

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Ms Lucia Pagliarone
Represented by: Mr A Castle

RESPONDENT: Immuno Biotech Limited
Represented by: Mr P Dawson-Ball

Tribunal Members: Mr P Woodward (Chairman)
Ms A Girollet
Mr R Brookfield

Hearing dates: Thursday 8 and Friday 9 October 2015

Decision of the Tribunal

Having considered all the evidence presented by the parties, whether written in this judgment or not, the Tribunal makes the following decisions:

The claim of Sex Discrimination is upheld and the Tribunal makes an Award of £10,500; to be paid by the Respondent to the Applicant, in accordance with Section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

The Tribunal dismisses the claim that the Applicant was entitled to be considered dismissed as defined in the Employment Protection (Guernsey) Law, 1998, as amended, by asserting her dismissal to be found automatically unfair either:

Due to discrimination against her on the grounds of her gender, contrary to the provisions of Part II, Section 6(2)(b) of the 'Sex Discrimination Ordinance' noted above and Section 9A of the 'Employment Protection Law', note above, or

Because she had raised an issue of Health and Safety with the employer; Section 11, paragraph (1)(c) of the 'Employment Protection Law', noted above, refers.

Mr Peter Woodward
.....
Signature of Chairman

10 November 2015
.....
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 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 Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended (the Law)

The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Ms Lucia Pagliarone, was represented by Mr Andrew Castle and gave evidence on her own behalf. Document bundles marked EE1, EE2, and EE3 were submitted and the following witnesses were called:

Mr Tom Rushton
Ms Karen Solway

- 1.2 The Respondent was represented by Mr Peter Dawson-Ball who gave evidence on its behalf. Document bundles marked ER1 and ER2 were submitted and the following witnesses were called:

Ms Beate Keisa
Ms Kathryn Touzeau
Mr David Noakes

- 1.3 The Tribunal received a claim from the Applicant, Lucia Pagliarone, alleging Unfair Dismissal and Sex Discrimination and a response from the Respondent, Immuno Biotech Limited, which denied both complaints.

- 1.4 Both parties agreed that the Applicant had been in receipt of remuneration per annum of £40,000 paid on a monthly basis. A bonus payment of £500 was paid in the pay period December 2014. This amount would be included in the determination of any Award, should the Applicant's complaints succeed. (ER1 Section 7 refers).

- 1.5 Included in the bundle of documentation was a copy of the Applicant's signed contract of employment dated 23 July 2014 (EE1 Pages 10 to 13 refer). The Applicant's employment commenced on 26 August 2014. The Applicant's employment terminated on 9 January 2015; the Respondent dismissed the Applicant with notice. (EE1 Pages 14 and 15 refer).

- 1.6 Noting the Applicant made claims of Sex Discrimination and Unfair Dismissal the Tribunal relied on Section 54 of the Sex Discrimination (Employment) (Guernsey) Ordinance 2005, to join the complaints to be heard in a single hearing.

2.0 Facts Found

- 2.1 The Respondent has offices in Guernsey with approximately eight employees and offices in other jurisdictions employing approximately 20 more persons.

- 2.2 The Company provides a range of specialised medical products called GcMAF. Mr David Noakes is the CEO of the Company.

- 2.3 The Applicant was originally hired in the role of Personal Assistant (PA) to Mr Noakes however, after approximately one week she was reassigned into an administrative/client supporting role. The Applicant liaised with clients via email and telephone, entered client orders onto the Company admin system and arranged for client's orders to be despatched.
- 2.4 The Applicant's contract of employment of 23 July 2014 (ER1 Pages 10 to 13 refer) indicated that the Respondent had policies and procedures regarding disciplinary action and grievance complaints. This contractual statement was contradicted by a document issued by Mr Noakes to the Applicant on 23 July 2014 that stated "there are no handbooks, policies and procedures and you won't have time to write them" (EE1 Page 42 refers).
- 2.5 On 25 November 2014, the Applicant was told by Mr Noakes and Ms Keisa that she had successfully passed her three-month probationary period.
- 2.6 After a major altercation between the Applicant and Mr Noakes on 15 December 2014, the Applicant moved from the Respondent's office in St Peter Port and was required to work out of Mr Noakes' personal residence as her normal workplace.
- 2.7 Despite the disagreement of 15 December, the Applicant, together with Ms Karen Solway, provided skeleton staff coverage over the Christmas period.
- 2.8 The Applicant received a performance bonus of £500 in her December 2014 pay in addition to her normal monthly salary.
- 2.9 On 9 January 2015 the Applicant was sacked from her employment without being given any reason for her dismissal (EE1 Pages 14 and 15 refer).

3.0 Ms Lucia Pagliarone

- 3.1 Ms Pagliarone read from a witness statement (EE1 Pages 16 to 28 refer).
- 3.2 The Applicant told the Tribunal that right from the commencement of her employment she found it a very strange place to work. There was very little training given and not much in the way of instruction or guidance. It was also an environment in which lots of inappropriate remarks were made about staff, mostly about women, and mostly by Mr David Noakes himself. The Applicant witnessed violent outbursts from him with lots of swearing being commonplace, which the Applicant found very intimidating.
- 3.3 The Applicant stated that employees were treated in a chaotic fashion. She observed that everything seemed to be done "off the cuff" and cited the example when, on 25 November 2014, she was issued with a written warning that was subsequently withdrawn the same day.
- 3.4 The Applicant informed the Tribunal that she had made contemporaneous notes of her experiences with the Respondent. These notes are contained in a log commencing 25 August 2014 with the final entry dated 9 January 2015 (EE1 Pages 18 to 28 refer). In particular the Tribunal notes the following incidences.

- 3.5 On 26 August 2014, her second day of employment, the Applicant met with Mr Noakes who, as he gave her a project list, commented "You'll need to help me do everything on this list. It took the useless bitch before you 3 fucking months to get an advocate on board".
- 3.6 On 25 September 2014, in commenting on a work colleague, Mr Noakes said "Marco always wants Beate to be at his beck and call. He wants to fuck her, he'll only be polite to you if you are good looking and female, a bit like me".
- 3.7 On the same day, having just concluded an interview with an external candidate, Mr Noakes said "Well we can't hire her as she is ugly and overweight and I only employ beautiful women".
- 3.8 On 26 September 2014 when the Applicant was tidying Mr Noakes' desk, she found her CV in a pile of paper; a note had been made on the back of it by Mr Noakes saying "Red lipstick, heels, tattoos, do not approve; wearing a dress excellent".
- 3.9 On 10 October 2014, following Ms Solway's attendance at the office for a job interview, Mr Noakes said "How are we supposed to hire her; did you see what she was wearing and the size of her, we can't have her on the front line representing GcMAF looking like that".
- 3.10 On 13 October 2014, the Applicant's personal effects were moved out of the office she had shared with Mr Noakes. The Office Manager told the Applicant that, upon his arrival, Mr Dawson-Ball needed to sit with Mr Noakes. Ms Keisa explained to the Applicant it would be "boys together, they have a lot in common regarding the Aero and Yacht clubs".
- 3.11 On 16 October 2014, Mr Noakes became upset over a payment issue and called the Applicant "a fucking stupid woman". Mr Dawson-Ball intervened and advised Mr Noakes that he would deal with the issue.
- 3.12 On 17 November 2014, there was dispute over the ownership of an 'on line petition' which had been initiated by Mr Rushton. The Applicant was asked to obtain the petition from Mr Rushton but he declined to pass it over. When the Applicant related this to Mr Noakes he started to shout and swear. Mr Noakes told the Applicant "You're fucking useless, if I need anything done in this place I am better off doing it myself".
- 3.13 On 15 December 2014 the Applicant was asked into their office by Mr Noakes and Mr Dawson-Ball. They expressed considerable concern over a voice message that the Applicant's mother-in-law had left for Ms Keisa relating to a personal matter. The Applicant asked what had this to do with her work and said it did not have anything to do with her. This response angered Mr Noakes who proceeded to shout and swear, such that the whole admin team could hear him. He said "Everybody hates you, Beate, Jessica, Lorraine and I all hate you. You're shit at your job and are the most unorganised useless fucking woman I have ever met. Your mother-in-law is a horrible fucking woman and we want nothing to do with her either. If I had my way you would have been sacked in the first fucking week. I want you out now, get the fuck out of my office now, you best resign now I don't care what you do I can treat

you how I like; I'd give you 12 months' pay if you get out of my office now. No one wants you here, you either resign or I will sack you".

- 3.14 The Applicant stated that another reason for her dismissal was due to her raising concerns as to the legality of herself and other Company staff administering injections; she alleged the last such concern was raised in an email sent to Mr Noakes on or around 30 November 2014. In her evidence, the Applicant referenced a section of the 'Medicines Law 2008':

"No person shall administer (otherwise than to himself) any such medicinal product unless he is an appropriate practitioner or a person acting in accordance with the directions of an appropriate practitioner".

In oral evidence the Applicant stated that initially she believed Mr Noakes to be a qualified person who could authorise her and other staff to give injections once he had demonstrated the proper technique to her.

- 3.15 The Applicant stated that she had raised her concerns regarding the giving of injections on three occasions but was "fobbed off" by Mr Noakes or "ignored". The Applicant alleged that on 3 October 2014 Mr Noakes conducted a meeting attended by herself, Mr Rushton, Ms Keisa and Ms Touzeau during which Mr Noakes advised that staff were no longer allowed to inject clients, to give out GcMAF vials or specialised yoghurt from the office; as it was a Health and Safety issue. However, on the same day a client visited the office and the Applicant was instructed to give out these products and to inject the client whilst in the meeting room.
- 3.16 On 6 October 2014, the Applicant observed that clients continued to visit the office for the purpose of collecting products and to receive injections. The Applicant alleges that she was told by Mr Noakes that if the police came in to raid the Company she should say it was a staff product for personal use. The Applicant raised her concerns as to this instruction but was ignored. The Applicant told the Tribunal that it became clear to her that Mr Noakes expected people to follow instructions without question and her refusal to do this was a contributory factor to her dismissal.

4.0 Mr Tom Rushton

- 4.1 Mr Rushton read from a witness statement (EE1 Pages 31 to 33 refer).
- 4.2 Mr Rushton had worked for the Respondent for approximately six weeks from 8 September 2014. He was employed to manage all the bookings for the three clinics in addition to other administrative duties. On his first day at work, he met with Mr Noakes and was taken into town by him to purchase a new Apple Mac computer. Mr Rushton said that he felt uncomfortable with this as he had noticed that the women in the office just had laptops. When he queried this Mr Noakes was very dismissive about it and said that it didn't matter. When he asked Mr Noakes if the women were also going to get the same Mr Noakes replied "eventually" and changed the subject. Mr Rushton confirmed that he would have been content with a laptop.
- 4.3 Mr Rushton stated that the Applicant was a pleasant and friendly young woman with a very good rapport with clients and staff alike. She was very organised and methodical –

which was in contrast with the Company. It was Mr Rushton's opinion that the Company was not run very efficiently and that there was a lack of proper administrative systems to control and direct the work.

- 4.4 Further, it was Mr Rushton's opinion that the Respondent, as a whole and Mr Noakes in particular, were very unprofessional in the way they treated staff, especially women. Mr Rushton claimed that he observed many examples of occasions when women were either treated harshly or were the victims of "off colour" remarks based on their gender. It also seemed to him that men were treated better in terms of equipment, status and behaviour in the firm. Examples that he personally witnessed that related to the Applicant were as follows:
- 4.5 The Applicant showed him a copy of her CV that she told him she had found whilst tidying up in Mr Noakes' office. There were some notes written on the back which commented on the fact that she (the Applicant) had worn a dress, heels and lipstick for her interview and the word 'Good' had been written alongside, but that she had some tattoos which he didn't like.
- 4.6 Two days later Mr Noakes made some remarks in the open office about a male client. He said that this person wanted "to fuck" the Office Manager, Beate Keisa, and that the client was the kind of man who was only polite to women who were good-looking; he then added "a lot like me". Mr Rushton said he felt uncomfortable about this, especially since Ms Keisa was noticeably in the office at the time and heard every word. She blushed as Mr Rushton looked at her.
- 4.7 On the same day Mr Noakes had been interviewing some prospective staff. He referred to one being "ugly and overweight" and said that he only hired beautiful women. This was said in front of all the staff. Mr Rushton said he found this very unprofessional and sexist.
- 4.8 At the beginning of October 2014, Mr Rushton attended a staff meeting where one of the topics discussed was Health and Safety and the administering of GcMAF. Mr Rushton related that Mr Noakes came into the office and told the meeting that staff should no longer give out the product or give injections at the office as it was an insurance and health issue. Not long after the staff meeting, a client came into the office and Mr Noakes told the Applicant to give the client the product and an injection. Mr Rushton stated that the Applicant objected but she was just ignored. Over the next few days several clients came into the office for supplies and they were all treated. Mr Noakes suggested that if the authorities raided the office, the staff should lie and say that the product was theirs. Mr Rushton did not personally use the product as he was healthy for the duration of his employment. He was told that he could never take a sick day as he should just take the product to stay healthy.
- 4.9 Mr Noakes was in the office one day talking about his daughter. Mr Rushton heard him comment that she was fat and lazy and was only employed at Immuno Biotech Limited because she was his daughter and couldn't get a job anywhere else. Mr Rushton was relieved that the daughter was not in the office at the time, but it amazed him that Mr Noakes was prepared to make these sexist remarks even about his own daughter.
- 4.10 Mr Rushton also recalled that towards the middle of October 2014 a new member of staff started, Peter Dawson-Ball. The Office Manager moved the Applicant's files, etc. out

of Mr Noakes' office and when the Applicant questioned her about it she said that Mr Noakes had asked for this because he and Mr Dawson-Ball had a lot in common and because it would be "all boys together".

- 4.11 Just before his dismissal, Mr Rushton recalled Mr Noakes shouting at the Applicant and calling her a "fucking stupid woman".
- 4.12 The last incident Mr Rushton recalled was when a lady came for a job interview. Afterwards Mr Noakes made some off-colour remarks about her appearance and said that she had an awful voice and that although she was nice to look at, her voice would do his head in.
- 4.13 Mr Rushton stated that he had been very excited when he first joined the Company and he remains of the opinion that the product science is effective in treating many ailments. He had, in his own time, created a supportive petition of his own volition. However, Mr Rushton thought the Company lacked professionalism and was too random and capricious in the way it operated. It also seemed to him that there were too many members of Mr Noakes' own family involved in the enterprise so that loyalties were divided and management control was perverse.
- 4.14 Mr Rushton was dismissed without any written or oral explanation in October 2014.

5.0 Karen Solway

- 5.1 Ms Solway read from a witness statement (EE2 refers).
- 5.2 Ms Solway commenced employment in late October 2014 and was employed as a PA to Mr David Noakes and also as a Project Manager.
- 5.3 Ms Solway said the Applicant made an immediate impression on her as a pleasant and helpful person who seemed to be very able and confident in what she was doing. In particular the Applicant had a very good rapport with clients and seemed to have a sound and detailed knowledge of both products and protocols.
- 5.4 Ms Solway stated that Mr Noakes gave her and other female staff, including the Applicant, a very difficult time. He frequently shouted and swore and made inappropriate sexist remarks, in particular she recalled the following incidents that involved the Applicant:
- 5.5 On 25 November 2014 the witness recalled the Applicant being called into Mr Noakes' office with the Office Manager. When the Applicant came out of the office she was visibly upset. She told Ms Solway and others that she had been given a written warning because she had given away some Company T-shirts without permission. She said she had reminded Mr Noakes and the Office Manager that he had asked for this to be done but he did not seem to remember this. Ms Solway, along with other members of staff, subsequently confirmed to Mr Noakes that he had made the request at a prior meeting. The written warning (given to the Applicant) was immediately withdrawn.
- 5.6 On 27 November 2014 Ms Solway observed that Mr Noakes seemed to be in a very bad mood. He had shouted at her a few times and had reduced another female

employee to tears. At one point he came out of his office, in an apparently foul mood and just threw some papers at the Applicant across the desk without any kind of explanation.

- 5.7 On 15 December 2014 Ms Solway observed the Applicant going into Mr Noakes' office together with Mr Dawson-Ball. They closed the door but after a while the whole office could hear what was going on. Mr Noakes was shouting and swearing at the Applicant. Ms Solway heard him tell the Applicant to "get the fuck of my office", tell her she was "fucking useless", that everybody hated her and to either resign or that he would sack her. The Applicant left the office very upset and crying. Another female member of staff took her outside to recover her composure. When she came back Ms Solway talked to her in the kitchen and asked what had happened. The Applicant confirmed what Ms Solway had heard through the door and that she had been dismissed.
- 5.8 Ms Solway then went into Mr Noakes' office to ask what was going on and to try to calm things down. He repeated what he had said to the Applicant and showed Ms Solway a list of supposed errors as justification for his view that the Applicant was useless. Ms Solway pointed out to him they were not reasons for dismissing on the spot and that he should use a proper procedure to deal with such issues. Mr Noakes said "I don't fucking care she's got to go, I'd give her 12 months' salary just to fuck off". He then calmed down and suggested that he and the Applicant should meet up somewhere for a coffee and sort out the problem.
- 5.9 Later on the same day Mr Noakes came and stood in the middle of the office and said he was so sorry and stated "I have completely mishandled situation, I should have handled it differently". The witness stated that she heard later that the Applicant had been reinstated and was to work at Mr Noakes' house.
- 5.10 During the Christmas period the Applicant and Ms Solway were left in the office whilst most of the other staff were on leave. It was her belief that between herself and the Applicant they kept on top of the workload. All payments and emails were processed and they thought they had done this task well; but when Mr Noakes and the Office Manager returned from leave the only feedback was to criticise a couple of typos in an email.
- 5.11 Ms Solway stated that a week later both she and the Applicant were dismissed. She told the Tribunal that they had met with Mr Noakes subsequently, but he had refused to give any reasons for the Applicant's dismissal, or for that of herself.

6.0 Peter Dawson-Ball

- 6.1 Mr Dawson-Ball read from a witness statement, (ER1 Section 7 refers).
- 6.2 Mr Dawson-Ball started work with the Respondent on 12 October 2014 as the Financial Controller.
- 6.3 Mr Dawson-Ball stated that during his employment with the Respondent, he had never heard anything that could be categorised as an office culture of Sex Discrimination and stated that the idea that there was any open hostility to women was at total variance with reality.

- 6.4 He informed the Tribunal that at the time the Applicant was dismissed, there were just three men and six women. In his opinion this ratio suggested that the Company had a positive attitude towards female employees.
- 6.5 It was also his opinion that these were complaints being brought by an embittered and disgruntled employee to abuse the reputation of a good man and good Company. He was of the firm opinion that the complaints were wholly contrived and “a bogus attempt to achieve financial gain”.
- 6.6 Mr Dawson-Ball stated that the Applicant had been dismissed because she was negligent when taking orders, was unable to take instruction on many occasions and used foul and abusive language. In his view she generally failed in her duty of care towards the clients and to the Company.
- 6.7 Mr Dawson-Ball said he had been highly disturbed to witness that on many occasions the Applicant would make serious mistakes when taking orders from clients. He observed that she would charge the wrong price for products and often ordered the wrong number of units of each product. This sometimes resulted in losses to the Company or alternatively could result in the client not receiving vitally required medication. In some cases, clients had been overcharged or even worse, had received the wrong product.
- 6.8 Mr Dawson-Ball stated there were also situations when the Applicant released orders for dispatch to private clients before payments were received. This was totally against Company policy unless authorised by a senior member of the team. The Applicant did not obtain authorisation on a number of occasions with the result that the Company experienced a failure to be paid by the clients for the products received.
- 6.9 Mr Dawson-Ball said that the errors made by the Applicant increased the workload on her colleagues. They had to correct these many errors when they themselves were already under severe pressure with their own workloads.
- 7.0 Ms Beate Keisa**
- 7.1 The witness read from a witness statement (ER1 Section 8 refers).
- 7.2 Ms Keisa started work with the Respondent on 12 November 2012 in the role of Office Manager.
- 7.3 On 1 October 2014, Ms Keisa attended a meeting with Mr Dawson Ball and Mr Noakes together with the Applicant. They informed the Applicant that her communication skills were below standard and, despite concerns expressed by Mr Noakes in previous days; there had been no improvement. The Applicant was told that she was not performing the duties correctly as a PA and it was decided to change her role to that of administration/client support. During this meeting the Applicant admitted she had no previous experience as a PA and accepted she was not performing in her role as a PA.
- 7.4 Ms Keisa stated that the Company had consistently employed more women than men and, in her opinion, this illustrated that the Company did not discriminate against women.

- 7.5 Ms Keisa stated that she had never heard Mr Noakes make a single sexist comment to the Applicant or anybody else in the office.
- 7.6 Noting that the Applicant had made a claim in relation to Health and Safety issues, Ms Keisa stated that the Applicant had not brought any such issues to her attention or to her knowledge, to that of Mr Noakes.
- 7.7 Ms Keisa stated that if there was any issue of Health and Safety, it was caused by the actions of the Applicant injecting Guernsey patients in total contradiction of Company procedure. The Applicant was not qualified to give injections and this was not part of her job duties. When the Applicant had been challenged on this practice, the Applicant had stated that she didn't care and that she would continue injecting patients. She had recorded that she had injected patients on the Company admin system.
- 7.8 Ms Keisa also said that despite Company policy requiring preauthorisation for any Facebook postings relating to Immuno Biotech Limited, the Applicant defied this Company rule and made postings on Facebook without prior permission.
- 7.9 Ms Keisa also brought to the Tribunal's attention a warning letter issued to the Applicant on 27 November 2014 (ER1 Section 8 refers). It stated that the Applicant was making decisions and taking actions relating to the Company without consulting either the Office Manager or the CEO. (The Tribunal notes that this is the same warning which, according to the Applicant and Ms Solway, had been immediately withdrawn that same day by the Respondent).
- 7.10 Ms Keisa stated that the Applicant made lots of mistakes with the orders and client emails. Product was being issued without the required prepayment and there were many other errors in the way that she carried out her duties. Ms Keisa stated that she had often spent hours checking the Applicant's orders and emails and had to correct many mistakes.
- 7.11 Ms Keisa was party to the decision to dismiss the Applicant in early January 2015 and stated it was a dismissal solely based on her repeated errors and her failure to learn from her mistakes.

8.0 Kathryn Touzeau

- 8.1 The witness read from a witness statement (ER1 Section 9 refers).
- 8.2 Ms Touzeau started work with the Respondent on 17 September 2013 as a Finance and Administrative Assistant.
- 8.3 Ms Touzeau told the Tribunal that her desk adjoined that of the Applicant in the open office area. Ms Touzeau said that she had never heard anything that could be considered as encouraging a culture of Sex Discrimination and that the idea that there was any open hostility towards women was fictitious.
- 8.4 It was Ms Touzeau's opinion that the Applicant was dismissed because she was negligent in taking orders and made many errors when replying to emails; many of these emails being processed in the evening whilst the Applicant was watching the

television at home. The Applicant seemed unable to take instructions, learn further from her errors and used foul language. Further, Ms Touzeau thought the Applicant generally failed in her duty of care towards the Company and its clients.

8.5 Ms Touzeau also stated that the Applicant often conducted extended telephone calls with clients despite Company policy to keep these to a minimum. On occasions, these telephone calls could last for up to an hour and would include advice on complementary therapies that were not authorised by Company protocols.

8.6 Ms Touzeau was particularly concerned when the Applicant announced that a patient was coming into the office to receive treatment and that she would be injecting the patient. Despite Ms Touzeau telling the Applicant this was not allowed, the Applicant had proceeded to do so and an entry from the Company administrative log on 9 December 2014, input by the Applicant, stated the following:

“75% burns all over body so very difficult to inject. Managed to inject around the wound on his knee and then squirt approx. 1ml in the open wound. Advised to squirt the wound daily. He may not be able to inject as he cannot grip with his hands. Offered to do this for him if someone else can’t”. (ER1 Section 9 Page 15 refers).

8.7 Together with her witness statement Ms Touzeau submitted an example list of errors made by the Applicant in December 2014, (ER1 Section 9 Pages 4 and 5 refer); in summary these errors illustrate:

- Client overcharges
- Financial losses from various incorrectly entered orders, on one occasion the loss amounted to €2310
- Failure to ship products which had been ordered
- Incorrect duplication of shipments.

8.8 Detailed documentary backup to demonstrate the range and depth of these errors is set out at ER1, Section 9, pages 6 to 41.

8.9 Ms Touzeau stated that many of the problems were as a result of the Applicant not reading the string of emails from customers thoroughly and her incorrect processing of orders had led to a reputational loss by the Company.

8.10 Ms Touzeau also stated that the increased workload in sorting these errors and chasing payments put pressure on colleagues both in terms of time and the need to pacify sometimes desperate and concerned clients who had put their trust in the Company to process their orders efficiently and correctly.

9.0 Mr David Noakes

9.1 The witness read from a witness statement (ER1 Section 10 refers).

9.2 Mr Noakes stated that in his opinion the Applicant had grossly overstated her abilities during her job interview and it quickly became apparent that she could not perform the role.

- 9.3 Mr Noakes stated that being the CEO of a kindly company he was not disposed to dismiss her but change her role to that that of administration/client support whilst retaining her managerial salary of £40,000 per annum.
- 9.4 Over time it became clear that she made multiple mistakes that other staff had to correct.
- 9.5 Although, in his opinion, the Applicant had a pleasant and happy disposition in the office it was the matter of the continuous mistakes that resulted in Mr Dawson-Ball and Ms Beate Keisa requesting a dismissal that he confirmed on 9 January 2014.
- 9.6 Mr Noakes categorically denied that he ever authorised the Applicant to give injections.
- 9.7 Mr Noakes was referred to the log of events maintained by the Applicant and asked whether he recalled the alleged events of his discriminatory abuse toward the Applicant and her female colleagues. Many of the events he could not remember or he denied they took place; he did however confirm that he did shout and lose his temper in the office on occasions. When questioned as to his preference as to the physical/appearance requirements for front line staff at public conferences he stated that after 25 years in marketing he might not give the Tribunal the answer it expected in terms of required non-discriminatory practice.
- 9.8 Mr Noakes categorically denied that the decision to dismiss was related in any way to challenges made by the Applicant in relation to Health and Safety issues.

10.0 The Law

- 10.1 The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 states in Section 6 (2)(b) subject to the provisions of subsection (3), *“a person shall not, in the case of a woman employed by him ... discriminate against her - by dismissing her or subjecting her to any other detriment”*..

Whilst it is not binding in law the Tribunal also takes into account the advisory booklet available to all Guernsey employers entitled *“Sex Discrimination At Work- your responsibilities”*. In particular the guidance to be found on the subject of harassment states:

“An employee may have been subjected to unwelcome behaviour of a sexual nature. This sort of behaviour constitutes harassment, which can lead to low morale, lack of confidence or even feelings of fear and panic, the kind of behaviour that could be unlawful includes:

- *Insulting or humiliating remarks*
- *Indecent or suggestive remarks”*

- 10.2 The Employment Protection (Guernsey) Law, 1998, as amended, provides for a dismissal to be found automatically unfair either:
- Because of discrimination on the grounds of gender, contrary to the provisions of Part II, Section 6(2)(b) of the ‘Sex Discrimination Ordinance’ and Section 9A of the ‘Employment Protection Law’

Or

- Because she had raised an issue of Health and Safety with the employer. Section 11, paragraph (1)(c) of the '1998 Law' refers.

For this complaint to succeed the Tribunal must decide, on the balance of probabilities, whether either or both of the allegations made by the Applicant constituted the reason for the dismissal, or if more than one reason constituted the principal reason for dismissal.

Whilst it is not binding in law the Tribunal also takes into account the advisory booklet available to all Guernsey employers entitled "*Disciplinary Practice and Procedures in Employment*".

11.0 Conclusions

- 11.1 The Tribunal is mindful that both of the witnesses called by the Applicant had, like her, been dismissed after relatively short periods of employment, without being told the reason for the dismissal. The Respondent drew attention to the fact that the witness statements of the Applicant and her witnesses had many similarities in both their wording and spelling. This begs the question as to whether the evidence could be relied upon or whether, as the Respondent argued, each of them was using this as an opportunity to indulge in malicious grudges against their former employer. Having heard their evidence under Oath the Tribunal concluded the evidence given by Mr Rushton and Ms Solway was truthful and objective.
- 11.2 The Tribunal considered it logical to address the alleged issue of Sex Discrimination whilst in employment prior to considering the act of dismissal on 9 January 2015. The Applicant provided an extensive log of her period in employment with multiple examples of alleged inappropriate conduct by the CEO David Noakes; the Tribunal finds this evidence compelling. In most cases there was clear corroboration of these events from Ms Solway and Mr Rushton.
- 11.3 It would seem to the Tribunal that such conduct, clearly based on sex, would affect the dignity of women in any workplace; indeed many of their male colleagues might find it very distasteful as well, even though not directed at them. In the opinion of the Tribunal this constituted an intimidating, hostile and humiliating working environment for the recipient. Mr Noakes gave in evidence that he was "not perfect" and that he, did on rare occasions, shout and swear but he denied swearing at the Applicant.
- 11.4 On this issue the Tribunal prefers the evidence of the Applicant and her witnesses to the evidence given by the Respondent's witnesses. It has been persuaded that insulting, gender specific comments were uttered by Mr Noakes on multiple occasions and it was clear that Ms Pagliarone suffered a detriment. It concludes that this constituted a breach of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, Section 6(2)(b).
- 11.5 Turning to the allegations that the dismissal could be attributed to either Sex Discrimination or a breach of the provisions in the '1998 Law' pertaining to Health and Safety, the primary issue considered by the Tribunal was whether the employer

chose to use, or could demonstrate it used, one of these reasons as the principal reason for her dismissal.

- 11.6 The Tribunal concedes that whilst the Respondent might dismiss without reason any employee who has completed less than 12 months continuous service, this is very arguably not good practice. An employer who chooses to do this on a regular basis should consider whether this harms their own employee relations and/or their reputation in the broader community. Also, in pursuing a standard practice of dismissal without a reason, an employer leaves ample space for an employee to allege multiple reasons for a dismissal, including those that do not require the 12-month qualifying period.
- 11.7 From the evidence presented by both parties, it became apparent to the Tribunal that Immuno Biotech Limited was, during the period of the Applicant's employment, a company without any documented policies or procedures that an employee could refer to. For example, in the email sent by Mr Noakes to the Applicant on 23 July 2014 he wrote "there are no handbooks, policies and procedures and you won't have time to write them". Whilst the Tribunal is required under the '1998 Law' to take account of smaller establishments which might not have the benefit of sophisticated managerial or Human Resource support this is an almost breath taking statement from an organisation which, given the products that it deals with, should be achieving at least a reasonable standard.
- 11.8 Without written policies and procedures there is scope for a lack of clarity in the expectations being set for the employee. In addition an employer will find it difficult to claim that it has a progressive and fair disciplinary process that prevents it from straying into potential areas of automatically unfair dismissal. Ultimately if there is not even the most basic of written records to record any management decision to dismiss and on what grounds, then an employer is at a significant disadvantage when it tries to justify a fair reason for a dismissal.
- 11.9 The Applicant claimed an automatically unfair dismissal, in that the principal reason for her dismissal was discrimination against her on the grounds of her gender, contrary to the provisions of Part II, Section 6(2)(b) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 and Section 9A of the Employment Protection (Guernsey) Law, 1998, as amended. The Tribunal concluded that, whilst during her employment the Applicant was subjected to verbal harassment, which the Tribunal found amounted to a breach of the '2005 Ordinance', the Applicant did not supply sufficient evidence to the Tribunal such as to convince it that the principal reason for her dismissal related to her gender.

With regard to the verbal harassment suffered by the Applicant, the Applicant did not provide evidence of protesting this treatment to her employer and/or linking such a protest to her subsequent dismissal. Neither at the time of such harassment did the Applicant resign from her employment due to such abuse. Indeed there was also some evidence to suggest that the Applicant herself had also, on occasion, used similar language within the work place; this situation does not excuse the employer of its obligation to provide an appropriate and acceptable working environment and to manage any offending employees.

It is also significant that Mr Rushton had his employment terminated similarly without a written reason in October 2014; thus the practice of terminating employees without a written reason in the period October 2014 through January 2015 was not limited to one gender.

Given this evidence the Tribunal dismisses the complaint that the reason, or the principal reason, for this dismissal was due to discrimination against the Applicant on the grounds of her gender.

- 11.10 The Tribunal then addressed the second claim, namely that the principal reason for the Applicant's dismissal related to the Applicant raising a matter of Health and Safety with her employer such that it caused the employer to dismiss her. It was the Company's position that the giving of injections was not part of the Applicant's duties or indeed the duties of any of its administrative staff. The Applicant's position was that she was required to do this, had been shown how to do it by Mr Noakes and had been authorised to do so by him. Mr Noakes vehemently denied he had given the Applicant such authorisation, as did Ms Keisa and Mr Peter Dawson-Ball.
- 11.11 The Applicant stated that although she gave injections to Company clients, she started to have increasing doubts as to whether she was allowed to do this under the law. She had therefore researched the subject matter and specifically the 'Medicines Law 2008'.
- 11.12 It was the Applicant's position that initially she believed Mr Noakes to be medically trained to a level whereby he was able to perform such actions and to supervise/direct similar action by staff, namely herself. She had then discovered him not to be so medically trained.
- 11.13 The Applicant stated that she had expressed doubts on this matter to Mr Noakes both verbally and also in writing by email, her last email on this matter being around 30 November 2014; although this email was not produced by the Applicant the Respondent did not deny it existed. The Tribunal notes that one of the Applicant's verbal enquires on this subject area was corroborated by Mr Rushton.
- 11.14 The entry into the Company on log 9 December 2014 is therefore of particular note in that the Applicant appears to confirm that she administered an injection to a client on that date. If, as stated by the Applicant, she had by that time become increasingly concerned as to her legal ability to administer an injection under the law, then it is questionable as to why she would have continued with this action on 9 December without laying down some evidence of protest at the time. It seemed rather that the reverse was true, and that the Applicant was content to carry out this action on 9 December despite, according to Ms Touzeau's evidence, being told not to. Indeed the Applicant still felt able to enter into the Company log that she had injected a client. Even more worrying is the failure by the Company to investigate and deal appropriately with this matter once the Company became aware of it, particularly given the emphatic denial in evidence by the Company to the Applicant's assertion that she was authorised to give injections.
- 11.15 In summary the Tribunal has not been convinced that the Applicant protested particularly strongly on this matter to her employer, neither was there evidence that it was taken into account by the Respondent when it confirmed the dismissal.

- 11.16 For a Tribunal to find in favour of a claim of automatically unfair dismissal the Applicant had to prove on the balance of probabilities, that her complaint constituted the reason for the dismissal, or, if more than one reason, the principal reason for dismissal. The Tribunal did not find the Applicant's evidence sufficiently persuasive and dismisses the claim.
- 11.17 No reason for the dismissal was given on 9 January 2015, neither was any record made as to how the decision was made. At this hearing the Respondent provided sufficient evidence of poor performance by the Applicant so as to justify that it was the probable reason for dismissal; albeit the lack of systematic training and absence of written procedures may have contributed to the poor performance. However the Tribunal is surprised that allegations made under Oath by the witnesses who have appeared, raising issues of possible contraventions of required medical practices, were not deemed serious enough to lead to investigation and potential grounds for dismissal.

12.0 Decision

- 12.1 The claim of Sex Discrimination is upheld and the Tribunal makes an Award of £10,500; to be paid by the Respondent to the Applicant, in accordance with Section 46 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

The Tribunal dismisses the claim that the Applicant was entitled to be considered dismissed as defined in the Employment Protection (Guernsey) Law, 1998, as amended, by asserting her dismissal to be found automatically unfair either:

Due to the discrimination against her on the grounds of her gender, contrary to the provisions of Part II, Section 6(2)(b) of the 'Sex Discrimination Ordinance' noted above and Section 9A of the 'Employment Protections Law', noted above or

Because she had raised an issue of Health and Safety with the employer, Section 11, paragraph (1)(c) of the 'Employment Protection Law', noted above refers.

Mr Peter Woodward

 Signature of the Chairman

10 November 2015

 Date