

**States of Guernsey**



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Steven Nelson

**RESPONDENT:** R G Phillips & Son Limited  
The Respondent was represented Mr Robin Mauger, Senior Manager

**Witnesses:**

**Called by the Applicant:**

- The Applicant himself
- WH: Member of roofing team 2007 to 2010
- JD: Apprentice Carpenter 2000 to 2004
- AM: Site foreman employed until 2009
- SB: Applicant's mother

**Called by the Respondent:**

- Mr Rees
- Mr AN (After Sales Manager/Sales Manager)

**Decision of the Tribunal Hearing held on 10 April 2013**

**Tribunal Members:** Mr Peter Woodward  
Ms Christine Le Lievre  
Ms Alison Girollet

**DECISION**

1. The Applicant alleged constructive unfair dismissal, under the Employment Protection (Guernsey) Law 1998, as amended.
2. 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 constructively unfairly dismissed.
3. The complaint is therefore dismissed and no award is made.

Mr Peter Woodward  
.....  
Signature of the Chairman

25 October 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.

**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 Steven Nelson represented himself.

The Applicant submitted four witness statements from

- WH: Member of roofing team 2007 to 2010
- JD: Apprentice Carpenter 2000 to 2004
- AM: Site foreman employed until 2009
- SB: Applicant's mother.

1.2 The Respondent was represented Mr Robin Mauger, Senior Manager

The Respondent called the following witnesses:

- Mr Robin Mauger: Senior Manager
- Robert Phillips: Managing Director
- RM: Foreman
- KB: Roofers Mate.

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

- The agreed Effective Date of Termination (EDT) was 13 June 2013
- The gross earnings were £12,205.44p for the six months prior to the EDT.

1.4 The complaint was an alleged constructive unfair dismissal. It is now firmly established in previous judgments given 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. that breach must be fundamental, amounting to a repudiatory breach of contract;
- iii. the employee must resign in response to that breach;
- iv. the employee must not delay 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.

1.5 The Respondent, in his ET2, submitted that the Applicant had resigned and was not constructively dismissed.

## **2.0 Facts Found**

- 2.1 The Respondent R G Phillips and Son Limited is a building, roofing and decorating contractor. The Applicant was employed as a Roofer.
- 2.2 The Applicant had three periods of employment with the Respondent. He was initially employed from 1999 but was dismissed from his employment for misconduct some years later. In 2008 he was imprisoned for a drugs related offence, served part of his sentence and was then given early release on parole. Following this early release he approached the Respondent and asked for his job back, stating that he had learnt his lesson and wanted a second chance. As he had previously worked well with his father, the Respondent agreed and took him back on the same terms and conditions as he had enjoyed in his prior period of employment.
- 2.3 Shortly after he commenced this second period of employment, the Applicant broke his parole and was re-imprisoned to complete his sentence. On completion of that sentence, his father approached the Respondent and again the Respondent agreed to employ the Applicant; but only on the proviso that the foreman of the roofing team (RM) was content with the situation and that the Applicant's father would supervise him.
- 2.4 The Applicant informed the Tribunal that he had mental health issues and was taking medicine to assist in controlling this illness.
- 2.5 On 15 April 2013 the Applicant left the work site and arrived at the Company premises just after 2.00 pm where he lodged a formal grievance complaint with the Receptionist. In this complaint, the Applicant alleged he had been constantly goaded and bullied by the site foreman (RM) and as a result of this, was both physically and mentally exhausted and could no longer stay at the work site. (Document 1 Tab 2 refers).
- 2.6 In the absence of the Managing Director, Robert Phillips (who was on holiday at the time), Robin Mauger undertook to investigate the complaint. He contacted RM during the afternoon of 15 April 2013 and requested that RM meet with him the following day.
- 2.7 As agreed, Robin Mauger met with RM on the morning of 16 April 2013 and asked for an account of the incident the previous day. In addition to giving a verbal account to Robin Mauger, RM had also prepared a written statement of the events of 15 April 2013 and he submitted this to Robin Mauger. In the meeting RM also detailed a number of performance issues than he currently had with the Applicant at that time. (Document 2 Tab 2 refers).
- 2.8 On 22 April 2013, the roofing assistant (KB), who had been at the work site on 15 April 2013 and who had apparently witnessed the altercation between RM and the Applicant, was asked to attend a meeting. This meeting was conducted by Robin Mauger with Robert Phillips (who had now returned from holiday) in attendance. KB made a detailed statement as to what he had observed on that day. (Document 3 Tab 2 refers).

- 2.9 On the following day, KB was requested to attend a further meeting with Mr Mauger and Robert Phillips to answer some clarifying questions. (Document 3A Tab 2 refers).
- 2.10 The Applicant also met with Robert Philips on 23 April 2013. It was confirmed to him that his complaint of 15 April 2013 was being taken formally and that investigations were underway. The Applicant was advised he would be asked to attend a meeting as part of that investigation and that he could bring a colleague with him to that meeting. The Applicant responded that he did not have need of a colleague (Document 4 Tab 2 refers).
- 2.11 The meeting with the Applicant took place on 29 April 2013 with Robin Mauger and Robert Phillips. A written record was made of the Applicant's recollection of the events of 15 April 2013. During that meeting, the Applicant was asked why RM might have formed the view that he was underperforming in his job. The Applicant responded by claiming that he had not underperformed and that any deficiency in progressing the work was down to his assistant (KB) shirking his duties. (Document 5 Tab 2 refers).
- 2.12 Following this meeting a letter was sent to the Applicant on 14 May 2013 signed by Robin Mauger. In this letter, Robin Mauger stated that having concluded their investigation, the management had decided that any problems caused on that day were primarily of the Applicant's own making. In addition, the letter also listed three issues that they would like to discuss further with the Applicant; these being:
- Time keeping / Working hours
  - Work performance
  - Personal conduct.
- The Applicant was informed that he should attend a disciplinary meeting on 16 May 2013. (Document 6 Tab 2 refers).
- 2.13 A Disciplinary meeting conducted by Robin Mauger and Robert Phillips was duly held with the Applicant on 16 May 2013. The Applicant had been advised he could bring a colleague to the meeting but he had declined this offer. In the meeting, the Applicant was informed in detail as to the Respondent's concerns, and the necessary improvements required. This was summarized in a document which the Applicant was given during the meeting. The document also stated that this was a formal warning and that further action would be taken if the need arose. (Document 7 Tab 2 refers).
- 2.14 On 17 May 2013, the Respondent wrote to the Applicant to advise him that, having concluded its investigation into the Applicant's grievance complaint, the Company had not been persuaded that RM had bullied him on 15 April 2013. The letter also stated that the Respondent would investigate further if the Applicant could provide specific examples of the alleged unacceptable behaviour. (Document 8 Tab 2 refers).
- 2.15 On 5 June 2013, the Applicant submitted his written resignation. In this letter, the Applicant stated the reason for his resignation was the Respondent's failures in dealing with his complaint. (Document 9 Tab 2 refers).

2.16 On June 6 2013 the Respondent acknowledged receipt of this resignation letter but denied that they had failed to respond to his complaint. (Document 10 Tab 2 refers).

### **3.0 Mr Steven Nelson**

3.1 The Applicant did not provide a witness statement.

3.2 In his ET1, the original complaint, the Applicant alleged that he had been bullied and harassed, ridiculed and demeaned. He claimed he had been subjected to insults and overbearing supervision and he had been deliberately undermined even though he was a competent employee. The Applicant stated that all of this behaviour was down to RM, the roofing foreman, and despite his many complaints to the Managing Director (Robert Phillips) little was done to stop this behaviour.

3.3 The Applicant alleged that RM had teased him as to his mental state and called him a "psycho".

3.4 The Applicant said that what started as banter by RM became very personal and foul language was used by RM toward him. The Applicant stated that RM did not know when to stop and that RM often insulted the Applicant despite his protestations. The Applicant stated that he would then ring his father (if his father was not on site) and his father would either talk to RM or calm the Applicant down.

3.5 The Applicant thought RM knew he was competent in his job but that RM did not like that, as often RM would claim credit for the good work the Applicant had done but not admit his own (RM) errors.

3.6 The Applicant said he was often antagonized by RM, but he chose to walk away from any confrontation with RM. The Applicant said events were different on 15 April 2013 in that RM had insulted his parents repeatedly. The Applicant said he found this totally unacceptable and he believed that he had no choice to but to make a formal grievance.

3.7 The Applicant stated that his formal complaint was totally ignored by the Respondent between 15 April and 23 April 2013. On 23 April, he met with Robin Mauger who invited him to a meeting with Robert Phillips on 29 April 2013. Following the meeting on 29 April, the Applicant said he did not receive any communication from the Respondent until 14 May 2013 when he received a letter. The letter brushed aside his grievance complaint and required him to attend a Disciplinary meeting on 16 May 2013.

3.8 The Applicant stated that the Disciplinary meeting he attended was unfair and that KB's evidence had been engineered by RM. The Applicant stated that in his opinion, the outcome of the meeting of 16 May 2013 was predictable. The whole Company knew he was being treated unfairly by RM, but nobody would support him.

### **4.0 Witness statement JD**

4.1 JD was an apprentice carpenter employed by the Respondent. The written statement referred to events between 2000 and 2004. The written statement alleged that RM had ridiculed the Applicant about his girlfriend and that the

Applicant had been very distressed. The Applicant had complained about this behaviour to Robert Phillips but no action was taken.

## **5.0 Witness Statement AM**

5.1 AM worked for the Respondent as a site carpenter and then subsequently as a site foreman. He left employment with the Respondent in 2009. In his written statement AM alleged that RM had spoken in harsh terms to the Applicant and was unduly critical of the Applicant in front of other employees. The statement alleged that RM's behaviour could not be considered as just "building site banter" - however management took no steps to deal with it.

## **6.0 Witness statement WH**

6.1 WH was a member of the Respondent's roofing team from 2007 to 2010. In WH's written statement, he alleged that although the Applicant was a competent employee he was often unfairly criticized by RM and that WH regularly overheard RM demean, criticize and insult the Applicant.

## **7.0 Witness statement SB**

7.1 SB is the Applicant's mother. In her written statement she alleged that RM had regularly bullied her son and that when she saw the Applicant on 15 April 2013, he was visibly distressed. SB alleged that the Applicant had told her that RM had ridiculed and insulted him from the moment RM had arrived on site that lunch time.

## **8.0 Mr Robin Mauger**

8.1 Robin Mauger read from a witness statement (Tab 4 refers). Robin Mauger stated he had worked for the Respondent for six years as a senior manager.

8.2 Robin Mauger confirmed that the roofing team was led by two foremen; RM and the Applicant's father.

8.3 On 15 April 2013, having been advised of the Applicant's grievance (and in the absence of the Managing Director, Robert Phillips who was on holiday), Robin Mauger initiated a formal investigation into the matter. He first asked RM to meet with him the following day in order that RM could give him an account as to what had occurred at the work site.

8.4 Robin Mauger met with RM on 16 April and RM briefed him both verbally and in writing as to the events of the previous day (Document 2 refers).

8.5 Following this meeting, Robin Mauger decided that he should not take any further action until the return of Robert Phillips on 22 April 2013.

8.6 On Robert Phillips' return to the office, Robin Mauger immediately advised him of the Applicant's complaint against RM. It was agreed that they needed to meet with KB (KB having been the only other employee on the site that day) so Robin Mauger therefore arranged for KB to attend at the Company premises in order to give an account as to what KB had witnessed at the work site on 15 April 2013.

- 8.7 Robin Mauger and Robert Phillips met with KB on the afternoon of 22 April 2013, and again on 23 April 2013. (Accounts of both these meeting are to be found in Documents 3 and 3A in Tab 2).
- 8.8 Robin Mauger and Robert Phillips then met with the Applicant on 29 April and asked the Applicant to explain his grievance concerning the events of 15 April. (The file note of this meeting is to be found in the bundle, Tab 3 refers).
- 8.9 Following the meeting with the Applicant, Robin Mauger and Robert Phillips gave consideration to the Applicant's issues, taking into account the input they had received from both RM and KB. It was concluded that the Applicant was mostly to blame for the altercation on 15 April and that RM had conducted himself appropriately.
- 8.10 This opinion was communicated to the Applicant in a letter dated 14 May, together with a statement of concern as to the Applicant's performance issues.

## **9.0 Mr Robert Phillips**

- 9.1 The witness read from a witness statement (Tab 4 Refers).
- 9.2 Robert Phillips confirmed the Applicant's employment history since 1999 and explained the special arrangements for his supervision from 2008 onwards as a member of the roofing team. Given the Applicant's medical condition, it was deemed necessary to have the Applicant's father undertake his day to day supervision whenever possible. In effect, taking into account the father's holidays or any other possible absences, this meant that RM would only need to supervise the Applicant for a few weeks each year.
- 9.3 Robert Phillips stated the teaming up of father and son for the great majority of each year was a good solution and that the Applicant's behaviour at work sites was for the majority acceptable. However in the absence of his father, the Applicant seemed unable to take authority from those more senior to him. Whilst this was disruptive, issues could normally be resolved by contacting the father and asking him to talk to his son.
- 9.4 Robert Phillips said he only became aware of the incident on his return from holiday on 22 April 2013. He agreed with Robin Mauger that the Applicant's allegation was serious but given RM's account of that day, there were also considerable concerns as the Applicant's conduct.
- 9.5 Robert Phillips and Robin Mauger interviewed KB to obtain a third party view of the events that had occurred at the work site on 15 April 2013.
- 9.6 Robert Phillips stated that he and Robin Mauger then followed an appropriate process to deal with both the Applicant's grievance and his poor work performance.
- 9.7 Robert Phillips said that whilst he did not find there was any evidence of bullying by RM on the 15 April 2013, it was confirmed in a letter dated 17 May, that the Company would investigate further if the Applicant provided any specific examples

of such behaviour that might have occurred at another time. In the event, the Applicant did not provide any such information.

9.8 Robert Phillips also thought it was appropriate to discipline the Applicant on 16 May 2013. The reasons for the formal warning were clearly stated in writing to the Applicant. Robert Phillips also stated that the letter of warning made it clear that the Applicant could appeal against the disciplinary decision. In the event the Applicant did not do so.

9.9 Robert Phillips confirmed that RM was a trusted employee and that he had never had an occasion to warn or discipline RM for bullying employees.

## **10.0 KB**

10.1 The witness read from a witness statement (ER1 Tab 3 refers).

10.2 KB had been working as part of the roofing team since 2011. KB confirmed he was normally supervised by RM and would often work on the same sites as the Applicant and the Applicant's father.

10.3 On 15 April 2013, KB said he arrived on site at 7.15 am and that RM arrived some five minutes later at 7.20 am. The scheduled start time was 7.30 am. The Applicant did not arrive until 7.40 am.

10.4 RM told KB and the Applicant what work was required on the roof and then left the site. Shortly after this the Applicant left the roof and did not return for a period somewhat in excess of 30 minutes.

10.5 At 9.00 am, the Applicant left the site to go to shop and returned approximately at 9.20 am and then took a break ending circa 9.55 am.

10.6 The Applicant then tiled the roof until approximately 11.30 a.m. at which point the Applicant left the site to go to the bank; returning approximately at 12.25 pm. The Applicant then proceeded to take his lunch.

10.7 RM, as the site Foreman, then arrived at approximately 12.45 pm and after having inspected what work had been done that morning, enquired of both of KB and the Applicant as to why so little progress had been made. The Applicant seemed to be annoyed by this critique and told RM that if he had a problem with the Applicant's work that he should go and see the Managing Director.

10.8 RM then stated to both of them that they were lazy; however, KB believed this was directed more to the Applicant's lack of work. A fairly heated conversation followed although KB believed nothing malicious was said. KB stated he did overhear RM telling the Applicant that he should learn some respect and that when challenged by the Applicant on this comment; RM told the Applicant that he blamed the Applicant's parents for not teaching him respect. Following this altercation the Applicant left the site.

10.9 KB stated that in the 22 months that he had worked with RM, in his opinion, he had never heard RM ridicule or demean the Applicant in any way. Neither in his opinion



was RM a supervisor who meted out unfair treatment. Whilst there was building site banter, he had never heard RM use meaningful insults to any work colleagues.

10.10 Commenting on RM's supervisory responsibilities. KB believed he had been fairly supervised by RM. In regard to the Applicant and the on-site working relationship with RM, KB confirmed this was under control when the Applicant was in the presence of his father but less so in his father's absence. KB said that in his role as Foreman, RM would often look in on the job briefly to make sure all was going well and then move on to another site. This was clearly part of RM's responsibility and should not be considered as oppressive supervision.

10.11 KB stated that he had never observed RM deliberately undermining any competent employee by constant criticism. If criticism was offered, it was only ever given constructively and typically he might offer an alternative way of doing things more quickly, with less effort, but still maintaining quality standards.

## **11.0 RM**

11.1 The witness read from a witness statement (ER 1 Tab 3 refers).

11.2 RM had commenced work with the Respondent some 24 years ago starting as a labourer and then progressing to a plasterer. He joined the roofing team some 20 years ago. After working for several years as a Roofer, he was given responsibility as a site Foreman.

11.3 RM told the Tribunal that during the Applicant's employment the Applicant had been trained and supervised by his father with only limited supervision from himself when the Applicant's father was absent. RM commented that in the early period of his employment, he found the Applicant to be pleasant enough but a little too self-assured. He also recalled that the Applicant's time keeping was poor and he often had to raise this subject with him.

11.4 When the Applicant returned to the Company in 2008 he resumed working with his father and continued to learn his trade. RM stated that he genuinely believed that the Applicant was trying to get his life back together and felt he had been supportive to him during this period.

11.5 Turning to the events of 15 April 2013, RM stated that he arrived at work at 7.20 a.m. and had noted that KB was already on site. RM spoke to KB and informed him as to what work needed to be done that day. The Applicant turned up on site at 7.40 a.m. and RM then informed the Applicant as to the work required. RM then left the site at 7.50 am as he needed to visit other sites.

11.6 RM recalled receiving a telephone call from the Applicant at 11.38 am demanding to know where RM was and stating that he needed some equipment. It seemed to RM that in the absence of this equipment, the Applicant could still continue working.

11.7 RM said he arrived back on the site at 12.45 pm i.e. during the lunch period. Just after 13.00 p.m. he spoke to both KB and the Applicant stating that he was not happy over the lack of progress made by them during the morning. RM remembered

the Applicant telling him that if he didn't like his (the Applicant's) work, he (RM) should talk to the Managing Director.

- 11.8 RM stated that at this point he noticed the Applicant was getting agitated and he tried to calm the situation. The Applicant however remained in a state of agitation even though he recommenced work. When the Applicant started to use foul language describing what he'd been doing over the weekend, RM asked him to tone his language down as the client was in a room below them and she would have been able to hear this language. RM agreed that he had told the Applicant that he should learn more respect and that he should have learnt this respect from his parents. RM felt he had said nothing more inflammatory than that. However the Applicant was clearly upset and walked off the site.
- 11.9 Shortly afterwards, RM received a phone call from Robin Mauger informing him that the Applicant had been to the office and made a formal complaint. RM was asked to attend the office following morning, Tuesday 16 of April 2013, to discuss the complaint with Robin Mauger.
- 11.10 RM acknowledged that the Applicant was a competent Roofer and could work to required standards; however as site Foreman, he sometimes felt the need to criticize constructively and to suggest alternative ways of performing the work. He did not believe that in doing this that he was trying to undermine or unfairly critique the Applicant.
- 11.11 RM acknowledged that there were many building sites where banter was commonplace. RM stated it was a way to get through the day. In his opinion, RM said he drew a firm line between general banter and more personal or discreditable comments; as these were inappropriate. RM explained that the occasional expletive might also be used and gave the example that on 15 April 2013 KB had used a mild expletive towards him when he had criticized KB for not doing enough work. It seemed to RM that KB had felt the criticism was harsh when he (KB) had worked throughout the morning, when the Applicant had not.
- 11.12 On 15 April 2013, RM recalled that they were working on a private residential site. The lady customer was in residence and she could easily hear any conversations going on from the roofing team. She was also paying per hour for the work being done. She would reasonably therefore expect the roofing team to be productive throughout their time on site in addition to seeing the physical evidence of any progression. In the opinion of RM, the job that day clearly was not progressing as quickly as it should have been. It seemed to RM that it was a very reasonable expectation for the Applicant to get on with his work and not use unpleasant language.
- 11.13 Despite his recent warning to the Applicant, RM saw the Applicant texting on his mobile phone and asked him not to do this. In response, the Applicant made degrading comments about a close family member of Robert Phillips. It was this behaviour that triggered RM into advising the Applicant that he should learn respect, and that he should have learnt respect from his mother and father. This comment seemed to agitate the Applicant even further and the Applicant left the site.

- 11.14 The Applicant had alleged that he had told RM that he should stop his very personal criticisms, at least five times. RM stated that he could not remember this. RM told the Tribunal that he was aware that the Applicant had mental health issues and needed to take medication. He understood this was a sensitive subject and did not believe that he used inappropriate language toward the Applicant. RM conceded however that at some other time he might have used the word “crazy” toward the Applicant but very much in the context that he would have used it to any other employee or indeed to his children. If he had made such comment, RM confirmed there was no intent to distress or demean the Applicant.
- 11.15 RM confirmed that as the Applicant was normally supervised by his father for the great majority of any given year he (RM) did not directly supervise the Applicant.
- 11.16 RM stated that when he met with Robin Mauger on 16 April, he told Robin Mauger that he would prefer not to work with the Applicant again due to the Applicant's poor timekeeping and the untrue but continuing assertions from the Applicant that RM was harassing him.

## **12.0 Conclusions**

- 12.1 At the commencement of the hearing, the Tribunal had a concern as to whether the Applicant was able to represent himself adequately (given his admitted mental health issue). However it quickly became apparent to the Tribunal that the Applicant was both cohesive and articulate in the giving of his testimony and demonstrated that he was also quite capable of cross-examining witnesses.
- 12.2 The evidence from both the Applicant and the Respondent confirmed to the Tribunal that over the period of employment from 2008 to 2013, there was a recurrent overall pattern. If the Applicant's father took holiday or was away from work due to illness, then the Applicant found it difficult to work under the guidance and supervision of others. The events of 15 April 2013 would seem to illustrate that, in the absence of his father; the Applicant could become abusive and aggressive and might resent being given instruction by a superior.
- 12.3 It was not contested by the Applicant that he arrived later than his required starting time on 15 April 2013 and that during the morning of that day, there were significant periods of time when he was not undertaking his duties or indeed he was away from the site. The net result of this was a seemingly unacceptable work-rate that day and a client who was concerned that they were paying for unproductive hours.
- 12.4 The site foreman (RM) arrived back at the site shortly after noon on that day where he realized that the work was not being completed to schedule. It is significant that RM did not assume that this was solely due to the Applicant but challenged both the Applicant and his assistant, KB, as to the level of work that had been done over the morning. It became apparent that KB had attended to his duties as required, but that the Applicant had not.
- 12.5 When RM expressed his dissatisfaction as to the level of work completed, the Applicant was very reluctant to take this critique. The evidence indicates that when the Applicant recommenced his work, he chose to talk inappropriately about a personal assignation with a lady friend during the weekend. He also made

derogatory remarks about a close family member of Robert Phillips, such remarks easily being within earshot of the client.

- 12.6 The Tribunal concluded that RM quite reasonably advised the Applicant to show respect especially when in the presence of a client. It is not disputed that RM commented that he would have thought the Applicant would have learnt respect from his parents. The Applicant claimed that this sentiment was expressed in a totally inappropriate way and was repeated a number of times. On balance the Tribunal prefers the evidence of RM that it was only said once and was expressed in appropriate language. The Tribunal found RM to be a credible witness.
- 12.7 The Applicant chose to take this critique very personally and quit the site. The Applicant subsequently went to the Company premises and (as Robert Phillips was not available), informed the Receptionist that he wished to make a formal complaint about RM.
- 12.8 Given the formality of the complaint, and as Robert Phillips was on holiday for the rest of the week, Robin Mauger felt it prudent to at least initiate a formal investigation. It would seem to the Tribunal that he gave this issue priority and within 24 hours had spoken at length with RM. Following his meeting with RM, Robin Mauger concluded he could do no more until the return of Robert Phillips on Monday the 22nd April.
- 12.9 On 22 April, the issue was again given priority in that KB was invited to attend a meeting with Robin Mauger and Robert Phillips to obtain a witness account from him. Further clarifications were requested from KB on 23 April. It should be noted that KB gave evidence to the Tribunal and his testimony was found to be both detailed and credible.
- 12.10 The Applicant was also invited to meet with Robin Mauger and Robert Phillips and this meeting took place on 29 April. The Tribunal has formed the view that this meeting was appropriately conducted and allowed the Applicant to provide his version of the events of 15 April. A file note was taken of the meeting. Up to this point it is the Tribunal's view that the issue had been handled in an exemplary fashion. However a significant period of time then elapsed between this meeting with the Applicant and the next formal communication to the Applicant which did not place until 14 May
- 12.11 In the letter of 14 May, there was only limited reference to the Applicant's grievance and this was combined with an expression of concern that the Applicant had a number of performance issues. In the Tribunal's opinion, the performance issues were a separate matter to the outcome of the Applicant's grievance complaint and should therefore have been dealt with in a separate communication to the Applicant.
- 12.12 The Tribunal finds that the disciplinary meeting conducted with the Applicant on 16 May 2013 dealt with the genuine concerns of the employer and was appropriately held. It is unfortunate that the document handed to the Applicant at the start of the meeting, included the information that the Applicant was being awarded a formal warning. Any disciplinary sanction should not have been conveyed to the Applicant until the Disciplinary Chairman had undertaken a period of reflection to consider any

responses from the Applicant. However this fault is mitigated in that the offer of an appeal to this decision was also included in the same document. The Tribunal notes that the Applicant chose not to appeal.

- 12.13 The letter which was subsequently sent to the Applicant on 17 May 2013 made it very clear that, on the basis of its investigation into the events of 15 April, no evidence had been found to support the Applicant's allegations against RM. The Respondent did not however close the matter completely in that if the Applicant did have clear and concise examples of bullying, then he was to write to them giving them this information. In the meantime, the Company committed that whilst any investigation continued, the Applicant would be supervised by somebody other than RM. In the opinion of the Tribunal this communication was appropriate and demonstrated a continuing concern for the Applicant's issues. The Tribunal notes that the Applicant chose not to provide any examples. The Tribunal also notes that the Applicant chose not to exercise his right of appeal in relation to the disciplinary warning.
- 12.14 There were no further formal communications until the Applicant submitted his letter of resignation on 5 June 2013 and the subsequent response by the employer on 6 June 2013 refuting his claims that he been unfairly treated and was entitled to claim constructive dismissal.
- 12.15 The Tribunal has considered the four witness statements submitted by the Applicant. The written statements allege that there was a fractious relationship between the Applicant and RM over a long period of time. However it is significant that three of these witness statements relate to events at least three years ago and in one case over a decade ago. Given the Applicant's difficulties in accepting any supervision other than that of his father, the Tribunal is persuaded that this did not amount to the sustained bullying and harassment alleged by the Applicant. It is also very significant that in the period 2008 to 2013 the Applicant remained regularly supervised by his father, not RM.
- 12.16 In his ET1, the Applicant made his claim for constructive dismissal on the basis that he had been demeaned, had been singled out for unfair treatment, had been insulted, and was subject to overbearing supervision. The Applicant claimed he was being deliberately undermined by constant criticism from RM, even though he was a competent employee. The Tribunal has formed the view that this was not so.
- 12.17 The Applicant claimed that the events which occurred on 15 April 2013 constituted a last straw situation. The Tribunal disagrees. It is the Tribunal's opinion that RM was appropriately using his authority and using appropriate language. It is the Tribunal's view that this did not constitute an act of bullying or harassment. The Tribunal finds little evidence to justify any breach of the implicit duty of the employer to act fairly and with integrity toward the Applicant. In summary, the Applicant failed to provide detailed and objective examples that would support any of his claims.
- 12.18 The Tribunal concluded that the Respondent, understanding the Applicant's medical condition and his resentment toward authority, made very suitable and reasonable adjustments in the supervision and working arrangements of the Applicant. The Respondent clearly set aside the Applicant's criminal misdemeanors in 2008 and accepted the Applicant back into employment. The Respondent would seem to have

acted with forbearance and understanding throughout the Applicant's period of employment.

**13.0 Decision**

13.1 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 constructively unfairly dismissed.

Mr Peter Woodward

25 October 2013

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Signature of the Chairman

Date