

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Paul Torode

The Applicant represented himself and gave evidence

**RESPONDENT:** Guernsey Gas Limited

The Respondent was represented by Mrs Becky Hill, who also gave evidence

**Witnesses:** Called by the Applicant:

PG

By witness statement former Guernsey Gas Employees:  
AS, MG, CP, SB

Called by the Respondent:

RG

DM

By witness statement only: NS

**Decision of the Tribunal Hearing held on 7 March 2013**

**Tribunal Members:** Mr Peter Woodward (Chairman)  
Mr Norson Harris  
Mrs Alison Girollet

**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

2 April 2013

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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 (Form ET3A) 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 Paul Torode represented himself.

The Applicant called the following witness:

PG

By witness statement:

AS

MG

CP

SB

1.2 The Respondent was represented by Mrs Becky Hill, who also gave evidence.

The Respondent called the following witnesses:

RG

DM

By witness statement only:

NS

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

The agreed Effective Date of Termination (EDT) was 12 October 2012.

The gross earnings were £27,648 for the six months prior to the EDT.

1.4 The complaint was an alleged unfair dismissal by way of redundancy. He alleged three primary elements to this complaint; they were in summary:

1.4.1 His redundancy was not conducted under the correct redundancy policy.

1.4.2 Once notified of being at “risk” of redundancy he was only given one day to consider inclusion or exclusion in the redundancy pool.

1.4.3 His decision not to be included in the pool for either the role of Customer and Network Services (CNS) Manager or as a CNS Operations Officer was influenced by not having sufficient time to discuss safety concerns with regard to the restructuring of the Company.

1.5 The Respondent, in its ET2, confirmed that a dismissal had occurred but asserted that it was fair and reasonable within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.

1.6 A Joint bundle was submitted by both parties ER1.  
Additionally the Respondent submitted ER2.

## **2.0 Facts Found**

2.1 Guernsey Gas is a wholly owned subsidiary of International Energy Group Limited (IEG). IEG subsidiaries are operational in a number of jurisdictions including Jersey and the Isle of Man. In January 2012 the Respondent's Group Manager, Mr Tony Nicholls, had informed staff in a group wide communication that the Company needed to make a saving of £1.2 million from the annual operating costs.

2.2 RG made his first contact with the Applicant as his Line Manager in March 2012 via a telephone call. He confirmed to Mr Torode that he would be taking over this role from DB; Mr Gardiner had cross jurisdictional responsibility at a senior operational level across a number of jurisdictions.

2.3 The first face to face meeting between the Applicant and RG took place on 2 April 2013. At this meeting proposed new staffing arrangements were communicated together with a revised departmental structure. (ER1 Page 255 refers). A further face to face meeting between RG and the Applicant took place on 23 April 2012 (ER1 Page 256 refers).

2.4 At the meeting of 2 April 2012 RG communicated two potential opportunities for the Applicant in this new structure. Either a promotion to Customer and Network Service (CNS) Manager, or the possibility of retaining a similar role to his current one. (ER1 Page 255 refers).

2.5 During April RG also sent the Applicant a "Business Information Document" (Pages 127 and 128 ER1 refer). This document sought input from the Applicant on a range of subjects relating to his department's operational capabilities including any concerns as to efficiency and safety issues. Mr Torode replied to these enquiries with a broad range of responses.

2.6 On 14 May 2012 the Respondent's directors met with representatives from the Union and the Joint Working Council to communicate proposed organisational changes.

2.7 On 16 May 2012 all Guernsey Gas Limited staff attended a meeting (ER1 Pages 14 to 31 refer). At this meeting a formal presentation was given by the Respondent's directors. This presentation described an overall "programme" of change which confirmed the rationale for the proposed changes and the consequent potential for redundancies. The proposed structure was communicated together with an outline of the employee "selection and nomination process". Those at risk of redundancy would be informed by 18 May 2012, for those where continuing employment was assured, they would be also be advised by 18 May 2012.

- 2.8 The presentation of 16 May 2012 explicitly stated that those employees at risk would be assigned to a relevant “pool” and that individual consultation with all such employees would commence at the beginning of June 2012. The stated intention in this presentation was that criteria would be developed and applied for candidate selection; the intended outcome being that all appointments to the new structure should be complete by end August 2012.
- 2.9 A hard copy of this presentation was given to all attendees at the termination of this meeting. Mr Torode was not present at this meeting as he was on holiday.
- 2.10 On 17 May 2012 the Applicant was able to attend a further presentation which repeated all the elements of the 16 May 2012 presentation (ER 1 Pages 32 to 47 refer). In addition to a repetition of the communication of 16 May 2012 there was a more detailed outline, by jurisdiction, as to where proposed roles would be located, including those based in Guernsey. The presentation was made by Mrs Hill and DM. Mr Torode was given a hard copy of the presentation at the end of the meeting and a letter entitled “Notification of Potential Redundancy” signed by DM (Page 227 ER1 refers).
- 2.11 The “Notification of Potential Redundancy” letter informed the Applicant he was at risk of redundancy as a result of the Company’s restructuring plan to reduce operating costs by £1.2 million. It further confirmed that he was in a selection pool and that he would now be assessed for the role of CNS Manager or one of the CNS Operations Officer roles. The Applicant was informed that job profiles were available and that there would be an interview process to decide who would be assigned to these roles in the new structure. The letter stated an assumption by the Respondent that the applicant would wish to be assessed for these roles.
- 2.12 The letter also described a consultation period during which he might wish to be considered for roles other than the two already identified. It was stated by the Respondent that it wished to work together with the Applicant to try and mitigate the need for redundancy. It was confirmed that in the event the applicant was made redundant that a redundancy payment equivalent to one week’s pay for each year of service would be made, plus a payment of contractual notice. However eligibility for this payment would fall away if he found another role in the Company. Finally the letter stated that neither the discussions held on 17 May 2012 nor the letter constituted notice to terminate the Applicant’s employment.
- 2.13 On 18 May 2012 the Applicant sent RG an email stating that although he understood his current role would be made redundant he was not going to put himself forward for the two identified roles as he did not think himself suitable for them and he believed that RG already had other applicants in mind for these roles.
- 2.14 Informal discussions between RG and the Applicant took place in late May and early June in which he was asked to reconsider this decision and also possibly consider roles other than the two already identified. He stated that he did not wish to be considered for any role.
- 2.15 The Applicant was requested on 5 June 2012 to attend a formal consultation meeting with Becky Hill and RG, on 12 June 2012. He was advised he could attend

with a colleague but he stated that would not be necessary. At this meeting he again confirmed that he did not wish to be considered for any role.

- 2.16 On 10 July 2012 he was asked if he wanted to take voluntary redundancy or reconsider his decision to be assessed for possible roles in the Company. He again declined and signed a letter confirming he wished to take redundancy. (ER1 Page 232 refers).
- 2.17 During the period 17 May 2012 to 10 July 2012 the Respondent issued other communications on the progress of the restructuring including those entitled “Frequently Asked Questions” (Issued 21 May 2012 and 15 June 2012) which answered employee questions and concerns as to various aspects of the restructuring. These documents were publicised to all Guernsey Gas staff (ER1 Pages 87 to 97 refer).
- 2.18 At a meeting on 17 July 2012 between Becky Hill and the Applicant a letter of “Termination of Employment” was given to the Applicant. This letter confirmed a termination of employment date of 12 October 2012 and further confirmed the Applicant would receive a redundancy payment of £35,092.20. It was stated that this payment was conditional on his agreement he would make no further claim against the Company. It was confirmed that the Applicant had the right to appeal the redundancy decision.
- 2.19 A further company-wide presentation was made to all employees on 31 July 2012 to update them on the progress of the restructuring programme. (Pages 70 to 80 ER1 refer).
- 2.20 During the period 17 July 2012 to 12 October 2012 the Applicant continued in his role; he did not lodge an appeal against the redundancy decision.
- 2.21 On 24 October 2012 the Applicant sent a letter to Mr Shaw (Guernsey Gas CEO) indicating his intention to register a claim for unfair dismissal (Pages 236 and 237 ER1 refer).
- 2.22 The Tribunal notes the existence of a redundancy policy ‘IEG HR 009’ issued in 2007 and available to all Guernsey Gas staff in a readily accessible ring binder. The Tribunal notes that it applies to all employees of BBI (Channel Islands) Holdings Limited in Guernsey. In paragraph 1.1 of this policy it is stated that the policy does not form part of the employee’s terms and condition of employment. (Page 99 ER1 refers).

### **3.0 Mrs Becky Hill**

- 3.1 Mrs Hill read from a witness statement (Pages 247 to 253 ER1 refer).
- 3.2 Mrs Hill confirmed that that she was an independent HR consultant supporting the Respondent on HR policies, procedures and practices. She became involved in the Respondent’s restructuring programme in February 2012.
- 3.3 Mrs Hill was a significant contributor to the presentations made to the Respondent’s staff on 16 and 17 May 2012 as well as that of 31 July 2012.

- 3.4 Mrs Hill expressed surprise that the Applicant did not engage in the consultation process; in her opinion the Respondent highly valued both the past and current contributions of the Applicant. Senior management wished to retain him and genuinely believed that with some developmental support he was likely to make a success of the CNS Manager role. Mrs Hill confirmed that neither the “Management” nor the “Officer” role involved any detriment in terms of salary or benefits from his current role; the managerial role would have been a promotion.
- 3.5 Repeated attempts were made later in May and in June to get the Applicant to reconsider. Even in the meeting of 10 July 2012 there was still a hope that the Applicant could be persuaded to reconsider his decision.
- 3.6 Mrs Hill rejected the view that the proposed roles within the structure presented to employees on 16/17 May were final at that point in time. It was her view that both she and senior managers had emphasised that as part of the consultation process in June and July employee input would be taken into account. In the event much input was received and by 31 July 2012 it was possible to give a company-wide update which detailed revisions to proposed roles, and additional roles, thought necessary for the future safe and efficient running of the Company. (Pages 70 to 80 ER1 refer).
- 3.7 The Applicant would not expand on his opinion that the new structure would not work and he made no mention of any perceived Health and Safety issues. The Applicant told Mrs Hill that he “had come to the end of the road with the Company”.
- 3.8 It seemed to Mrs Hill that the Applicant was extremely satisfied with the redundancy settlement and there were discussions as to the possibility of him returning to the organisation after his redundancy in a contracting role.
- 3.9 The Applicant did not raise any grievances in the period May to October 2012 and remained professional and amicable throughout the period. He was also responsible for developing the criteria for gas service engineers as part of the restructure process and seemed to be content with this procedure.
- 3.10 Mrs Hill told the Tribunal that the Respondent had gone to considerable lengths to ensure that the new structure was compliant with required standards of health and safety. The Guernsey Health and Safety Executive undertook an assessment and gave approval; in addition an independent Health and Safety consultancy was specifically commissioned to confirm that the approach taken to manage the change both from an operational and human factor basis was appropriate.
- 3.11 In his complaint Mr Torode had claimed that as the Respondent had not followed the 2007 IEG Policy (IEG HR 009) that the redundancy was unfair (Page 98 ERI refers). Mrs Hill believed this argument was without merit. She stated a number of reasons for this assertion:
- The policy only applied to the employees of BBI (Channel Islands Holdings Limited) in Guernsey. There were only 13 employees under contract with BBI EIG; the Applicant was not one of those employees.
  - This policy did not form part of any Guernsey Gas employees’ contracts of employment and thus did not form part of their terms and conditions.

- The Applicant was employed by Guernsey Gas Limited who had its own employee handbook signed off by the union and had its own specific redundancy policy.

Notwithstanding these arguments Mrs Hill stated that the Respondent had an overall objective to achieve a clear, fair and “best practice” redundancy procedure. The approach had been to review the law/best practice for Jersey, Isle of Man and Guernsey, adopt the highest standard, and then apply this systematically across all three jurisdictions. The concern was always to be fair and reasonable.

Finally, at no time during his employment did the Applicant raise a concern over the policy or appeal the redundancy decision.

#### **4.0 RG**

- 4.1 RG read from a witness statement (Pages 254 to 258 ER1 refer).
- 4.2 RG confirmed he was the Customer & Network Services Director for EIG Group; he is based in the Isle of Man and has responsibility for C&N Services in all three island jurisdictions.
- 4.3 The witness had been involved in the development of the proposed structure for the EIG Group companies and made an early determination that the Applicant was a credible candidate for the role of CNS Manager.
- 4.4 He told the Tribunal that he made every attempt to make himself accessible to the Applicant in order to understand his problems, concerns and issues.
- 4.5 During the meeting held with the Applicant on 2 April 2012 RG informed him that the CNS Manager role in the new structure would constitute a promotion for him whilst the “officer” role was in effect his current role. At the time of this discussion RG had formed the view that he, the Applicant, would be a good candidate for the managerial role.
- 4.6 RG stated that he spoke regularly with the Applicant regarding business issues and supported his decisions; he thought they had a good working relationship.
- 4.7 On 18 April 2012 he received an email from the Applicant raising concerns that his current job was going and that he held the opinion that RG had other candidates in mind for the CNS Manager and Officer roles. He subsequently spoke to the Applicant in an attempt to persuade him to consider the new roles however the Applicant responded by telling RG that he did not believe he was suited to the new roles.
- 4.8 RG met again with the Applicant on 25 May 2012 and subsequently on 29 May 2012. RG informed the Applicant that he was arranging interviews for the two roles and asked him to reconsider. RG explained that even if he did not wish to be considered for the managerial role that he could consider the “Officer” role, which in all but title was the role he currently filled.
- 4.9 The Applicant responded on 30 May 2012 by email restating his wish not be considered for either of the positions.

- 4.10 Interviews with other candidates then proceeded on 6 June 2012. RG expressed his extreme disappointment that the Applicant had turned down being considered for either role. He told the Tribunal there was no other internal qualified candidate for the managerial role.
- 4.11 On 12 June 2012 a consultation meeting was held with the Applicant with Mrs Hill in attendance. It was explained that they wished to understand why he had declined being considered for the two roles. The Applicant was offered the managerial role and time was spent going through the role, the responsibilities, the work streams and how they would work to support him in the new role. The Applicant still insisted he could not see how the new role or structure could work but gave no clear reason for this viewpoint. At no time did the Applicant state that he perceived any health and safety issues or risks.
- 4.12 On the same day RG met again with the Applicant and there seemed to be no anger or disappointment; on the contrary the Applicant explored the possibility of working in a contractor role after the redundancy.
- 4.13 The witness stated that at no time did the Applicant raise any issues over the redundancy process.
- 4.14 In the opinion of RG the redundancy process was conducted in a consultative manner. Feedback from employees resulted in some structural alterations and changes in final staffing numbers.
- 4.15 The witness stated that the restructuring process was carried out in accordance with Health and Safety Executive guidelines using an industry standard protocol CH1S7 as a guideline.
- 4.16 RG also stated that in his day to day dealings with the Applicant routine health and safety issues were discussed. This is in great contrast to the allegations after his redundancy that he had safety concerns as to the new structure; RG was very disappointed with this double standard.
- 4.17 RG stated his belief that the proposed changes were communicated in a clear, fair and equitable way. All the employees had an opportunity to challenge the process including the Trade Union and the Joint Working Committee (JWC). Whilst in employment the Applicant never challenged the process or raised concerns.

## **5.0 DM**

- 5.1 DM read from a witness statement (Pages 262 to 264 refer).
- 5.2 DM confirmed that she is Finance Director and Company Secretary for the IEG Group.
- 5.3 DM explained that the redundancy policy IEG-HR-009 applied only to employees of BBI (Channel Islands) Holdings Limited in Guernsey (Tab 2.9 ER1 refers); whereas the Applicant was not employed by this entity but rather Guernsey Gas Limited. (Page 12 ER1 refers).



- 5.4 DM informed the Tribunal that Guernsey Gas Limited had its own employee handbook that included procedures for dealing with redundancies. Each subsidiary company of IEG had its own management structure, set of operating procedures and employee handbook. The policies and procedures would be aligned with local jurisdictional requirements.
- 5.5 In regard to Guernsey Gas Limited a specific consultation process was developed to assist with the design of the new organisation and to manage any resultant redundancies fairly.
- 5.6 Employees and trade unions were consulted on the restructure of the company and the process to be applied before decisions were made about appointments to the new structure and resulting redundancies.
- 5.7 Throughout the consultation process all employees had several opportunities to ask questions and raise concerns about the structure and fairness of procedure. To her knowledge the particular issues that concerned Mr Torode were not raised by him whilst still in employment.
- 5.8 The witness believed the consultation process was effective and employee input resulted in a number of changes and additional posts being agreed compared to initial proposals. Throughout the restructure process the Directors' first priority was to ensure that the new organisation would be fit for purpose in terms of health and safety and environment.

**6.0 By witness statement NS**

- 6.1 NS is the Chairman of IEG and submitted a witness statement (Pages 259 to 261 refer).
- 6.2 In his witness statement NS corroborated much of the evidence given by DM in that the redundancy policy IEG-HR-009 applied only to employees of BBI (Channel Islands) Holdings Limited in Guernsey (Tab 2.9 ER1 refers); whereas the Applicant was not employed by this entity but rather Guernsey Gas Limited. (Page 12 ER1 refers).
- 6.3 In the statement NS informed the Tribunal that Guernsey Gas Limited had its own employee handbook that included procedures for dealing with redundancies.
- 6.4 NS explained that the policy IEG-HR-009 only applied to 13 IEG employees where there was a requirement for interviews with the CEO. This policy did not apply to subsidiary companies with the overall group.
- 6.5 Each subsidiary company had its own management structure and set of operating procedures and employee handbook. The policies and procedures would be aligned with local jurisdictional requirements.
- 6.6 In regard to Guernsey Gas Limited a specific consultation process was developed to assist with the design of the new organisation and manage any resultant redundancies fairly.

- 6.7 Employees and trade unions were consulted on the restructure of the Company and the process to be applied before decisions were made about appointments to the new structure and resulting redundancies.
- 6.8 Throughout the consultation process all employees had several opportunities to ask questions and raise concerns about the structure and fairness of procedure. To his knowledge the particular issues that concerned Mr Torode were not raised by him whilst still in employment.
- 6.9 The witness believed the consultation process was effective and employee input resulted in a number of changes and additional posts being agreed compared to initial proposals. Throughout the restructure process the Directors' first priority was to ensure that the new organisation would be fit for purpose in terms of health and safety and environment.

## **7.0 PG**

- 7.1 PG referred to his witness statement (Page 242 ER1 refers).
- 7.2 PG was the Managing Director of Guernsey Gas Limited until March 2012; he was then placed on "Garden Leave" for the remainder of the year before his eventual departure from the Company in December 2012.
- 7.3 The witness confirmed that the policy IEG-HR-009 was held in an office area accessible to all staff. It was filed with other IEG and locally amended policies.
- 7.4 PG held the opinion that the policy IEG-HR-009 was applicable to the Applicant as Guernsey Gas Limited was a wholly owned subsidiary of IEG. It was the practice of Guernsey Gas Limited to adopt IEG policies without amendment wherever possible.
- 7.5 PG was not involved in the Applicant's consultation process.

## **8.0 Mr Paul Torode**

- 8.1 Mr Torode read from a witness statement (pages 240 to 241 RE1 refer).
- 8.2 The Applicant had worked for the Respondent for some 33 years and had worked his way up from an apprentice to the senior role of Customer Service Department Manager.
- 8.3 He was informed by the Respondent in early 2012 that a "leaner and lower cost structure" was being developed.
- 8.4 The Applicant had concerns that the new structure would not be able to meet the company's safety and operational obligations and told the Tribunal that he was not given the opportunity to properly consider, raise or discuss these concerns before having to decide to "opt for redundancy" in May 2012.

- 8.5 The Applicant also asserted that the Respondent had not applied the correct redundancy policy i.e. IEG-HR-009. Had that policy been followed he would have had at least two opportunities for consultation meetings with the Chief Executive Officer.
- 8.6 The witness stated that on 17 May 2012 he made a decision not to put himself forward for consideration for a new role. He was concerned that he might have been placed in a role he could not perform and also concerned that he might lose contractual rights to a redundancy payment.

#### **9.0 By witness statements**

AS (Page 243 ER1 refers)  
MG (Page 244 ER1 refers)  
CP (Page 245 ER1 refers)

Each of these witness statements were submitted by Guernsey Gas Limited employees who were in employment in May 2012. These employees all held the opinion that policy IEG-HE-009 applied to Guernsey Gas Limited staff at that date. To their knowledge this policy was neither modified nor withdrawn during their employment with the Respondent.

#### **10.0 By witness statement**

SB (Page 246 ER1 refers)

This witness was employed by Guernsey Gas Limited until 18 February 2013. The witness stated that at no time during the 2012 restructuring process was there any Company announcement as to a revised redundancy policy.

#### **11.0 Conclusion**

- 11.1 The Tribunal accepts that the Respondent was experiencing a period of financial stringency and had a firm financial rationale for having to reduce staffing levels.
- 11.2 The Tribunal takes account of the influential UK ruling in Polkey V Dayton Services Ltd In Polkey v A.E. Dayton Services Limited [1988] AC 344, HL, Lord Bridge stated that “... in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation”.

The judgement included four basic Principals of fairness ‘which should always be considered’ in situations of redundancy:

1. The duty to consult the employee
2. The duty to warn of redundancy
3. The duty to establish fair criteria for the selection of employees
4. The duty to explore alternatives to redundancy.

*“Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too”.*

These principles are relevant to the application by Mr Torode.

- 11.3 The Tribunal also took into account the Code of Practice “Handling Redundancy” issued by Commerce and Employment which whilst not binding in law, the adherence or non-adherence to this code may be taken into account in determining whether a dismissal was fair or unfair.
- 11.4 The Applicant alleged that the Respondent had not used the redundancy policy IEG HR-009 which he argued was part of his contractual agreement with Guernsey Gas Limited at the time of his redundancy. If this policy had been followed then he argued he would have been entitled to have two meetings with the CEO of IEG as part of his consultation. In the event this policy was not followed and the Respondent adopted a different procedure.
- 11.5 PG and a number of Guernsey Gas Limited employees in their witness statements held the view that their employment with the Respondent was subject to IEG-HR-009 and by implication this was the case for the Applicant. This view was countered by evidence from Mrs Hill, DM and NS. On balance the Tribunal prefers the Respondent’s interpretation of the contractual situation.
- 11.6 The Tribunal understood that the revised Employee Handbook issued to all employees of Guernsey Gas Limited in 2011 (Pages 81 to 85 ER1 refer) contained the redundancy policy applicable to the Applicant as an employee of Guernsey Gas Limited. It should also be noted that even if the policy IEG-HR-009 had been in force for the Applicant, that paragraph 1.1 of that policy states that it does not form part of employee’s terms and conditions of employment.
- 11.7 It is the view of the Tribunal that whatever policy is expressed by an employer the test that should be applied is whether a fair and reasonable process was adopted within a reasonable range of responses.
- 11.8 The Tribunal concluded that the Applicant was already aware by 2 April 2012 that changes were afoot and that a new structure was being considered. From the uncontested evidence discussions occurred on that day with RG as to possible new roles for the Applicant. It would also seem to the Tribunal that the Applicant was being treated as a senior employee with valuable input as to the changes and was being advised that there was potentially a senior role for him in this new structure.
- 11.9 It is somewhat regrettable that the Applicant was on vacation when the employee briefing occurred on 16 May 2012 but this absence was clearly rectified by his attendance at the subsequent meeting on 17 May 2012. The Tribunal has reviewed the presentation materials (Pages 32 to 47) and found them to be detailed, comprehensive and informative.
- 11.10 The primary topics reviewed in the presentation were:
- A statement of the objective
  - A company “mission”, which referred to provision of safe services
  - A review of structural changes
  - A rationale for the structural changes

- Proposed individual department structures
  - A description of the selection and nomination process to fill the roles in the new structure
  - A confirmation that those “at risk” would be informed by 18 May 2012
  - An overview of the consultation process which would commence in June
  - The objective to have all appointments to the new structure completed by end August 2012
  - Confirmation of the redundancy package in the event of redundancy
- 11.11 At the end of the 17 May 2012 presentation the Applicant was handed an “at risk” of redundancy letter. This letter was explicitly clear that it was not a letter of termination and included reference to the two roles which the Respondent assumed the Applicant would wish to consider (Page 227 ER1 refers).
- 11.12 This letter was also explicit that it would trigger a period of consultation with the request that Mr Torode and the Respondent should work together to mitigate the risk of redundancy.
- 11.13 In the view of the Tribunal employees attending this presentation and subsequently receiving an “at risk” letter could have little doubt as to intention of the Respondent to enter a rigorous and thorough consultative process.
- 11.14 The Tribunal finds it surprising that the Applicant should have rejected the opportunity to enter into the consultative process within 24 hours of receiving his “at risk” letter. The Tribunal also finds it puzzling that he would give no detailed feedback to senior management as to the reason for this decision; he seemed to rely upon a general statement that he thought the new structure would not work.
- 11.15 The Tribunal was persuaded by the Respondent’s evidence that subsequent to 18 May 2012 they made several genuine attempts to persuade the Applicant to reconsider his position, he would not do so.
- 11.16 Turning to the specific issue of health and safety, the evidence from both parties confirms that as early as 2 April 2012 the Applicant was made aware of the proposed changes to departmental structures and the consequent proposals for new roles within this structure. However, at no point between that date and the Applicant’s dismissal on 10 October 2012 is there any evidence that the Applicant raised health and safety concerns with senior management, either verbally or in writing.
- 11.17 Specifically, the Tribunal was not persuaded that there was only a one day “window” in which he could have raised safety issues prior to agreeing to be in the selection pool. The Applicant had ample time and opportunity prior to the presentation on 17 May 2012 to raise concerns given the discussions with RG in April 2012 as to the planned changes in roles.
- 11.18 The Applicant argued that as the redundancy process adopted by the Respondent did not include formal consultation with the CEO NS, that he was deprived from raising such issues with the only senior manager he trusted to understand these issues. The Tribunal finds this argument lacks merit; Mr Torode was a senior employee with acknowledged technical competence and had been continuously employed by the Respondent for some 33 years, yet he made no attempt at meeting

with NS to discuss these issues. Despite having had an opportunity to contact an external agency such as the Guernsey Health and Safety Executive; there was no evidence that he did so.

11.19 From the evidence the Tribunal has formed the view that RG had both the technical competence and the experience to understand safety concerns if raised. The Applicant's evidence was that he did not raise such issues with RG as he did not trust him; given he had only recently been appointed as his manager. The Tribunal finds this argument has little merit and would seem to indicate that the Applicant did not wish to engage into meaningful consultation with his employer.

11.20 In summary the Tribunal believes that the redundancy process adopted by the Respondent was not unfair and seemingly met the tests of reasonableness required under the Employment Protection (Guernsey) Law, 1998, as amended. There was also evidence of conformity with the Commerce and Employment Code of Practice on redundancy.

## **12.0 Decision**

12.1 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, that the Applicant was not unfairly dismissed.

Mr Woodward

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Signature of the Chairman

2 April 2013

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Date