

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Mr John Robert  
**Represented by:** The Applicant represented himself

**Respondent:** Electrical Installations (Guernsey) Limited  
**Represented by:** Advocate Thomas Crawford

**Tribunal Members:** Ms Christine Le Lievre  
Ms Helen Martin  
Mr George Jennings

**Hearing Date:** 18 February 2020

**Decision of the Tribunal**

The Applicant made a complaint of unfair dismissal.

Having considered all the evidence presented, the representations of both parties, and with due regard to all the circumstances, whether referred to in this judgment or not, the Tribunal determines the dismissal to be unfair.

The Tribunal therefore makes an award of £16,736.93.

Ms Christine Le Lievre  
.....  
Signature of the Chair

13 March 2020  
.....  
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, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

**The Legislation referred to in this document is as follows:**

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

FORM: ET3A ED001/19

**Extended Reasons**

**1.0 Introduction**

- 1.1 The Applicant, Mr John A Robert, represented himself.
- 1.2 The Respondent, Electrical Installations (Guernsey) Limited (the Company), was represented by Advocate Thomas Crawford.
- 1.3 A joint bundle, agreed by the parties, was submitted in evidence.
- 1.4 The Applicant had been employed by Electrical Installations (Guernsey) Limited, from 23 May 1969.
- 1.5 The Applicant, in an ET1 Application form, dated 7 January 2019 claims unfair dismissal under The Employment Protection (Guernsey) Law, 1998, as amended (the 1998 Law).
- 1.6 The Respondent's initial ET2 Response Form was submitted by their legal counsel Ms Richardson on 29 January 2019 (ET2A). A further ET2 form (ET2B), amending the first, was submitted on 25 February 2019 by Advocate Crawford.
- 1.7 The Respondent agrees dismissal took place under Section 5(2)(a) of the 1998 Law, and resists the claim as the reason for the dismissal was retirement falling under 'some other substantial reason' under Section 6(2)(e) of the 1998 Law.
- 1.8 The Tribunal, consisting of three members, met on Tuesday 18 February 2020.
- 1.9 The Tribunal was mindful that the Applicant was not legally represented during the hearing and acted to ensure he had a fair hearing by giving help regarding procedure (initially in detail at the earlier Case Management Meeting), with the case he presented, and in questioning witnesses as appropriate to ensure relevant evidence was brought out. Adjournments were offered as appropriate; for example to provide time for considering questions to be asked, and for summing up.
- 1.10 The burden of proof rested with the Respondent to show the dismissal and the procedure it followed in dismissing the Applicant was fair in all the circumstances.
- 1.11 There were no witnesses called by the Applicant.

- 1.12 The Respondent called the following witnesses who gave evidence under oath or affirmation:

Mr Mark Le Mesurier, Managing Director.  
Mrs Julie Le Mesurier.

## 2.0 Summary of Evidence

- 2.1 The Respondent agrees that dismissal took place as evidenced by way of two letters. The first dated 18 Oct 2018 states ‘... we are having to retire you as we have a lack of suitable work.’ and the second, dated 7 Nov 2018, in which it also states ‘... we have given a months’ notice ...’ [Pages 25 and 27 of the bundle.]
- 2.2 The Respondent considers these two letters confirm the reason for the dismissal was retirement.
- 2.3 In his Closing Statement [Page 2 paragraphs 9 – 15], Advocate Crawford sets out the reasoning for retirement being a potentially fair reason for dismissal under the category of some other substantial reason under Section 6(2)(e); albeit he states ‘There appears to be no case law in Guernsey to support this assertion, and it seems that there are no English or Jersey authorities that may assist as their statutory regimes in relation to retirement are and have always been different.’
- 2.4 At page 15 of the bundle, a blank Statement of Conditions of Employment (the Contract) is provided. It has not been completed, signed or dated by either the Respondent or the Applicant. On questioning, Mr Robert agreed he had been given a copy of this contract but had not signed it because he did not agree to it. He agreed he had continued to work and Advocate Crawford asserted that it was implied that the Applicant had accepted its terms.
- 2.5 During the hearing, Mr Le Mesurier stated the Company had been advised to issue the employment contracts in 2009 following a previous tribunal when they had a larger number of employees. In ET2A the Respondent confirms the Contract was issued to Mr Robert on 22 September 2009.
- 2.6 On the second page of the Contract it states the conditions became effective from 1 June 2009.
- 2.7 The Contract includes retirement provisions at Clauses 16.11 and 16.12 of the Contract [Page 22 of the bundle]. They state:
- “16.11 Once the normal 65 years of age for retirement is reached thereafter an all inclusive rate will be introduced which gives, No Sick pay, No Annual Holiday pay, No Public Holiday or Proclaimed Holiday pay.
- 16.12 After Age 65 years it shall be reviewed by The Employer Annually to ensure the said person can continue in the Trade he has served the company. It’s at the discretion of The Employer at which time to terminate the employment.”

- 2.8 The bundle included a document entitled Conditions of Employment, Appendix 1 [page 22A]. Under the heading of 'Absenteeism' Paragraph 1 on the last page states:

Where the absence is due to a medically certified illness, the issue will be treated as one of capability and the employer will take appropriate action taking into account the likelihood of any improvement in health and subsequent attendance (based where appropriate on professional medical advice), the availability of suitable alternative work, the effect of past and likely future absences upon the organization, and how similar situations have been handled in the past.

- 2.9 During 2018 Mr Robert was subcontracted to work for Mr Jason Carre at Electrix. On 1 July 2018, Mr Carre sent an email to Mr Le Mesurier [Page 24 of the bundle]. This includes reference to Mr Carre having tried to discuss with Mr Robert, plans for his future but as Mr Robert 'seemed to be unsure of what his plans were' Mr Carre brought to Mr Le Mesurier's attention that he would not plan to take on more work for Mr Robert beyond early August.
- 2.10 In the same email to Mr Le Mesurier, Mr Carre also mentioned that if Mr Robert wanted to carry on working for a little longer there was work he could do for Mr Carre.
- 2.11 Mr Le Mesurier read from his witness statement, dated 18 December 2019, [Pages 1-11]. He stated that, following a period of absence by Mr Robert, due to a back injury in early 2017, he had 'several conversations with Mr Robert throughout 2017 and 2018 about his ailing physical condition, during which the question of his retirement was also discussed [paragraph 15]. Throughout his statement Mr Le Mesurier referred to only giving Mr Robert light work because of this.
- 2.12 At paragraph 18, Mr Le Mesurier states that he followed 'the same process with another employee who retired before John and one after, in that he raised the prospect of retirement in advance and took their wishes into account.'
- 2.13 Mr Le Mesurier stated 'I have no notes of these conversations but what we discussed left me in no doubt that John was well aware that he could be made to retire on his 65<sup>th</sup> birthday, he had no expectation that he would continue to be employed after his 65<sup>th</sup> birthday, and it was his intention to retire of his own accord anyway.' [Paragraph 21 of the Witness Statement].
- 2.14 Mr Le Mesurier went on to say 'In light of these conversations and John's ongoing health problems, I reached an initial decision sometime around June 2018 that his employment should not be extended beyond his birthday on 5 August 2018.' By his own admission Mr Le Mesurier did not convey this decision to Mr Robert at the time [Paragraph 26].
- 2.15 Mr Le Mesurier said his decision was also based around other factors regarding Mr Robert's working practices with apprentices and in education facilities [paragraphs 24 and 25]. No evidence was provided to show that these issues had been raised appropriately at the time they occurred.

- 2.16 At Paragraphs 30 to 34 of his witness statement Mr Le Mesurier says 'Upon receipt of the email [from Mr Carre, dated 1 July 2018], I discussed the situation with John who said that he was happy to finish off the Job, which only involved him doing light work and was expected to complete sometime around October 2018. Mr Le Mesurier said he was satisfied that he had made Mr Robert fully aware that his retirement was on the cards once he had completed the job and that Mr Robert was agreeable to this.
- 2.17 On form ET2B, paragraph 9(d) it states Mr Robert met with Mr and Mrs Le Mesurier at his house on 12 September 2018 "...for one hour in order to discuss further the prospect of his retirement after completing the job for Electrix in October 2018."
- 2.18 Reading from his witness statement (Paragraphs 35 – 39) Mr Le Mesurier includes reference to this meeting and includes, at paragraph 39, his wife being present and states "...John even recorded the hour-long meeting on his time sheet for that day (Tuesday) which clearly shows that the meeting was of a business nature: a copy of the time sheet, signed by John, for the week ending 12 September 2018 (the date mistakenly recorded in the Form ET2 as the date of the meeting when it should have been 11 September 2018 in accordance with the timesheet) appears at page 28 of the bundle." Mr Le Mesurier referred the Tribunal to the time sheet and an entry which he read as go to 'Mark's house'.
- 2.19 In responding to a question from the Tribunal, Mr Le Mesurier stated he hadn't invited Mr Robert to the meeting on 11 September but it had occurred when Mr Robert was dropping his time sheet off.
- 2.20 Mr Le Mesurier stated that at this meeting Mr Robert requested that he be made redundant and receive a redundancy payment. It was confirmed to him that he was not being made redundant and would receive no pay out. Mr Le Mesurier said he then, as a gesture of goodwill, offered to provide Mr Robert with light work as and when it became available.
- 2.21 On giving evidence, Mrs Le Mesurier confirmed the meeting as being 11 September 2018 as she recalled Mr Robert saying he was going away the following day. Mrs Le Mesurier also confirmed the rest of the conversation as stated by her husband, including that offering light work to John seemed to placate him. She added that this was the same as had been offered to previous employees when they retired.
- 2.22 In giving his evidence, Mr Robert said no meeting occurred on either 11 or 12 September. He referred to the relevant entry on his time sheet and pointed out that having already worked an 8 hour day on 11 September 2018, he had agreed to attend the work site of a client to MARK HOLES as he didn't want to let the client down. This was recorded on his time sheet and took one hour. His comments were supported by a further corresponding note on the time sheet which identified the client name and location for this task. Mr Robert said as he

had therefore worked 9 hours on that date, he had gone home for his tea once the work was completed.

- 2.23 In his evidence Mr Robert had included a copy of his Aurigny flight confirmation which showed he was in Alderney on 12 September.
- 2.24 Mr Robert stated that, as per the time sheet [page 28 of the bundle], the work week ended on Wednesday 12 September 2018 and, as he was not working on 12 September, he had taken his time sheet to the office on Thursday 13 September.
- 2.25 The Tribunal noted that the Respondent's ET2A form did not mention any meeting on either 11 or 12 September 2018.
- 2.26 Throughout the hearing, Mr Robert consistently stated he did not recall Mr Le Mesurier discussing his retirement until he happened to go into the office, on 16 October 2018, to find out where he was working next as he had finished the job for Electrix. Mr Robert stated it was at this time he was told there was no more work for him and he was to be retired which was a shock to him. Mr Robert said he went home and checked his employment contract which stated he should receive 4 weeks' notice in writing. [Witness statement paragraph 5].
- 2.27 Mr Le Mesurier agreed that he had, on 16 October 2018, told Mr Robert 'that when he was ready I wanted to have a discussion with him about his retirement now that the job had finished.' [Witness statement paragraph 41.]
- 2.28 On 17 October 2018 Mr Robert said he visited the Social Security Office.
- 2.29 On 18 October 2018 Mr Robert said he took his new Social Security card to the work office to follow up on issues he had identified with his Social Security deductions. He went on to say that Mr Le Mesurier did not take the card from him as he considered him to be retired. Mr Robert told Mr Le Mesurier that he had checked his employment contract and that he had to be given 4 weeks' notice in writing to which Mr Le Mesurier said he would do so.
- 2.30 On 18 October 2018, Mr Le Mesurier says '... I advised him that I had taken the decision not to extend his employment any further now that he had completed the Job, so he would be retired from the Respondent's employment.' [Paragraph 42 of his Witness Statement.]
- 2.31 A letter dated 18 October 2018 was submitted in evidence. Mr Le Mesurier advised the hearing that he was so concerned that Mr Robert was trying to attain 'some sort of payoff' and hinder his retirement that he had typed the letter on that date, whilst Mr Robert was in the office, however Mr Robert refused to take it [Witness Statement paragraphs 42 – 46].
- 2.32 At the meeting of 18 October 2018, Mr Le Mesurier told Mr Robert he could keep his work van as a gesture of goodwill. Mr Robert testified that he did not want the 18 year old van with the Company's writing on it.

- 2.33 The parties agree that Mr Robert was paid holiday from 17 to 24 October 2018.
- 2.34 The parties agree that Mr Robert continued to work from 25 October to 12 December 2018. Mr Le Mesurier explained this as 4 weeks' notice from 18 October to 15 November 2018; with the remaining time, to 12 December 2018, as an ex-employee. [Witness Statement paragraphs 61 - 62].
- 2.35 On 5 November 2018, Mr Le Mesurier visited Mr Robert at the work site in order to give him the termination letter of 18 October 2018 and to provide him with a change of vehicle form and said Mr Robert refused them both.
- 2.36 At 9.40 p.m. on 6 November 2018, Mr Robert sent an email to Mr Le Mesurier requesting four weeks' notice, written reasons for his dismissal and identifying various issues that needed to be resolved regarding Social Security deductions, insurance payments and holiday pay. Mr Robert also requested a reference letter as he would be seeking further employment.
- 2.37 On 7 November 2018, Mr Le Mesurier typed the second letter which includes: '... we are having to retire you as we have a lack of suitable work.' and in a second paragraph 'We met and agreed your retirement on the 18<sup>th</sup> Oct. As per the terms of your contract we have given a month's notice ...' [Page 27 of the bundle.]
- 2.38 Mr Le Mesurier completed his evidence noting that he had not documented the various discussions he had with Mr Robert and acknowledged that he had not offered Mr Robert the right to appeal his dismissal. He confirmed that even if Mr Robert had appealed, the circumstances were such that nothing would have changed his decision. [Paragraph 66.]
- 2.39 Whilst giving his evidence Mr Robert added he had written his witness statement by referring to his work diary, in which he had recorded events at the time. Advocate Crawford reminded Mr Robert that he had not submitted the work diary as evidence.
- 2.40 During questioning the Tribunal permitted Mr Robert to refer to his work diary once or twice to assist his recall of specific dates.
- 2.41 On questioning from Advocate Crawford Mr Robert said he understood that 'when you reached age 65 you are asked to go to the office with another employee and paid an enhanced rate as there would no longer be sick pay or holiday pay.'
- 2.42 Mr Robert repeatedly denied that Mr Le Mesurier had any conversations with him about his retirement prior to 16 October 2018, some two months after he attained age 65, and this had come as a complete shock to him. In his view, he was dismissed on that date as the subcontract work had come to an end; albeit he acknowledged he had continued to be provided with work from 25 October 2018 until 12 December 2018.
- 2.43 Mr Robert's Witness Statement [Paragraph 11] agrees he was visited by Mr Le Mesurier on 5 November 2018 and was told he would finish working for the

Company on 16 November 2018. He sent the email to Mr Le Mesurier on 6 November asking for a letter of termination. The letter of termination dated 7 November was brought to him on that date, at his workplace, and stated he was to leave on 15 November 2018.

- 2.44 On 14 November 2018, Mr Le Mesurier again visited Mr Robert at his workplace and as Mr Le Mesurier realised the job would take longer, he asked Mr Robert if he would stay to complete the work. Mr Robert said he agreed to do so as he didn't want to let the people down and leave it unfinished. The work was completed on 12 December 2018.
- 2.45 On questioning by the Tribunal about any meeting that had occurred with Mr or Mrs Le Mesurier at their house at any other time; Mr Robert replied that he seen them both on 6 September 2018 when he had first discussed his Social Security deductions with Mrs Le Mesurier. On that date, Mr Le Mesurier asked him to go and see him when he had finished the subcontract job; which he had done on 16 October 2018.
- 2.46 On being asked about any discussions regarding a retirement party, Mr Robert explained that he had bumped into Mrs Le Mesurier at the phone shop and she had mentioned it there. Mr Robert said he had not made a note of the date but it was after he had discovered he would no longer be employed as he was in the phone shop to get a phone for himself as he had a Company phone.
- 2.47 In respect of his ability to work, Mr Robert said that during the last 28 weeks of 2018, when he had worked an average of 44 hours per week, he had covered more than light work whilst others were on holiday. Mr Robert said on his return to work, on 25 October 2018, he had worked at the Fire Station servicing pumps and changing hoses and this wasn't light work.
- 2.48 The Tribunal noted that the time sheet included in the bundle totalled 46 hours of work for the week ending 12 September 2018.
- 2.49 On summing up Mr Robert said it had been a sad ending after 49 years of work but he had told the truth.

### **3.0 Conclusion**

- 3.1 The burden of proof fell to the Respondent to show the reason for dismissal was a potentially fair reason. In the context of this case, the Tribunal determined the reason for dismissal fell under some other substantial reason under Section 6(2)(e) of the 1998 Law.
- 3.2 The Tribunal found the contractual clauses allowed the Respondent to retire an employee at age 65 or at its discretion at any time thereafter, with 4 weeks' notice.



- 3.3 The burden of proof fell to the Respondent to show it acted reasonably in that the procedure followed was fair in the circumstances, including the size and administrative resources of the employer's undertaking.
- 3.4 By its own admission the Respondent failed to make or keep any contemporaneous notes of any meetings or discussions it claims took place with Mr Robert to discuss his pending retirement.
- 3.5 The Respondent relied on the recall of 2 key witnesses, Mr and Mrs Le Mesurier, who provided written statements in evidence and responses to questions during the hearing.
- 3.6 The facts of when meetings or discussions took place and what was said or not said between the Applicant and the Respondent were not agreed by the parties except as otherwise noted. However, the Respondent's stance with regards to having held a key one-hour discussion with Mr Robert on 11 September 2018 was found to be inconsistent when compared to evidence on Mr Robert's time sheet [Page 28 of the bundle.]
- 3.7 There was no reference to a meeting on 11 or 12 September on the initial ET2A Response Form.
- 3.8 There is a conflicting statement between the Respondent's initial ET2A submission at Paragraph 5, when compared to the amended ET2B form. On ET2A it states 'The Applicant reached 65 years of age on 5 August 2018. At this point the Respondent carefully considered the Applicant's position and whether or not to allow him to continue working beyond the normal retirement age.' The above statement was amended by ET2B with the removal of 'At this point' and the insertion of 'Prior to him doing so'.
- 3.9 The Respondent stated several matters were taken into account when considering whether or not to retire Mr Robert. These included the Respondent's perception of the Applicant's health following a period of absence some 18 months' earlier in 2017. The Respondent's Conditions of Employment in respect of absenteeism required it to base decisions on professional medical advice. No medical report was offered in evidence to support the Respondent's view of Mr Robert's health nearing the time of the Applicant reaching 65 years of age. In addition, the Respondent included Mr Robert's inability to work with apprentices and the Company's reluctance to have Mr Robert work in education facilities. The Respondent offered no evidence to show that these matters had been discussed with their employee at the time they occurred or in the time leading up to his 65<sup>th</sup> birthday.
- 3.10 No witnesses were called by the Respondent to support its statement that Mr Robert was treated in the same way as others reaching retirement age.
- 3.11 Throughout the time since introduction of the 1998 Law, there has been extensive media coverage of employment tribunals. The Employment Relations Service (ERS) and several professional bodies have provided free seminars and training to

employers of all sizes. The ERS provide free employment Codes of Practice and guidelines on their website.

- 3.12 The Tribunal recognises the Respondent is a small employer and acknowledges that small employers are unlikely to have professional in-house HR personnel. However, the Respondent offered no explanation as to why they did not have knowledge or experience of how to handle employment matters, or the resources to take advice when needed.
- 3.13 When dismissing an employee the Tribunal considered that any reasonable employer would, in similar circumstances, have held, at a minimum, one pre-arranged meeting, at an early stage, to discuss with an employee their future with the Company, to allow them to be accompanied, and to take some notes of the meeting. This would be even more important if the Respondent considered the discussion was not to the employee's liking.
- 3.14 In considering all the circumstances, including the discrepancies in the Respondent's evidence regarding the meeting on 11 September 2018, the Tribunal finds the Applicant's evidence and statements to be persuasive.

#### **4.0 Decision**

It is the Tribunal's decision that the Respondent failed to act reasonably and follow a fair process in dismissing the Applicant.

Having considered all the evidence presented, the representations of both parties, and with due regard to all the circumstances, whether referred to in this judgment or not, the Tribunal determines the dismissal to be unfair.

The Tribunal found no reason to reduce the award.

Signature of the Chair

Date: 13 March 2020