

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: **Mr Ian Barnes**
The Applicant represented himself.

RESPONDENT: **Global Computing Ltd**
The Respondent was represented by Mr Andrew Castle.

Witnesses: **Called by the Applicant:**
Mr Steven Trebert
Mr Carl Ceillam, by witness statement only

Called by the Respondent:
Mr Leslie Bichard
Mr Dominic Chubb
Mr Jonathan Brehaut

Decision of the Tribunal Hearing held on 21 June and 2 July 2012

Tribunal Members: Mr Peter Woodward (Chairman)
Ms Caroline Latham
Mr Nigel Burnard

COMPLAINT

The Applicant alleged that he was (constructively) Unfairly Dismissed.

The Respondent denied that any dismissal had taken place but argued that the Applicant had resigned of his own volition.

DECISION

Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

Mr Peter Woodward
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Signature of the Chairman

25 July 2012
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Date

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.

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

Extended Reasons

1.0 Introduction

The Applicant, Mr Ian Barnes represented himself.

The Applicant called the following witnesses:

Mr Steven Trebert

Mr Carl Ceillam, by witness statement only

1.1 The Respondent was represented by Mr Andrew Castle.

The Respondent called the following witnesses:

Mr Leslie Bichard

Mr Dominic Chubb

Mr Jonathan Brehaut

1.2 At the outset of the hearing it was confirmed that:

The agreed Effective Date of Termination (EDT) was 19 October 2011.

The gross earnings were £14,596.32 for the six months prior to the EDT.

1.3 The complaint was an alleged (constructive) unfair dismissal. It is now firmly established in previous judgments given, under the Employment Protection (Guernsey) Law, 1998 as amended, that in order for an employee to be able to establish Constructive Unfair Dismissal, four conditions must be met:

- (i) The employer must be in breach of a term of the contract of employment.
- (ii) That breach must be fundamental, amounting to a repudiatory breach of contract.
- (iii) The employee must have resigned in response to that breach.
- (iv) The employee must not have delayed too long in terminating the contract following the breach of contract, otherwise the breach can be found to have been waived and the contract affirmed.

1.4 The Respondent, in his ET2, denied the dismissal and stated that the Applicant had resigned from the company.

1.5 Bundles were submitted by both parties

- For the Applicant EE1 to EE3
- For the Respondent ER1 to ER5

- 1.6 Whilst it is not customary to refer to Case Management Meetings (CMMs) held prior to the hearing, the Tribunal notes that both parties were advised as to the requirements of the Employment Protection (Guernsey) Law, 1998, as amended: specifically that decisions are based on “the balance of probabilities” not on the basis of “beyond all reasonable doubt”. The Tribunal is satisfied that it was provided with sufficient documentation and relevant testimony to make a decision on the basis provided for in the Law.

2.0 Facts Found

- 2.1 The Respondent at the time of Mr Barnes’ departure from employment was providing both hardware and software support to a number of Guernsey based clients. The company had a staff numbering some eight employees.
- 2.2 The Applicant had been employed by Global Computing since 30 July 2001 as an IT Services Technician.
- 2.3 On 26 September 2011, the Applicant entered a guilty plea in a Guernsey Court to a charge of assault on a neighbour.
- 2.4 The Applicant informed his employer of this offence on 5 October 2011.
- 2.5 The Applicant continued his duties at the company premises until 19 October 2011, but did not visit client premises during this period.
- 2.6 On 19 October 2011, the Applicant met with Mr Bichard, Business Development Director of Global Computing Ltd, and was informed of an impending meeting with the Directors which would address issues relating to the assault and his time away from work to attend court proceedings in September 2011.
- 2.7 During the meeting on 19 October, a letter of resignation was signed by Mr Barnes and accepted, on behalf of the Respondent, by Mr Bichard (ER1 page 14 refers).

3.0 Mr Ian Barnes

- 3.1 Mr Barnes did not have a prepared witness statement although this had been requested in CMMs prior to the Hearing; in the event, the Tribunal asked Mr Barnes to direct them to his bundle and indicate the critical areas of evidence in these materials in support of his claim. The Tribunal then adjourned to consider these prior to reconvening.
- 3.2 Mr Barnes was then requested to read out passages from his bundle with particular reference to EE1 pages 1 to 9. This evidence consisted of a detailed description of alleged bullying by Mr Bichard toward Mr Barnes which had taken place over a number of years from 2007 and possibly prior to that. The alleged bullying included the following allegations:
- Criticising employees, including the Applicant, for breaking rules which were unknown to Mr Barnes: on one occasion this criticism being made in the presence of Mr Bichard’s teenage stepson.
 - Criticising the Applicant for allowing clients open access to the internal company network when, by the very nature of the work undertaken by Global Computing, this was a normal event.

- Use by Mr Bichard of rude or obscene language when discussing issues with the Applicant.
 - Accusing the Applicant of feigning illness and taking unjustified days off work.
 - Setting “income performance standards” for staff, including the Applicant, despite there being no written contractual terms in the employment contract to justify this.
 - Very long delays to staff requests for essential equipment.
 - Falsely alleging that the Applicant had left a hot tap running in the office overnight, as well as leaving the building insecure by leaving windows open at close of business.
 - Bullying Mr Trebert, the Applicant’s line manager, and thus making it difficult if not impossible for the Applicant to raise grievances.
 - Not making it clear whether the provisions and rules contained in the Employee handbook applied to Directors.
 - Ignoring complaints by the Applicant in relation to the conditions of the brakes on a company van.
- 3.3 Mr Barnes stated that he had not communicated the alleged bullying to either Mr Bichard or to Mr Bichard’s fellow directors. He did not think it worth telling other directors of his concerns, as Mr Bichard would be supported by these directors.
- 3.4 Mr Barnes stated that he had recorded all these incidents in a diary but he had not shared the contents of this. Neither did he share this diary with any work colleague. He also stated that he thought it would have been inappropriate to inform Mr Bichard, at the meeting of 19 October, that he was being bullied and did not include this in his letter of resignation.
- 3.5 Mr Barnes was disciplined twice in the period 1 October 2010 to 11 February 2011. The first incident involved the loss of a key, by the Applicant, which belonged to a client of the company. The Applicant believed that by reporting the loss to the police he had taken the correct action; he was unaware of having to formally inform the Respondent that he had been entrusted with client keys which had also been used by his direct line manager in the period leading up to their loss. In the event a written warning was issued.
- 3.6 The second incident was in relation to a client having been given access to the Respondent’s network via a computer link. The Applicant explained that this had been a regular procedure with clients over a period of years, was not unusual, and the particular client at issue was a relation of one of the Respondent’s Directors. Despite this, Mr Barnes was issued with a written warning, which was sent to the wrong home address.
- 3.7 Turning to the events of October 2011. On 5 October 2011, the Applicant informed Mr Bichard and Mr Chubb of his guilty plea to the charge of assault. He stated that, due to his previous treatment by Mr Bichard, he was afraid that he would lose his job. He also confirmed that there was a meeting later on the same date with Mr Bichard, where he told Mr Bichard that he had been on a day’s holiday for the court appearance on 26 September.
- 3.8 Mr Barnes confirmed that he then continued to work normally until 19 October 2011, although he was not deployed to any customer site.

- 3.9 Mr Barnes met with Mr Bichard on 19 October 2011 and was told that unless he resigned he would not be given a good reference or paid notice until the end of November 2011. Mr Barnes denied that Mr Bichard ever offered him a disciplinary process after 19 October 2011.
- 3.10 During this meeting, Mr Barnes was surprised that Mr Bichard could so readily produce a pro-forma resignation letter and therefore thought this must have been planned in advance.
- 3.11 In his opinion the notes of 19 October 2011, compiled by Mr Bichard (ER1 Pages 21 and 22 refer), were a complete fabrication.
- 3.12 He agreed that he had asked for six months' notice, as he was under the impression that his service with the Respondent entitled him to such a payment.
- 3.13 Mr Barnes signed his resignation letter because he thought that if he didn't he would not receive a good reference or any notice payment. He then left the premises immediately.

4.0 Mr Steven Trebert

- 4.1 Mr Trebert was a long term employee with Global Computing and was Mr Barnes' line manager at the time of his departure from employment on 19 October 2011. Given the close working environment of the Respondent, he agreed that he had been well placed over a number of years to observe the working relationship between Mr Barnes and Mr Bichard.
- 4.2 The witness was questioned at length by the Tribunal about the working relationship between Mr Bichard and Mr Barnes. He stated that Mr Bichard was frustrated with Mr Barnes' work rate, but that there were no issues over the quality of his work. He could not recall any incident between Mr Bichard and Mr Barnes which he would have characterised as an act of bullying.
- 4.3 He described Mr Bichard's management style as firm and opinionated; he thought Mr Bichard was clever and generally right with his opinions and decisions on work related issues.

5.0 Witness Statement Mr Carl Ceillam

- 5.1 A witness statement was provided by Mr Ceillam in the capacity of an expert in the area of digital evidence. (EE1 Page 79 refers).
- 5.2 In his statement, the witness expressed the opinion that the Respondent had adopted a general policy of email deletion which was not in line with industry norms. The practical effect of this policy would have been to delete all email records that might have existed in relation to Mr Barnes' departure. Equally this policy had resulted in the prompt deletion of email traffic between the Respondent and clients in this same period.
- 5.3 The Tribunal noted a number of questions contained in this report and used them as a basis for questioning Mr Bichard.

6.0 Mr Leslie Bichard

- 6.1 The witness read from a witness statement to be found in ER1 Pages 17 & 18.
- 6.2 Mr Bichard is the Business Development Director of Global Computing Ltd and has worked for the Respondent since 1997.
- 6.3 The witness stated that he had had occasion to discipline the Applicant twice in recent years. On the first occasion the Applicant had lost an office key belonging to the client and on another occasion had allowed unauthorised network access to a third party. Details as to how these issues were addressed can be found in EE1 pages 27 to 30 and in ER4. He stated that these issues were dealt with appropriately and in neither case did Mr Barnes seek to appeal against his decisions.
- 6.4 Mr Bichard was questioned by the Tribunal on the issues and the process adopted by the company in dealing with these two warnings.
- 6.5 In relation to the loss of client keys the problem was compounded by the fact that, although Mr Barnes claimed they were nondescript, they were marked with the clients' alarm system codes. Also, that neither the client nor the Respondent was approached prior to reports being made to the police was not satisfactory. Mr Barnes apparently accepted the written warning and did not appeal the decision.
- 6.6 The second disciplinary issue was in relation to client access to Respondent's systems and the risk to the security of the Respondent's systems. Mr Barnes claimed this was normal practice, but in fact it was not and was a contravention of a standard term in the company handbook. The Respondent explained that the breach of computer security made the whole system more vulnerable to external hacking attacks. Again, Mr Barnes apparently accepted the written warning and did not appeal the decision.
- 6.7 The Tribunal questioned Mr Bichard on the extensive list of allegations of bullying. He stated that in his opinion the Applicant was being appropriately criticised when he breached company rules and regulations.
- 6.8 Mr Bichard denied that the apparently rapid deletion of company emails and other records as described in Mr Ceillam's report (EE1 Pages 77 to 81 Refer) was instituted to remove email correspondence in relation to Mr Barnes prior to 19 October 2011.
- 6.9 Mr Bichard strongly refuted that Mr Barnes was denied access to other Directors with issues or complaints. Mr Barnes wrote a letter to the Directors which was dealt with seriously even though many of the issues raised were critiques of his fellow employees. He was also given more powerful computing tools after the intervention of fellow director Dominic Chubb. At no time did any of these communications from the Applicant to Mr Bichard's fellow directors criticise him for bullying the Applicant.
- 6.10 The witness agreed that there had been an issue over a period of sickness taken by Mr Barnes, but it was his recollection that the issue centred round some days which had not been covered by medical certificates and would not therefore be paid, rather than an issue of "feigned" illness.
- 6.11 Mr Bichard explained that his company, by the very nature of its business, has access to very sensitive client information and therefore there is written requirement in the Employee handbook that employees, such as the Applicant, were to advise the company of any actual or impending court appearances for certain offences. The handbook, which was issued in 2008, stated that in view of the type of services

offered by the Respondent, certain employees who undertook work of a sensitive nature were subject to what were termed as “Exclusions”. The conditions specified under “Exclusions” included, but were not limited to:

“Being placed under Bail (Conditional or otherwise), or a guilty plea or conviction for;

- *Fraud*
- *Theft*
- *Assault (physical, marital or sexual)*

To avoid breaking client contractual arrangements it is the employees absolute responsibility to inform the Directors of Global Computing Limited should they be in breach of any of the above conditions within 24 hours of such breach.

Failure to do so will render the employee for instant dismissal and summary prosecution to reclaim any costs howsoever they arise”.

- 6.12 Mr Bichard stated that on 5 October 2011 Mr Barnes sought an urgent meeting with himself and a co-director Dominic Chubb. Mr Barnes advised them that he had made an appearance in Court, on 26 September, where he had pleaded guilty to an assault on his neighbour. Mr Barnes explained that he was bringing the issue to their attention as the incident had been reported in the media on that day.
- 6.13 Mr Bichard stated that it was Mr Barnes who asked if he would lose his job due to this guilty plea, the issue was not initiated by the Directors. Mr Bichard responded by telling Mr Barnes that he would need to talk the matter over with fellow directors and would then get back to him.
- 6.14 Mr Bichard explained that, following his meeting on 5 October 2011, he then consulted Mr Chubb on a number of occasions and phoned Commerce and Employment for advice as to how the matter should be handled.
- 6.15 The decision was made to inform Mr Barnes on 19 October that he would be subject to a disciplinary hearing; the date for this to be advised later. Mr Bichard subsequently met Mr Barnes on that date, explained the process and how it would work. In the minutes of the meeting (ER1 Pages 21 and 22 refer) Mr Bichard noted that he had told Mr Barnes that he and his fellow directors would have to determine:
1. *If he had broken the rules of the employee handbook regarding his not reporting the bail and the guilty plea for assault.*
 2. *If he had broken the contracts by which we were governed by our clients.*
 3. *If he had taken unauthorised time off to attend court and telling our directors that the day was holiday when he was not entitled to do so.*
- 6.16 Mr Barnes asked Mr Bichard what he thought the outcome of the hearing might be. Mr Bichard told him that he would not prejudge the outcome and it was by no means a foregone conclusion as to the action which would be taken but that it could result in dismissal.
- 6.17 Mr Barnes also asked what would happen if he handed in his notice, to which Mr Bichard responded it was a matter for him and that he would not wish to influence Mr Barnes either way with such a decision.

- 6.18 Mr Barnes then verbally tendered his resignation and requested six months' notice payment. Mr Bichard told him that he was contractually entitled to one month's notice. Mr Bichard told the Tribunal that he offered to assist the Applicant in finding another job but also counselled Mr Barnes not to make a hasty decision and to think things over prior to a resignation. However, the Applicant was adamant that he wished to resign.
- 6.19 Mr Bichard then printed out a pro-forma resignation letter from the company data base. Mr Bichard explained that as he supported many clients with their HR systems such pro-formas were stored on the Respondent's computer files. Mr Barnes signed the letter and Mr Bichard then gave him a letter formally acknowledging receipt of the resignation.
- 6.20 It was put to Mr Bichard that as a Director of the company he could have simply refused to accept the resignation until a later date. Mr Bichard responded that Mr Barnes was a very "resolute person" and could not be dissuaded from resigning without any further consideration.
- 6.21 Mr Bichard denied that he had ever bullied Mr Barnes and stated that he did not in any way persuade or force Mr Barnes to resign on 19 October 2011. He told the Tribunal that he had on occasion dealt firmly with Mr Barnes. He believed this firm action was required to manage Mr Barnes, and it was his opinion that it should not be construed as oppressive in any way.
- 6.22 It was confirmed that the Employee handbook was first issued in 2008 and Mr Bichard described how Mr Barnes was notified of its existence and his right to have access to a copy at any time.
- 6.23 Mr Bichard confirmed that the Hardware contracts, which had been undertaken by Mr Barnes, were transferred to Bleu IT very soon after Mr Barnes' resignation. It was queried if it suited the Respondent to have the Applicant resign in October 2011. Mr Bichard stated that there had been discussions with Bleu IT over a number of months prior to this period and that the departure of Mr Barnes only served to hasten the transfer which had been provisionally envisioned for the middle of 2012.
- 6.24 Mr Bichard did not think that Mr Barnes had been prevented over the period of his employment from raising issues concerning his employment with fellow directors.
- 6.25 Mr Bichard confirmed that he did not have a letter prepared on 19 October 2011 to confirm the anticipated disciplinary hearing; he stated that the intention was to issue such a letter within one or two days.

7.0 Mr Dominic Chubb

- 7.1 Mr Chubb read from a witness statement (ER1 page 19 refers).
- 7.2 Mr Chubb is the Software Director of Global Computing and had known Mr Barnes since 2001, when he entered into employment with the Respondent.
- 7.3 Mr Chubb stated that on 5 October 2011 he was in a meeting with Mr Bichard when Mr Barnes entered the room. He thought that Mr Barnes was very agitated and anxious in his demeanour. The Applicant had a copy of the Guernsey Press in his

hand and said that it was an urgent matter and vitally important that he should talk to Mr Bichard and Mr Chubb immediately.

- 7.4 Mr Barnes explained that he had been having some serious problems with his next door neighbours which had culminated in him assaulting one of them and being taken to court some time previously. Mr Barnes had pleaded guilty and, as it was reported in that day's edition of the Guernsey Press, Mr Barnes thought it inevitable that his employer would become aware of those proceedings.
- 7.5 He asked the two Directors if he might lose his job and Mr Bichard had explained that, as this was the first time he had heard of the matter, he would need to seek advice and would talk with him later.
- 7.6 After Mr Barnes left the meeting room, Mr Bichard and Mr Chubb had a brief discussion in which they agreed this was a serious matter and that Mr Bichard would need to investigate further and seek advice.
- 7.7 Following the events of 5 October Mr Chubb and Mr Bichard discussed this matter several times and it was decided that Mr Bichard should hold an "investigatory" meeting with Mr Barnes as a prelude to a "possible" disciplinary hearing.
- 7.8 Mr Chubb stated that it became clear to him during these discussions that Mr Barnes was in breach of requirements stated in the company handbook, that there had been a breach of trust in not reporting the matter to the Respondent immediately on pleading guilty; also he had concerns as to the days leave taken by Mr Barnes to attend court proceedings in that it had not been taken in accordance with company procedure. As a Director he had a "duty of care" toward his clients and he needed to ensure that he discharged his responsibility in relation to that duty.
- 7.9 Mr Chubb was aware at the time, during the interval between 5 October 2011 and 19 October 2011, that Mr Bichard had sought advice from Commerce and Employment on the "client exclusion clause" in Mr Barnes' contract and general advice as to how to proceed. It was not his expectation that Mr Bichard would take any executive action at the meeting on 19 October 2011. The witness stated that on such serious issues the Directors of Global Computing made their decisions as a team.
- 7.10 The witness stated that the delay in the period 5 October to 19 October 2011 before responding to Mr Barnes was due to the requirement to take advice and discuss amongst the Directors what appropriate action should be taken. The witness denied that, in not providing a firm date for the anticipated disciplinary hearing, there was any intent to put pressure on Mr Barnes to resign. Mr Chubb did not believe that there was any intention by Mr Bichard to seek the resignation of Mr Barnes on 19 October.

8.0 Mr Jonathan Brehaut

- 8.1 Mr Brehaut is an Analyst Programmer with the Respondent and read from a witness statement (ER1 Page 41 refers).
- 8.2 Whilst Mr Brehaut did not work closely with the Applicant he saw him in the work place most working days. He stated that in his opinion Mr Barnes was confident and self-assured in his demeanour. He had never heard of Mr Barnes complaining of bullying by Mr Bichard, nor had he observed such behaviour.

- 8.3 The witness characterised Mr Bichard's management style as being methodical with an emphasis on procedures. On occasion this caused Mr Brehaut to have an argument with Mr Bichard but this was always in relation to creative issues and professional disagreements. Mr Brehaut never felt bullied by Mr Bichard.
- 8.4 Mr Brehaut confirmed that the employee handbook was issued in 2008 and described the issue process, including the invitation to all staff to review it and make any comments / critiques for consideration by the management. The witness did find it somewhat unusual that individual copies of the handbook were not issued to employees but a copy was always in the reception area for staff access.
- 8.5 The witness recalled that on the day that Mr Barnes made his court appearance there was no booking on the open company intranet system - by which all staff could understand who was expected to be absent or present on any given workday. His recollection was clear as the Receptionist had approached all staff on that day to enquire if they knew where Mr Barnes was, or if they had seen him earlier on that day.
- 8.6 Mr Brehaut was unaware of the problems being experienced by Mr Barnes with his neighbour until after he had left the company.

9.0 Conclusion

- 9.1 For the Applicant to succeed in his claim that he was constructively dismissed the employer must be shown to be in fundamental breach of a term of the contract of employment. This can either be an explicit breach or an implied breach of a term of the contract.
- 9.2 A single breach may occur which is so significant that despite possibly previous exemplary conduct by the employer it may justify the employee terminating their contract of employment. Alternatively it may be that over a period of time a number of actions by an employer taken cumulatively justify such action, in these circumstances, there will be some "last straw" event which, in conjunction with previous events, occasions the employee to resign. The complaint brought by Mr Barnes was considered from both perspectives by the Tribunal.
- 9.3 The Tribunal considered whether there had been a breach of an express term of the employment contract and could find no evidence of this. The complaint clearly centred round the alleged behaviour of Mr Bichard toward the Applicant and that if found would be based on a breach of the implied duty of trust and confidence inherent in all contracts of employment.
- 9.4 If such a breach would seem to have occurred then the Tribunal must then consider whether that breach was fundamental, amounting to a repudiatory breach of contract. If so found then the employee must have resigned in response to that breach and must not have delayed too long in terminating the contract.
- 9.5 The Applicant claimed that his resignation on 19 October 2011 was justified not only by the immediate events leading up to that date but also was driven by alleged bullying and unfair management practices by Mr Bichard over a number of years.
- 9.6 It is clear from the evidence that Mr Barnes had long harboured a poor opinion of Mr Bichard and had recorded many incidents of alleged bullying in a personal diary.

It is evident from the testimony of all the witnesses that Mr Bichard manages in a firm and determined manner. It is somewhat regrettable that Mr Barnes kept his confidential diary of alleged bullying to himself. Whilst it is seldom easy to raise such issues with company managements the lack of disclosure of these concerns meant that the Respondent did not know of the depth of concern apparently being experienced by the Applicant and therefore had no opportunity to address such issues, whether real or imagined. On balance, the Tribunal prefers the evidence of Mr Brehaut and Mr Trebert that over a number of years they did not witness any acts of bullying by Mr Bichard toward Mr Barnes.

- 9.7 The Tribunal also considered the two written warnings issued to the Applicant by the Respondent. The Tribunal is of the view that a reasonable employer faced with similar circumstances might believe that it had sufficient grounds to apply the sanction of written warnings. It would have been better if the Respondent had explicitly pointed out the possibility of appeal in either case; however, the Tribunal has come to the conclusion, on the balance of probabilities, that Mr Barnes would have appealed these sanctions if he had truly believed that he had not breached any company rules.
- 9.8 The Tribunal is satisfied that Mr Barnes had access to the Employee Handbook from 2008 and clearly had the opportunity to read and understand the content including the “Exclusion” clause.
- 9.9 The Tribunal has very carefully considered the evidence from the Respondent and the Applicant concerning the events between 26 September and 19 October 2011. There is abundant evidence from both parties that Mr Barnes was very agitated. He was seemingly fearful that he would lose his job and on being told that he would face a disciplinary hearing appeared to make a very rapid decision that he would resign his employment, there and then.
- 9.10 It would have been advisable for Mr Bichard to have met the Applicant together with a colleague and also to have prepared a document detailing how the disciplinary process would proceed, however, the Tribunal is persuaded that Mr Bichard was genuinely surprised when Mr Barnes insisted on his immediate resignation. The Tribunal takes into account (as required by the Code of Practice) that Global Computing is a small company without any HR resource and consequently was less likely to adopt some of the strict formalities of a larger organisation.
- 9.11 The Tribunal has concluded that Mr Bichard did not arrange the meeting of 19 October in order for the Applicant to resign and prefers his evidence that he did not express any wish or requirement during the meeting that Mr Barnes should resign prior to the formal disciplinary process.
- 9.12 The Tribunal has also concluded that the evidence from both parties confirms that any prospective formal disciplinary process had not yet started at the time of the Applicant’s resignation from his employment. Any suggestions by either party as to the possible outcomes of such a process can only be considered speculative and are given little weight in this judgment.
- 9.13 The Tribunal puts little weight on the possible deletion of email records which might have existed between directors in the period leading up to 19 October. It would seem likely that, given the small size of the organisation, the matter might well have

been handled by discussions between directors rather than via email correspondence.

9.14 In summary, whilst it finds there were some breaches by the Respondent in its implied duty of ensuring trust and confidence in the employment relationship none of them were so fundamental as to entitle the Applicant on 19 October 2011 to terminate his contract of employment.

9.15 Both parties made submissions for costs; it is the decision of the Tribunal not to award costs to either party.

10.0 Decision

10.1 Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

Mr Peter Woodward

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Signature of the Chairman

25 July 2012

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Date