Case No: ED025/12

States of Guernsey

EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: **Mr Chad Webb**

RESPONDENT: **Ideal Contractors Limited (In Liquidation)**
Represented by**:** Ms S Peacock

Witness:

Called by the Respondent:
"RPC" A Director of the Respondent

Decision of the Tribunal Hearing held on

Tribunal Members: Ms Caroline Latham (Chair)
Mr Peter Woodward
Ms Alison Girollet

DECISION

Having considered all the evidence and circumstances presented, the written and oral representations of the Respondent and the evidence available on behalf of the Applicant, the Tribunal concluded that the actions followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed.

The complaint is therefore dismissed and no award is made.

Costs

The Claimant must pay to the Respondent costs amounting to £128.56 being in accordance with The Employment Protection (Recoverable Costs) Order, 2006.

Ms Caroline Latham	23 November 2012
……..	……..
Signature of the Chairman	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 Applicant, Mr Chad Webb did not appear at the hearing. The Tribunal delayed the commencement of proceedings and two separate telephone calls were made to the Applicant's contact telephone to enquire whether he would be attending the hearing. There was no reply from his telephone.

1.2 The Tribunal was satisfied that appropriate and valid notice of the hearing had been sent to the Applicant.

1.3 The Tribunal decided to proceed with the hearing in the absence of the Applicant and to rely on the evidence available to them as set out in Form ET1 in which he stated that he had been made redundant on 27 April 2012 on the grounds that there was no work available. He claimed that the Respondent had placed a recruitment advertisement to employ a replacement for the Applicant in a local newspaper a week after the termination of his employment.

1.4 The Respondent, Ideal Contractors Limited (In Liquidation), claimed that it had followed the correct redundancy procedures and that the grounds for redundancy were admissible under "The Law". It denied that it had placed a recruitment advertisement a week after giving notice of termination of the Applicant's employment.

2.0 Findings of Fact

2.1 The following facts have been derived from the evidence presented by the Respondent, written statement of the witness, Forms ET1 and ET2 and attachments thereto and the Respondent's document "bundle" provided to the Tribunal.

2.2 Although all submissions and arguments put forward by both parties were considered by the Tribunal, whether they are mentioned specifically in this judgement or not, the Tribunal noted the following key points:

2.3 The Applicant was initially employed by the Respondent as a labourer in 2008. He left its employment in 2010. He was re-engaged in the same position for the period 17 January 2011 to 27 April 2012.

2.4 The Respondent is a civil engineering and utilities company providing pipe laying services to clients in the Channel Islands.

2.5 For the period 2009 to March 2012 the Respondent experienced a significant decline in business. By March 2012 the situation had become very serious.

2.6 In March 2012 the company concluded that it had no option but to implement a plan that would entail redundancies. It commenced a redundancy consultation process at the beginning of April 2012.

2.7 At a meeting on 2 April 2012 the employees were informed of the company's situation and lack of future work. The company informed the employees that they were at risk of being made redundant and a period of consultation would commence. The Applicant did not attend the meeting due to ill health but attended a meeting the following day. Details of the meeting were confirmed in writing to the Applicant in a letter dated 5 April 2012.

2.8 On 10 April 2012 the Applicant attended a redundancy consultation meeting.

2.9 On 18 April 2012 the Applicant was advised in writing that compulsory redundancy was being considered. He was invited to attend a meeting on 20 April 2012 to discuss the possible termination of his employment on grounds of redundancy.

2.10 With the exception of one specialist water fitter, the respondent decided to make all employees redundant and this decision was given to the Applicant in a hand delivered letter dated 23 April 2012. The date of termination of the Applicant's employment was 27 April 2012 as set out in the aforesaid letter.

2.11 After the date of termination of the Applicant, the company was asked to tender for new work on or around 1 May 2012. The company actively pursued this opportunity.

2.12 On 18 May 2012 the Respondent spoke with the remaining employees who were working their last day of employment and explained that it was hopeful of securing more work. It encouraged them to keep in touch with the company. The company notified them it was to advertise for labourers in the hope of winning a new contract.

2.13 The Respondent placed an advertisement for labourers in a local newspaper on 19 May 2012.

2.14 On the afternoon of 19 May 2012, Mr Webb contacted the Respondent and stated that he thought the company was seeking a replacement for his role.

2.15 On 23 July 2012 the Respondent was informed that its tender for new work had not been successful. On the same day, the Respondent company was placed in liquidation.

3.0 Summary of the Parties' Main Submissions

Evidence of Mr RPC

3.1 Mr RPC read verbatim a statement in which he described events leading to the termination of Mr Webb's employment by reason of redundancy.

3.2 There has been a fall off in demand for work from 2009 onwards. By February/March 2012 the situation had worsened. The witness referred to the company's balance sheets to demonstrate the company's financial position (pages 16b – 16 e of the Respondent's bundle refers).

3.3 By the end of March 2012, the company considered that it had no alternative other than to consider redundancies. A redundancy consultation process began on 2 April 2012 with all employees including Mr Webb.

3.4 Mr Webb attended the first of several meetings as part of the consultation process on 3 April 2012. Notes of the meeting had been made (page 17 of the Respondent's bundle refers). He believed that Mr Webb fully understood the situation.

3.5 A further consultation meeting was held on 10 April 2012 when Mr Webb was given the opportunity to make suggestions on how to salvage the business and avoid compulsory redundancy. Notes of the meeting were made (page 19 of the Respondent's bundle refers) and a letter confirming the content of the meeting dated 18 April was delivered to Mr Webb's home.

3.6 A further meeting was held on 20 April 2012 to discuss possible compulsory redundancy. Mr Webb had no suggestions regarding solutions other than redundancy.

3.7 A letter dated 23 April 2012 notifying Mr Webb that his employment was terminated, with effect from 27 April 2012, for reasons of redundancy was delivered to his home address. The letter included details of how Mr Webb could appeal against the decision.

3.8 RPC explained that all but one employee was made redundant. The remaining employee (who was later made redundant when the company went into liquidation) was a specialist water engineer for whom the company had an ongoing requirement. He confirmed that the Applicant did not have these specialist skills.

3.9 RPC described how an opportunity to tender for work had arisen at the beginning of May 2012. He considered it was unfortunate to be asked to tender for work just after all but one of the employees had been made redundant, particularly as the tender letter was dated 22 April 2012 but not posted until 27 April 2012.

3.10 He described the various meetings and correspondence regarding the company's tender for new work (pages 24 – 38 of the Respondent's bundle refers).

3.11 In an effort to demonstrate that appropriate labour resources would be available to undertake the new work, the company decided to advertise for labourers. The day before the advertisement appeared in the newspaper, RPC spoke with the remaining employees informing them that the advertisement was to appear the following day. The advertisement appeared in the newspaper on 19 May 2012 (page 39 of the Respondent's bundle refers).

3.12 On the afternoon of 19 May 2012 he received a telephone call from Mr Webb who was angry because he thought the company was replacing his role. In response he tried to explain the situation to the Applicant and said that he did not have any work for him.

3.13 Almost two months later, on 23 July 2012, the company received written communication that it had been unsuccessful in the bid for work. Later that day the company was placed in liquidation.

The Applicant's case

3.14 The Applicant, Mr Chad Webb did not appear at the hearing. As a result, the Tribunal had no alternative other than to consider the contents of the Form ET1 in which he claimed unfair dismissal. He stated on the form that whilst he was off work (due to an accident at work) he had been presented with a letter explaining that there was no work left. The following week the company had placed an advert in the paper to recruit staff. When he had called the company to ask what was happening, he was "rudely" told to "go away". He also stated that he was aware of other cases being dealt with as it had been in the local news and newspaper.

4.0 Application for costs

4.1 The Respondent made the following application for costs in accordance with Section 5 of The Employment Protection (Recoverable Costs) Order, 2006 ("The 2006 Order"):

a) £28.56 (twenty eight pounds and fifty six pence only) being an amount equal to two hours' loss of earnings necessarily incurred by RPC, the Respondent's sole witness, in attending to give evidence on the case (as provided for in Section 2 (a) of the Order);

b) £100.00 (one hundred pounds only) in respect of the Respondent's costs, fees and expenses reasonably incurred in preparation or presentation of its case (as provided for in Section 4 (a) of the Order); and

c) £83.00 (eighty three pounds only) in respect of expenses incurred by the Respondent in traveling to and from the place of hearing (as provided for in Section 4 (c) of the Order).

4.2 At the request of the Tribunal, the application for costs has been communicated in writing to the Applicant with a request for him to make representations. No response has been received.

5.0 Conclusion

5.1 The Applicant's allegation of unfairness related to the fact that the Respondent had advertised for labourers post termination of his employment. The Tribunal had to consider whether a genuine redundancy situation existed.

5.2 The Tribunal concluded that there had been a genuine economic reason for the Respondent to make its employees redundant. There was evidence of a significant decline in work from 2009 onwards and by February/March 2012 it was running at a significant loss with limited reserves.

5.3 The Tribunal found no fault with the redundancy procedures followed by the company in relation to the consultation with the employees and to its desire to find ways to mitigate against redundancy. The process of fair selection, plus warning of the possibility of redundancy and consultation with employees were all followed in

an appropriate way. The company had full regard to The Commerce and Employment Code of Practice "Handling Redundancy". Further, the Applicant made no attempt to appeal against the decision to make him redundant.

5.4 The company had continued to look for new work both before and after the Applicant's termination of employment. This was perfectly reasonable given the company's lack of work and financial situation. When the opportunity arose in early May 2012 to tender for work it was reasonable that it should pursue the prospect of a new contract. In an effort to secure enough labour resources should the company be successful in its bid for work, it was reasonable to advertise for labourers. The company had informed staff that had been made redundant that the advert was to appear and that they should keep in contact with the company. The Tribunal finds no fault with the Respondent for taking these actions in its attempts to survive.

5.5 For the reasons described above the Tribunal concluded that the overall process and actions followed by the employer were those of a reasonable employer.

5.6 The Tribunal also had to consider the application made by the Respondent for costs. The Applicant has failed to engage with the Tribunal Service and has made no effort to actively pursue or participate in his claim. He did not attend the Case Management Meetings or the Tribunal Hearing and did not inform the Tribunal prior to the hearing that he would not be present. The Tribunal agrees that by bringing this claim before the Tribunal and then failing to make any attempt to progress it, he has put the Respondent to considerable expense in terms of costs, fees and expenses incurred in the preparation and presentation of the case. The Tribunal concluded that in this case, costs in respect of the Respondent's claim described at 4.1 (a) and 4.1 (b) will be permitted in accordance with Section 4 of "The 2006 Order". However, it does not consider that the costs claimed at 4.1 (c) above are admissible in accordance with "The 2006 Order" because the expenses relate to the company's representative and not to the party and are therefore not payable.

6.0 Decision

6.1 The Applicant asserted that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law 1998, as amended, by reason of redundancy.

6.2 Having considered all the evidence and circumstances presented, the written and oral representations of the Respondent and the evidence available on behalf of the Applicant, the Tribunal concluded that the actions followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed.

6.3 The complaint is therefore dismissed and no award is made.

7.0 Costs

7.1 The Applicant must pay to the Respondent costs amounting to £128.56 being in accordance with The Employment Protection (Recoverable Costs) Order, 2006.

Ms Caroline Latham	23 November 2012
……..	……..
Signature of the Chairman	Date