

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPELLANT: Mr Matthew Le Noury
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

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

- 1.1 The Appellant, Mr Matthew Le Noury, 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 Le Noury's ET1 Application form; two letters to the Tribunal outlining the Appellant's reasons for late submission; a letter from Dr Tim Littlefair of St Sampson's Medical Practice; and a letter from The Blue Diamond Group Human Resources Manager Ms Lucy Le Maitre, which incorporated a timeline of events relevant to the case, copies of letters between the parties in relation to the Appellant's disciplinary hearings, dismissal and internal appeal procedure, arrangements and meetings.
- 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 Mr Le Noury was employed by The Blue Diamond Group at Le Friquet Garden Centre from February 2008, until 25 April 2012 when he was dismissed.
- 2.2 Mr Le Noury had been the subject of a disciplinary procedure in which it was alleged that he was rude, aggressive and uncooperative, which he denied.
- 2.3 Mr Le Noury was subsequently employed by Arrowsmith Marlow Limited but left after four days.
- 2.4 After this short spell of work, the Appellant continued to seek employment and after a number of weeks was employed by WH Smith Limited. After approximately three weeks Mr Le Noury had an altercation with another member of staff and walked off the job.
- 2.5 The Appellant described feeling under a great deal of pressure and stress and sought help from the Samaritans and from a number of different doctors at St Sampson's Medical Practice. He did not receive any medication or other further medical referral.
- 2.6 Mr Le Noury also suffered a range of setbacks in his personal life, including being left by his girlfriend and his flatmate stealing from him and self harming. He also told the Tribunal he had many bills to pay which made him more depressed.

- 2.7 During the times when he has not been in employment, since his dismissal from 'Le Friquet', Mr Le Noury has attended some courses at Social Security in order to try to get back to work. He has also spent time relaxing and going fishing with a friend.
- 2.8 Mr Le Noury did seek advice from the Employment Tribunal Service and was given information as to how to make a claim for unfair dismissal under the Law. He also sought advice from the Citizens Advice Bureau on a number of occasions.
- 2.9 The Appellant gave his reasons for late submission as high levels of stress, delays in the internal appeal procedure after his dismissal from 'Le Friquet', and difficulty in getting witness statements from former colleagues.

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 delivered within the three month time limit.

4.0 Conclusions

- 4.1 It was not disputed that the Effective Date of Termination was 25 April 2012. Nor was it contested that the ET1 was delivered to the Tribunal Service on 11 September 2012. Thus the claim arrived seven weeks out of time.
- 4.2 Mr Le Noury asserts that he had difficulty obtaining witness statements pertinent to his case and this delayed his application. However witness statements are not required in order to submit an ET1 to The Tribunal Service. As Mr Le Noury was in receipt of advice from both the Employment Tribunal Service as well as the Citizens Advice Bureau, it is reasonable to assume he was given this information.
- 4.3 As to the delays in the Appellant receiving mail relating to his internal appeal at 'Le Friquet', the Tribunal is not convinced that this needed in any way to delay the Appellant submitting a claim for unfair dismissal.
- 4.4 Furthermore Mr Le Noury appears to have a significant level of understanding of his rights under the Law displayed in his letter to his previous employers dated 4 July 2012, in which he writes:

"I am of the opinion that the inefficiencies you mention and the persistent denial of breaks, with neither reward nor time in lieu, were designed to make a case for constructive dismissal."

- 4.5 Mr Le Noury was obviously upset at the loss of his job, and did suffer some significant personal setbacks which led him to seek help from medical practitioners, the Samaritans and the Citizens Advice Bureau. However as Mr Le Noury was able to go and seek this help, and was able to relax and go fishing with his friend, it is reasonable to assume that he also could have filled in and delivered an ET1 form during this time period.
- 4.6 The Tribunal is therefore not minded to exercise its discretion in the late submission of this claim, as it can find no evidence that it was not reasonably practicable for this claim to be made within the three months allowed by the Law.

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 Kathey Tracey

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Signature of the Chairman

20 November 2012

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Date