

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mrs Justine Quesnel

**RESPONDENT:** The Medical Specialist Group Limited  
**Represented by:** Ms Bonnie McPartland of Mourant Ozannes

**Witnesses:**

**Called by the Respondent:** ES  
SLM  
AG

**Decision of the Tribunal Hearing held on 25 July 2013**

**Tribunal Members:** Mrs Paula Brierley (Chairman)  
Mr Roger Brookfield  
Mr Norson Harris

**DECISION**

The decision takes into account the relevant Law, the Guernsey and UK authorities cited by the parties.

Having considered all the evidence presented and the representations of both parties (and ET1 and ET2 forms) and having due regard to all the circumstances presented to it, whether specifically referred to in this judgement or not, the Tribunal unanimously finds that under section 5(2)(c) of the Employment Protection (Guernsey) Law 1998 (as amended) the Applicant was not unfairly constructively dismissed from her employment. The Tribunal therefore makes no Award.

Mrs Paula Brierley  
.....  
Signature of the Chairman

13 September 2013  
.....  
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.**

**FORM: ET3A**

**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, Mrs Justine Quesnel, represented herself and gave oral evidence in addition to her submission on form ET1 and evidence contained in a joint bundle (EE1).
- 1.2 The Applicant gave witness testimony under oath.
- 1.3 The Respondent, The Medical Specialist Group Limited (MSGSL) was represented by Ms Bonnie McPartland from Mourant Ozanne Advocates.
- 1.4 The Respondent called the following witnesses:
- ES (HR Manager) who gave witness testimony under affirmation.  
SLM (former Chief Executive) who gave witness testimony under oath.  
AG (Finance and Administration Director) who gave witness testimony under affirmation.
- 1.5 At the outset of the hearing it was confirmed that:
- The agreed Effective Date of Termination (EDT) was 5 January 2013 with the last day worked being 4 January 2013.
- 1.6 The Applicant claimed that she had been constructively dismissed as she felt she had no choice but to resign from her position at the MSGSL because she had lost complete trust and confidence in some senior members of management due to their failure in following procedures, lack of honesty and because of the way the bonus procedure had been handled, which left her feeling victimised. The Applicant further claimed that there was no recourse under the grievance policy if an individual had a grievance with HR and/or the Chief Executive.
- 1.7 The Respondent denied that its actions had left the Applicant no choice but to resign. The Respondent purported that its bonus award was discretionary and it had every right to exercise that discretion. Further purporting that the bonus award process was fair and objective and in no way irrational or perverse and that the Applicant elected not to make use of the Grievance Policy which was available to her in order to seek a remedy to the situation.
- 1.8 In addition to forms ET1 and ET2, a joint bundle was submitted by both parties containing:
- Section A: witness statement of JQ, ES, SLM, AG, a copy of the Applicant's 2012 completed staff appraisal form dated October 2012 (section A page 12), discretionary bonus letter dated 5 December 2012 (section A page 20), an extract of

page 1, schedule 1 of the Respondent's ET2 submission (section A, page 22), a summary of the recorded meeting between Justine Quesnel and SLM which took place on 12 December 2012 (Section A, page 23), an email dated 10 October 2012 from ES (Section A, page 25), emails dated 11 October 2012 from SLM and Justine Quesnel (Section A, page 26), MSGL Employee Grievance Policy and Procedure (Section A, page 27), extract (page 2) of a letter dated 4 January 2013 from Dr PS acknowledging and accepting the Applicant's resignation (Section A, page 31).

Section B: witness statement of ES (Section B, page 1), offer letter and statement of terms and conditions dated 18 March 2011 from MSGL to Justine Quesnel (Section B, page 19), a job statement for the role of Clinical Administrator Coordinator (Section B, page 25), MSGL staffing structure chart dated October 2011 (Section B, page 31), the Applicant's training history (Section B, page 32), MSGL Employee Handbook dated October 2009 (Section B, page 34), acknowledgement of the staff handbook signed by Justine Quesnel dated 7 October 2010 (Section B, page 64), MSGL Code of Conduct (Section B, page 65), MSGL Electronic Communications Policy (Section B, page 70), MSGL Employee Grievance Policy and Procedure (Section B, page 78), redacted 2012 bonus payments schedule (Section B, page 82), duplicate copy of ES email dated 10 October 2012 (Section B, page 85), duplicate copy of ES email dated 11 October 2012 and reply email from Justine Quesnel dated 11 October 2012 (Section B, page 86), email from JC dated 11 October 2012 giving his thoughts on email sent from Justine Quesnel (Section B, page 87), email trail dated 9 October 2012 between the Applicant, JL and LP (the Applicant's line manager) regarding IT privacy concerns (Section B, page 88), email from Justine Quesnel to her team dated 3 October, 2012 regarding IT privacy concerns (Section B, page 92), file note of a meeting held on 1 November 2012 between JL and ML to discuss Justine Quesnel's complaint re IT privacy concerns (Section B, page 93), email from the Applicant to Physicians Dept dated 18 October 2012 requesting resource assistance for the following week (Section B, page 94), file note of a conversation with TH which took place on 6 November 2012 (Section B, page 95), email dated 22 November 2012 from Justine Quesnel to TH's team apologising for upset caused (Section B, page 96), bonus letter to Justine Quesnel from SLM dated 5 December 2012 (Section B, page 97), file note of discussion on 11 December 2012 between ES and Justine Quesnel (Section B, page 99), letter dated 2 January 2013 from Justine Quesnel to SE resigning from her position (Section B, page 100), email dated 2 January 2013 from SE to the Applicant acknowledging receipt of the Applicant's letter and requesting clarification (Section B, page 103), letter dated 4 January 2013 from PS formally responding to the Applicant's complaints and acknowledging her resignation at her request with immediate effect (Section B, page 105), file note of a meeting held on 4 January 2013 between Justine Quesnel, ES and PS and subsequent conversations as the Applicant was leaving (Section B, page 108), email dated 7 January 2013 sent to MSGL staff following the Applicant's departure (Section B, page 109).

Section C: witness statement of SLM (Section C, page 1), redacted agenda and minutes of the directors meeting held on 7 December 2012 at which bonuses were ratified (Section C, page 30), file note of conversation between SLM and the Applicant held on 12 December 2012 (Section C, page 36), other documents in Section C are duplicates of documents already contained in previous sections.

Section D: witness statement of AG (Section D, page 1), other documents in Section D are duplicates of documents already contained in previous sections.

Section E: Full transcript of the meeting between Justine Quesnel and SLM held on 12 December 2012.

- 1.9 The Respondent also submitted document ER1, Employer's Response form.

## **2.0 The Law**

- 2.1 According to the Employment Protection (Guernsey) Law, 1998 as amended, Section 5(2)(c) "an employee shall be treated as dismissed by his employer if, but only if – the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason for the employer's conduct."
- 2.2 The complaint was an alleged (constructive) unfair dismissal. It is now firmly established in previous judgments, 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) The 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.

## **3.0 Facts Found**

- 3.1 The Applicant had worked for the Respondent on two previous occasions firstly joining in February 2004 as a support PA for the Obstetrics and Gynaecology Department but left to be a full time mother, secondly joining in February 2008 as a Personal Assistant in the Anaesthetic Department, but with little scope for promotion, left to work in a different industry. She returned to the MSGL in October 2010 on a temporary contract. The Applicant was offered and accepted a permanent position from 1 April 2011 as a Clinical Administration Coordinator for the Women and Child Health Directorate (A/C).
- 3.2 Through her role, the Applicant worked closely with Dr PS who was also the chairman of the MSGL.
- 3.3 Detailed in the job statement, within the competencies section, under leadership skills there is a requirement to "demonstrate an ability to build, develop and manage effective relationships across teams and the service".
- 3.4 The Applicant's 2012 annual appraisal took place on Tuesday, 9 October, 2012; the document reflected a positive review. There were no appraisee comments on the document. The document was signed off, as administratively correct, by HR on 19

December 2012. The “staff appraisal summary sheet” reflects an overall percentage of 64%.

- 3.5 On 9 October 2012, the Applicant made a complaint regarding concerns about IT being able to access private emails. Prior to raising the complaint the Applicant had, on 3 October 2012, highlighted her concerns to her staff in an email.
- 3.6 On 11 October 2012 the Applicant sent an email in reply to ES’s email of the same date regarding a re-desking project. The Applicant replied to all recipients included in the mailing list, expressing her frustration at ES’s email.
- 3.7 On 18 October 2012 the Applicant sent an email to the Physicians Department requesting assistance, the email was targeted at only one other team. It later transpired that Applicant’s team had not required the assistance which should have been known to the Applicant as two of the consultants were due to be on planned holidays. This episode had resulted in bad feeling between the departments. By email dated 22 November 2012 the Applicant apologised to the team she had targeted.
- 3.8 Towards the end of November 2012, SLM, AG and ES, held a bonus review meeting to discuss the award of discretionary bonuses. The starting point for the allocations had been a notional 5% award for staff and then each member of staff was discussed and their overall performance was taken into consideration. In preparation for this meeting ES had familiarised herself with the employment files in order to be aware of key performance indicators which included staff behaviour and conduct.
- 3.9 In the case of the Applicant the Bonus Review Committee took into consideration the re-desking emails, the IT complaint which had been communicated to her team prior to it being investigated and the handling of the cover request, as noted in paragraph 3.7.
- 3.10 The Bonus Review Committee, having taken into account the three incidents as well as the other elements of the Applicant’s overall performance, decided to award a 3% bonus.
- 3.11 The bonuses awarded ranged from 3% to 8%.
- 3.12 Other members of staff were also awarded 3%.
- 3.13 Proposals for the bonus awards were then submitted to Dr PS as Chairman of the MSGSL who was then responsible for authorising the proposals prior to them being ratified by the Board.
- 3.14 Dr PS requested clarification regarding the bonus amounts for the Applicant from ES; he accepted the response to his query and then signed off the proposals.
- 3.15 On 5 December 2012 bonus letters were distributed to all staff. The Applicant received a letter communicating that she had received a bonus equating to 3%.

- 3.16 On 11 December 2012 the Applicant met with ES (HR Manager) and said that she wanted to see SLM. SLM was not in his office at the time therefore ES let him know that the Applicant wanted to see him.
- 3.17 SLM met with the Applicant the next day on 12 December 2012. The Applicant asked to record the meeting and SLM consented to the request. The Applicant sought to understand why her bonus was less than that of others.
- 3.18 SLM explained that the Bonus Review Committee had taken into account other items including the email of 11 October 2012 regarding the re-desking project, when deciding the bonus amounts. The reaction from a number of the recipients of this very public email was that the Applicant had shown a poor level of leadership and had sought to undermine the project and another manager.
- 3.19 After the meeting had closed, SLM went out to the Applicant's desk in the open area of the office and told her that he was uncomfortable with the fact that the meeting had been recorded and that his door was always open should she want to discuss this further.
- 3.20 The Applicant said that the second part of the meeting in the open office had made her feel uncomfortable.
- 3.21 In giving evidence the Applicant confirmed that she understood that the bonus was discretionary and that she was not challenging the amount of the award.
- 3.22 On 2 January, 2013 the Applicant sent a letter of resignation to Dr SE, noting that she was resigning with immediate effect.
- 3.23 On 2 January Dr SE responded by email noting that he was passing the letter to Dr PS as Chairman of the MSGSL.
- 3.24 On 3 January 2013 Dr PS noted that he was sorry to hear the Applicant felt she had no choice but to resign and would be speaking with ES and SLM.
- 3.25 On 4 January 2013 Dr PS met with the Applicant at 5:20 pm and gave her a letter acknowledging her resignation which, at the Applicant's request, was with immediate effect.
- 3.26 The MSGSL's Employee Grievance Policy and Procedure, at page four under the heading "Supplementary Notes", point four states "The MSGSL reserves the right to seek assistance from external facilitators at any stage in this procedure, in the interests of seeking a satisfactory outcome for all those concerned".

#### **4.0 Conclusion**

- 4.1 For the Applicant to succeed in her claim that she 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.

- 4.2 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 the Applicant was considered from both perspectives by the Tribunal.
- 4.3 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 around the bonus allocation process and the fact that performance and conduct post appraisal was also taken into account when determining the amount of bonus to be paid.
- 4.4 If such a breach were to have been found then the Tribunal must then consider whether that breach was fundamental, amounting to a repudiatory breach of contract. If so then the employee must have resigned in response to that breach and must not have delayed too long in terminating the contract.
- 4.5 The Applicant claimed that her resignation on 2 January 2013 was justified when it became apparent on 11 December that her bonus was less than other members of staff and because of the procedure followed by the Bonus Review Committee and the matters which had been taken into account when deciding the bonus amount.
- 4.6 The Applicant felt that it was unfair that her conduct of 11 October in sending the email had been taken into account because it had not been pointed out to her at the time.
- 4.7 The Applicant claimed that the award decision by the Bonus Review Committee had been taken to punish her and had left her feeling untrusting of them and victimised.
- 4.8 The Applicant further claimed that SLM's discussion with her on the floor on 12 December 2012 had been the 'last straw' event.
- 4.9 The Tribunal was satisfied that the Respondent was within its right to take into account events which were contrary to expected conduct of someone in the Applicant's position and therefore to exercise discretion accordingly when deciding bonus amounts.
- 4.10 The Tribunal noted that the bonus was clearly described as discretionary within the employment contract.
- 4.11 Based on the evidence put before it, the Tribunal is persuaded that in exercising that discretion, the Respondent did not act unreasonably. The Tribunal was further persuaded that the Applicant had not been singled out as there were other members of staff paid a bonus at the same percentage.
- 4.12 The Tribunal noted that the bonus proposals went through three stages of authorisation which included the Chairman who could directly comment on the Applicant's performance and conduct.

- 4.13 The Applicant claimed that the Respondent's grievance policy did not indicate what to do when a grievance was with HR or the Chief Executive. Evidence given drew attention to the "Employee Grievance Policy and Procedure" page four, "Supplementary Notes" point four "*The MSGL reserves the right to seek assistance from external facilitators at any stage in this procedure, in the interests of seeking a satisfactory outcome for all those concerned*" (Section A, page 30 of the bundle refers). The Tribunal is satisfied that adequate procedures were in place to deal with a situation involving the HR Manager or the Chief Executive. The Tribunal also considered that the Applicant had a working relationship with the Chairman therefore would have had access to discuss her concerns with a more senior member of the Group had she wished.
- 4.14 Based on the evidence and witness testimony put before it the Tribunal is persuaded that the conversation between SLM and the Applicant did not constitute a 'last straw' event. The Tribunal felt that SLM had been seeking to explain to the Applicant that his "door was always open" and he was, therefore, willing to discuss her concerns.
- 4.15 In determining the decision, the Tribunal took into account that a contract of employment may only terminate without notice if the other party has committed a fundamental breach of contract and that any breach (or breaches) must go to the heart of the contract. Importantly, the Applicant must resign in response to the breach and must not have delayed too long in terminating the contract, otherwise it can be found that the breach was waived and the contract affirmed. It was noted by the Tribunal that the Applicant accepted the payment of the bonus, resigned three weeks after the discussion with SLM and also that although she had stated that her resignation was to take immediate effect, she had, as acknowledged by her during the hearing, expected to work her notice period.
- 4.16 In view of these reasons the Tribunal concluded that the Applicant had failed to demonstrate that the employer had acted in such a manner that entitled her to view her contract so fundamentally breached that she was entitled to resign as a result of the actions of her employer.

## **5.0 Decision**

- 5.1 The decision takes into account the relevant Law, the Guernsey and UK authorities cited by the parties.
- 5.2 Having considered all the evidence presented and the representations of both parties (and ET1 and ET2 forms) and having due regard to all the circumstances presented to it, whether specifically referred to in this judgement or not, the Tribunal unanimously finds that under section 5(2)(c) of the Employment Protection (Guernsey) Law 1998, as amended, the Applicant was not unfairly constructively dismissed from her employment. The Tribunal therefore makes no Award.

Mrs Paula Brierley  
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Signature of the Chairman

13 September 2013  
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Date