are given in Mr de Laune's letter accompanying

Form Emprot2 and it is also mentioned in the 'Minutes of the Bar & Catering Meeting', held on 1 July 2002, attached to the same form.

- 7.8 On this occasion the Kitchen Porter had been placed in charge of the carvery at a time when all kitchen staff were on duty, a position that should normally be taken by the Head Chef or failing that one of the other two Chefs. This resulted in complaints from members, as they did not receive the level of service that could normally be expected. It was also brought to Mr de Laune's attention that Mr Watson was allegedly under the influence of alcohol during work time on the evening of this function.
- 7.9 It was Mr de Laune's opinion that additional work that Mr Watson was carrying out, outside the Club, was having an impact on his ability to carry out his work. He provided a copy of a sickness certificate that had been presented to the Club by Mr Watson, (as referred to in Mr Watson's evidence and included in the Employer's bundle of documents marked ER1), showing that Mr Watson had been signed off work for exhaustion.
- 7.10 Mr de Laune stated that after the Committee Meeting at which Mr Watson's dismissal had been discussed, Mr Watson had gone on sick leave. Mr de Laune had felt that it would be inappropriate to inform Mr Watson of his dismissal at this time had therefore informed him upon his return to duty.
- 7.11 Mr de Laune stated, when questioned, that the Club, whilst employing some 16 staff, had no formal disciplinary procedure in operation.

8 Conclusions

- 8.1 Mr Watson's effective date of termination was 8 July 2002. With regard to Mr Watson's point that the written reasons provided to him were not the same as those given at the meeting with Mr de Laune on 8 July 2002, I am satisfied that had Mr Watson remained in Mr de Laune's office to hear all that he had had to say, then matters would have led to the points in Mr de Laune's subsequent letter being fully discussed.
- 8.2 It is quite apparent that Mr de Laune had a difficult task in running the Club to the Members' satisfaction and also maintaining continuity of staff. It is clear that there were problems in the way the kitchen was being run and as the person responsible, it fell to Mr Watson to address these problems. It was his duty to ensure that the kitchen staff were doing the jobs they were employed to do and that the level of catering service expected by the members was maintained. It is obvious from the letters of complaint produced and the incidents described that this was not happening.

- 8.3 The situation whereby sandwiches were not being prepared in reasonable time and similarly the 'pate incident', were occasions when Mr Watson might have been dealt with in a more formal manner and warned of the consequences should there be a re occurrence of such actions. Mr Watson's conduct on the evening of 29 June 2002, appears to have been considered by the Club Manager and also the Bar and Catering Committee, as a matter for grave concern. However, this situation was not dealt through any disciplinary process.
- 8.4 By admission on Mr de Laune's part, the Club had no formal Disciplinary Procedure. I do not consider that the documents presented to me, outlining areas of Mr Watson's work where improvement was expected were sufficient in bringing to the attention of the employee the seriousness with which the consequences of his actions were viewed.
- 8.5 Even though potentially fair grounds for dismissal may have been established, it is for the Respondent to show that a fair procedure has been followed. If an employer is to be considered to have acted reasonably in dismissing an employee then certain procedural steps must be carried out. In cases of gross misconduct this would entail, carrying out a full and fair investigation and hearing what the employee has to say in explanation, mitigation or as a defence.
- 8.6 At no time was Mr Watson offered a formal disciplinary meeting at which he could address the allegations over his conduct. He never had the opportunity to defend himself, to offer any explanations or to be supported by a colleague or representative.
- 8.7 In accordance with the Adjudication Procedure in the Schedule to the Law, I have considered the evidence of both parties and their submissions and I find that Mr Watson was unfairly dismissed and make an award of three months pay, consistent with section 19 and 20 of the Law, in the sum of £5,325.64.

Mr G Wherry

Adjudicator

8/10/02