



**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Mr Mark Chiverton

**Respondent:** Sahara City Co Limited  
**Represented by:** Mr Daniel Elsadany

**Tribunal Members:** Mr Peter Woodward  
Ms Georgie Scott  
Mr George Jennings

**Hearing date(s):** 17 July 2020

**Decision of the Tribunal**

A Hearing was held subsequent to an Appeal made to the Royal Court by Sahara City Co Ltd. and a judgement handed down by the Deputy Bailiff on 18 December 2019. The complaint was remitted to the Tribunal by the Deputy Bailiff with guidance on the issue of continuous employment expressed in paragraphs 19 to 29 of that judgement. The Tribunal had as a primary task to reconsider if there had been continuous service between Mr Chiverton's employment with 'La Trelade Hotel Limited' until 31 March 2018 and his further employment from 1 April 2018 with 'La Trelade Hotel operated under licence by Daniel Elsadany, 'Sahara City Co Limited'. The relevant section of the 1998 law as amended is section 34(1) "Schedule Continuous Employment", paragraph 7 'Change of Employer'. The Tribunal determined the employment was continuous within the meaning of sub section (2) and that Mr Chiverton had sufficient continuing employment to make a complaint to the Employment and Discrimination Tribunal.

Mr P Woodward

27 August 2020

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Chairman

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, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 717056)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

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

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

Extended Reasons

**1.0 Introduction**

- 1.1 The Applicant, Mr Mark Chiverton, represented himself and gave evidence on his own behalf. He submitted document bundle EE1.
- 1.2 Sahara City Co. Ltd, the Respondent, was represented by Mr Daniel Elsadany, the owner of the company. He gave evidence on its behalf and a document bundle, ER1, was submitted.
- 1.3 This Hearing arises from an Appeal made to the Royal Court by Sahara City Co Ltd. and the subsequent judgement handed down by the Deputy Bailiff on 18 December 2019. The complaint was remitted to the Tribunal by the Deputy Bailiff with guidance on the issue of continuous employment expressed in paragraphs 19 to 29 of that judgement. The Tribunal had as a primary task to reconsider if there had been continuous service between Mr Chiverton's employment with 'La Trelade Hotel Limited' until 31 March 2018 and his further employment from 1 April 2018 with 'La Trelade Hotel operated under licence by Daniel Elsadany, Sahara City Co Limited'. The relevant section of the 1998 law as amended is section 34(1) "Schedule Continuous Employment", paragraph 7 'Change of Employer'. The Tribunal determined that this would be the sole issue to be heard at this time.
- 1.4 If the Tribunal determined that there was continuing service then the Tribunal is clearly directed by the Deputy Bailiff in paragraph 43 of the Royal Court judgment to give reconsideration to the proposed reduction of the award by 15%. If, however, the Tribunal determines that Mr Chiverton's employment was not continuous then Mr Chiverton's claim would fall given he had less than 12 months service at the time of his dismissal by Sahara City.
- 1.5 The Tribunal was conscious that neither of the parties was legally represented and was anxious to make sure that all necessary steps were taken to ensure that they had a fair hearing. The Tribunal took account of the Deputy Bailiff's general comments in *Cotterill v States of Guernsey* (Guernsey Royal Court, Judgment 58/2017) and in particular those at paragraph 45 concerning the need to give appropriate help to unrepresented parties regarding procedure and possibly also with the case that they wish to present.

Accordingly, the Tribunal Chair spent time during the Case Management Meeting, held prior to this Hearing, to ensure both parties understood the process and legal tests that would be applied; the Chairman also explained the role of a "McKenzie" friend.

In addition, on the day of the Hearing, the Tribunal was prepared to 'look behind' the language used to articulate arguments where that was appropriate so that the merits of the case could be explored without pedantic insistence upon the use of correct terminology. That being said, the Tribunal was also mindful of the commentary in paragraph 44 of *Reynard v Fox* [2018] EWHC 443 (Ch) that the fact that a litigant was acting in person was not in itself a reason to dis-apply procedural

rules or orders or directions, or excuse noncompliance with them. The exception to that principle being that a special indulgence to a litigant in person might be justified where a rule was hard to find, difficult to understand, or it was ambiguous.

## **2.0 Facts Found**

- 2.1 The Respondent has managed the La Trelade Hotel, trading as 'La Trelade Hotel operated under licence by Daniel Elsadany, Sahara City Co Limited' since 1 April 2018.
- 2.2 Included in the Applicant's bundle of documentation was a copy of the Applicant's contract of employment with his previous employer, Mr Doughty, owner of the "La Trelade Hotel Limited", evidence provided to the Tribunal confirmed this continuing contractual arrangement commenced on 1<sup>st</sup> October 2013, was renewed yearly; and last renewed on 1<sup>st</sup> August 2017. (EE1 refers)
- 2.3 The Tribunal was also provided with a copy of the employment contract with the Respondent dated 1 April 2018. (ER1 refers).
- 2.4 Mr Chiverton was employed as a 'Reception and Reservations Manager' during the period 1<sup>st</sup> October 2013 to 31 March 2018 His employment after this date was as 'Reception Manager'.
- 2.5 The Respondent dismissed Mr Chiverton on 20 December 2018. A letter "Termination Notice" dated 10 December 2018, was issued to the Applicant; this confirming the effective date of termination as 20 December 2018, thus if Mr Chiverton's employment was not found to be continuous with his previous employer then he would have less than 9 months employment.
- 2.6 In the appeal judgement the Deputy Bailiff considered each of the sub-paragraphs in section 7 of 34(1) Schedule Continuous Employment. He ruled that sub-paragraphs (3), (4) and (5) had no relevance to this complaint. The only remaining sub-paragraphs to be considered were (2) and (6).
- 2.7 Sub-paragraph (6) reads as follows-

*'If an employee or employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer-*

*(a) the employee's period of employment at that time counts as a period of employment with the second employer, and*

*(b) the change of employer does not break the continuity of the period of employment.'*

- 2.8 The definition of 'Associated Employer' is to be found in section 34, sub section (2) of the law-

*For the purposes of this Law any two employers are treated as "associated" if-*

*(a) One is a company of which the other (directly or indirectly) has control, or*

*(b) Both are companies of which a third person (directly or indirectly) has control, and the expression "associated employer" shall be construed accordingly.*

- 2.9 The submissions by both parties in relation to sub-paragraph (6) seem to have common ground. Mr Chiverton concedes in section 4 of his bundle that *'Michael Doughty has no control over the operation of Sahara Co Ltd, he is neither an employee or Director, or a shareholder of said company'*. In his bundle Mr Elsadany provided a diagram of the relationship between La Trelade Hotel and La Trelade Hotel Limited and confirmed he was neither a director of Mr Doughty's company nor has any interest in it. In summary, neither party understood the sub paragraph (6) to be applicable, and the Tribunal agrees.
- 2.10 The Tribunal concludes that given the evidence provided by both parties these were not associated employments.
- 2.11 Sub-paragraph (2) reads as follows-
- (2) If a trade or business, or an undertaking (whether or not established by or under enactment) is transferred from one person to another\_*
- (a) The period of employment of an employee in the trade or business or undertaking at the time of transfer counts as period of employment with the transferee and*
- (b) The transfer does not break the continuity of the period of employment*
- 2.12 Mr Elsadany provided the Tribunal with a full copy of the licence agreement between La Trelade Hotel Limited and Sahara City Co Ltd. This document describes in extensive detail the responsibilities of the licensee from payment of all utilities to upkeep of all wood, iron and other surfaces. It commenced on 1<sup>st</sup> April 2018 and subject to the licensee is due to terminate on 31<sup>st</sup> October 2030. At no point does it refer to the employees or any responsibility for the new employer to transfer them into Sahara City Co Ltd. It does however require the hotel to be run as a '3-star hotel'.
- 2.13 Mr Doughty in a written statement, ER1 (2) refers, has confirmed to the Tribunal that he placed no requirement on Sahara City Co Ltd to take any of the employees of La Trelade Hotel Limited. He stated that he offered the choice to all of his employees to terminate their employment contract with his company or to accept new employment with Sahara City Co Ltd.
- Mr Elsadany stated that he took no liability for the employees of La Trelade Hotel Limited and they commenced new employment contracts with Sahara City Co Ltd.
- At first sight this might seem a total rupture between the past and new employments and thus no continuity of employment, however sub paragraph 34 (2) Schedule Continuous Employment would seem to have been drafted by the Law Officers and approved by the States of Guernsey to cover just such an eventuality
- 2.14 If the Respondent is correct in his belief that businesses can be taken over, or passed on, either via operation of a licence, by a sale or any other financial arrangement from one employer to another without reference to the employees, or the Employment Protection (Guernsey) Law, 1998, as amended, then it is open to any party to defeat the presumed rationale for this element of the legislation and deprive employees of continuity of employment at will.

- 2.15 The Tribunal understands that the word ‘business’ as the totality of the operation, it makes no exceptions or exemptions in ‘The Employment Protection (Guernsey) Law, 1998, as amended’.

The Tribunal did not clarify this logic in the original judgment and thus left it open for misunderstanding

- 2.16 The Tribunal is of the opinion that Mr Doughty would have clarified the situation prior to 1 April 2018 if he had written to each of the employees and described their options; this did not happen. Further if Mr Doughty had the intent to end employee contracts prior to their taking up employment with Sahara City Co Ltd then it would seem that contractual notice payments were due at this time. The evidence from Mr Chiverton, and other employees in the original hearing, confirmed this did not happen. It should be noted that the issue of payment of contractual notice, or non-payment, is not within the remit of this Tribunal’s powers.
- 2.17 Mr Elsadany stated that employees were free to accept or decline their new employment contracts, thus in his mind there was a definitive rupture between the old and new employment; however, this is not the determinant as to whether continuity of employment was lost or maintained. In effect there was not even a single days’ gap between the old and new employments and the evidence in the original hearing confirms an almost seamless transfer of business activities of the 3-star hotel from Mr Doughty on 31<sup>st</sup> March to Mr Elsadany on 1 April 2018. The overarching outcome is that a transfer of the business from one person to another occurred and would seem to satisfy sub paragraph (2) of section 7 of the ‘Schedule Continuous Employment’.

### **Conclusion**

The Tribunal concludes that Mr. Chiverton did have continuous employment within the meaning of sub paragraph (2) of section 7 of the ‘Schedule Continuous Employment’. In consequence he had more than the 12 months of service and he was entitled under ‘The Employment Protection (Guernsey) Law, 1998, as amended’ to bring a complaint against Sahara City Co Ltd.

Mr P Woodward

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Chairman

27 August 2020

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Date