

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPELLANT: Mr Wanfred Callanan
Represented by: Himself

Decision of the Tribunal Hearing held on 29 October 2012

Tribunal Members: Mrs Kathy Tracey (Chair)

DECISION

Having considered all the evidence presented and having due regard to all the circumstances, the Tribunal found that under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, there was no evidence to suggest that it was not reasonably practicable for the Appellant to have submitted his complaint within the prescribed time limit and therefore the appeal is dismissed.

Mrs Kathy Tracey
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Signature of the Chairman

20 November 2012
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Date

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

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

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.

Extended reasons

1.0 Introduction

- 1.1 The Appellant, Mr Wanfred Callanan, represented himself and gave oral evidence under oath, in support of documentary evidence that was provided to the Tribunal in advance.
- 1.2 The documents considered were: Mr Callanan's ET1; a letter to the Tribunal outlining the Appellant's reasons for late submission and a letter from the Guernsey Border Agency which comprised a notification of cancellation of bail, and a confirmation that the Appellant was no longer under investigation regarding a criminal matter relating to his former employment.
- 1.3 The chair advised the Appellant that the sole matter to be determined at the hearing would be whether or not it was reasonably practicable for the Appellant to have submitted his claim within the three month time period allowed by the Law, and whether or not the claim was presented in such further time as the Tribunal considers reasonable.

2.0 Facts Found

- 2.1 The Appellant was employed by Aurigny Air Services as cabin crew from March 2001. His final day of employment was 2 March 2012.
- 2.2 Approximately two weeks after this date Mr Callanan was in Police custody in relation to events leading up to his dismissal and was granted legal aid.
- 2.3 In speaking with his advocate in relation to the matters for which he was in custody, Mr Callanan also asked whether he should make a claim for unfair dismissal against Aurigny Air Services. His advocate advised him that he should wait for the current issue to be resolved as that would have a bearing on whether he should make a claim or not.
- 2.4 Mr Callanan believed this to be good advice as he understood his name should be cleared before taking any other action. He was also feeling stressed and did not think he would want any extra pressure.
- 2.5 On 27 June 2012, Mr Callanan received a letter from the Border Agency informing him he was no longer under investigation.
- 2.6 At this time Mr Callanan was working as a labourer. His reason for not making a claim at this time was that he wanted to let his mind rest, and have a break.
- 2.7 The labouring contract ended on 13 August 2012 and since then Mr Callanan has been doing some part-time bar work and providing childcare for his young daughter whilst his partner is at work.
- 2.8 On or around the 3 August 2012 Mr Callanan called his advocate to ask if he could make an unfair dismissal claim. The advocate's secretary informed him that he

would need to put down a deposit of funds in order to be represented. Mr Callanan said he could not afford that and then contacted the Court; the Citizens Advice Bureau and; the Employment Tribunal Service.

- 2.9 It was at this point that Mr Callanan became aware that he could represent himself, and that there was a time limit on making a claim of unfair dismissal. On the 23 August he submitted his ET1 Application Form.

3.0 The Law

- 3.1 The appeal was considered under the Employment Protection (Guernsey) Law 1998 as amended.

- 3.2 Section 17 of the above Law entitled 'Time Limit for Presenting Complaints', states that:

The tribunal shall not hear and determine a complaint under section 16 (1) unless it is presented to the secretary

(a) within three months beginning on

(i) the effective date of termination

The tribunal may exercise discretion as to the time limit where it was not reasonably practicable for the complaint to be submitted within the three month time limit.

4.0 Conclusions

- 4.1 It was not disputed that the Effective Date of Termination was 2 March 2012. Nor was it contested that the ET1 was delivered to the Tribunal Service on 23 August 2012. Thus the claim arrived 12 weeks out of time.
- 4.2 Mr Callanan first raised the issue of making a claim with his advocate in the two weeks following his dismissal. He knew of his right to make such a claim, although neither pursued the claim nor sought any further information about making a claim. This advocate was appointed through legal aid to deal with the potential criminal matter and was not engaged to provide advice on employment matters, however the advocate did tell Mr Callanan that he should wait until the criminal matter was settled.
- 4.3 If Mr Callanan wanted to pursue his interest in making this claim there is no evidence to suggest that it was not reasonably practicable to do so at this time, albeit against the advocate's advice.
- 4.4 If Mr Callanan had waited for the criminal investigation to be completed and then immediately made a complaint, this would have shown his intention as well as his attention to his advocate's advice. However a further six weeks passed before he contacted his advocate again.
- 4.5 The tribunal can find no evidence that it was not reasonably practicable for this claim to be made within the time limits of the Law. Mr Callanan was aware of his rights to make a claim, displayed through his request to his advocate two weeks following his dismissal. It is for the potential claimant to pursue the necessary

knowledge required for making a claim, as this would be the reasonable action of an aggrieved employee in these circumstances.

- 4.6 Furthermore in considering exercising discretion in the circumstances, the Tribunal can find no evidence that it was not reasonably practicable for the Appellant to have made his claim immediately the criminal investigation was concluded.

5.0 Decision

- 6.0 Having considered all the evidence presented and having due regard to all the circumstances, the Tribunal found that under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, there was no evidence to suggest that it was not reasonably practicable for the Appellant to have submitted his complaint within the prescribed time limit and therefore the appeal is dismissed.

Mrs Kathy Tracey

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Signature of the Chairman

20 November 2012

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Date