



**THE EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**Applicant: Miss Anda Priedava**  
Represented by: Self-represented

**Respondent: Mr Anthony Hansen t/a Hansen's Sandwich & Coffee Bars**  
Represented by: Self-represented

**Tribunal Members:** Crown Advocate J. Hill (Chair)  
Mrs H. Martin  
Mr A. Vernon

**Hearing date: 29 September 2020**

**Decision of the Tribunal**

The Applicant made a complaint of constructive unfair dismissal.

Having considered all the evidence presented, whether referred to in this judgment or not, the representations of both parties and with due regard to all the circumstances, the Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant resigned from her employment in circumstances that did not give rise to constructive dismissal. In the circumstances, the Applicant's claim is dismissed. The Tribunal made no order for costs.

J Hill  
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Crown Advocate J Hill

5 October 2020  
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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, Le 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 Law')  
The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005  
The Employment Protection (Recoverable Costs) Order, 2006

**The authorities referred to in this document are as follows:**

Cotterill v States of Guernsey (Guernsey Royal Court, Judgment 58/2017)  
Reynard v Fox [2018] EWHC 443 (Ch)

**Extended Reasons**

**1.0 Introduction**

- 1.1 The Applicant, who it was agreed was employed by the Respondent from 27 May 2018 to 28 February 2020 as a kitchen assistant, complains that she was constructively unfairly dismissed. The Respondent denies that the Applicant was dismissed; he alleges that she resigned with notice by text message on Sunday, 9 February 2020. Accordingly, the Applicant had the initial burden of proving that she was dismissed to the civil standard, that is to say on the balance of probabilities. The Tribunal, consisting of three members, met on Tuesday, 29 September 2020 to hear and determine the Applicant's complaint. All of the material submitted by the parties has been taken into account by the Tribunal, whether specifically referred to in this judgment or not.
- 1.2 The Tribunal was conscious that both the Applicant and the Respondent were not legally represented and was anxious to make sure that all necessary steps were taken to ensure that they both 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 took care to explain the Tribunal's procedure carefully to the parties throughout the proceedings and to explore potential arguments and lines of questioning that they could have advanced. 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 disapply procedural rules, orders or directions or excuse non-compliance 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.
- 1.3 The Tribunal was also conscious that the Applicant and several witnesses did not speak English as their first language and took steps to make sure that they fully understood questions asked of them and the procedure being adopted. Every step was taken to make sure that their answers when giving evidence were understood.

- 1.4 The Tribunal heard oral evidence from the Applicant and her partner, Francisco de Jesus (on behalf of the Applicant) and from the Respondent, Maija Hansen, Svetlana Lukjanuka and Dana Pilane (on behalf of the Respondent). The parties agreed that the Applicant's earnings for the last 6 months of her employment were £14,161.88.

## 2.0 Background

- 2.1 The Applicant's case is that on Friday, 7 February 2020 she spoke to Maija Hansen (the Respondent's wife) at the Respondent's "*Grab & Go*" premises in the Pollet, St. Peter Port and asked if she could take holiday between 12 and 28 July 2020. According to the Applicant she had always dealt with Maija Hansen (who was fluent in Latvian) when arranging holidays on previous occasions and that consent was given there and then by Maija Hansen for her holiday. The Applicant made it clear to Maija Hansen that she proposed to book flights and accommodation that same day.
- 2.2 On 8 February 2020 the Applicant received a text message from Maija Hansen to the effect that another worker at the Pollet premises also wanted to take holiday that would overlap with the Applicant's request. The Applicant did not reply to this message.
- 2.3 On 9 February 2020 the Applicant was at work in the Pollet when she received a telephone call at about 11am on the shop telephone from the Respondent. The Respondent asked the Applicant if she knew that Dana Pilane (another worker at the Pollet premises) was getting married in July 2020; the Applicant said that she did. The Respondent explained that they could not both take holidays at the same time. The Applicant replied that she had already bought flights and accommodation at a cost of £1,000. The Applicant alleges that the Respondent told her "*The choice is yours*", which she interpreted as a clear indication that if she did go on the holiday as planned she would lose her job. At 3.04pm that day the Applicant gave notice to the Respondent in a text message: "*You said make my choice, I make my choice I gone leave end of month*" (sic).
- 2.4 The Respondent's case is that he and his wife had only just returned from a three week holiday on 6 February 2020 and that he had not distributed what he described as "holiday sheets" to the employees that would show them which dates were unavailable for holidays. He explained that his wife was not expecting to have to deal with any business matters on 7 February 2020.
- 2.5 The Respondent was clear that his wife's reply to the Applicant on 7 February 2020 was to the effect that "*We will have to see, as long as nobody else wants to take holidays at the same time, it should not be an issue*". He maintains that even if a holiday request is made to his wife, approval comes from him later after checking for holiday conflicts between other staff members.
- 2.6 In relation to the comment of "*The choice is yours*", the Respondent's position is that he said "*That was your choice*" in response to the Applicant asserting that she had already booked flights and accommodation and was not to be taken as a suggestion that if she went on holiday she would be dismissed.

- 2.7 There was a major point of dispute between the parties about a deleted text message sent by the Respondent to the Applicant at 3.16pm on 9 February 2020. The Applicant's case is that it said *"Good you are going like that I don't need to sack you. Everybody is fed up about you and nobody likes working with you"* (sic). On the other hand, the Respondent's case is that whilst he cannot remember precisely what it said, he regretted sending it and thought it was unprofessional of him and he wanted to take the moral high ground. He recalls that the gist of what he said was along the lines of *"the staff and I are disgusted with what you have done"*.

### **3.0 Evidence Summary**

- 3.1 The Applicant confirmed that her witness statement was true. When cross-examined by the Respondent, she accepted that at the time of asking Maija Hansen for time off she knew that Dana Pilane wanted an overlapping period as holiday. She said that although the Respondent never used words like *"I will dismiss you"* to her, she knew how he had acted towards other staff in the past and how he had made their lives a misery. She was unable to give specific examples of times or dates or when the Respondent had behaved badly towards other employees. She explained that she was worried about her £1,000 spent on flights and accommodation and that she would not get it back, although she had only investigated cancelling or changing her plans after she gave the Respondent her notice.
- 3.2 The Respondent specifically put to the Applicant the policies of Easyjet and Aurigny for cancellations or changes made more than 60 days before the date of travel and the Applicant agreed that they were *"£25 plus fare difference"* and *"£15 plus fare difference"* respectively. She also agreed that the policy of Airbnb was for a full refund for cancellations before 3pm on 28 June 2020.
- 3.3 The remainder of the Applicant's evidence related to events that occurred after her agreed act of giving notice, that is to say her text message to the Respondent at 3.04pm on 9 February 2020. Specifically, the Applicant agreed that the alleged incidents of bullying towards her happened after she gave notice.
- 3.4 Francisco de Jesus confirmed that his witness statement was true. Under cross-examination by the Respondent he accepted that he was relying upon what he had been told by the Applicant. He also confirmed in response to a question from the Tribunal that it was he who suggested to the Applicant that she should give notice.
- 3.5 The Respondent confirmed that his witness statement was true. Under cross-examination by the Applicant he explained that on 9 February 2020 he told the Applicant that she would have to consider changing the dates of her holiday and that more than likely she would have to choose alternative dates. He explained that he said *"That was your choice"* rather than *"That's your choice"* and that it was in response to the Applicant's comment that she had already booked her flights and accommodation. He denied that it was to be interpreted as a threat that the Applicant would be dismissed if she went ahead with her holiday.

- 3.6 In relation to the deleted text at 3.16pm on 9 February 2020, he said that although he could not remember the exact words used, the gist of the message was that he and the rest of the staff were disgusted at what the Applicant had done. He deleted it because he wanted to take the moral high ground and thought his message was unprofessional; he felt bad about it.
- 3.7 Svetlana Lukjanuka confirmed that her witness statement was true. When cross-examined by the Applicant she said that she had made the Applicant aware of the dates of her proposed holiday, including a christening in Madeira in 25 July 2020. She explained that she did not know which dates the Applicant wanted to take as holiday and that when she and the Applicant were on holiday together at the same time last year that was at a time when there were more staff working at the Respondent's premises.
- 3.8 Dana Pilane confirmed that her witness statement was true. She confirmed under cross-examination by the Applicant that her plans to travel to Latvia were known to the Applicant.
- 3.9 Maija Hansen confirmed that her witness statement was true. Under cross-examination by the Applicant she explained that what she had, in fact, said in response to the Applicant's request for holiday was *"As far as I'm concerned I'll have to check if anyone else wants holiday. Shouldn't be any issues if nobody else wants holiday"*.
- 3.10 In his closing speech, the Respondent drew to the Tribunal's attention that it was the Applicant's decision to leave her employment and that she was not dismissed. He asked the Tribunal to take into account that any claims of ill-treatment by him happened after the Applicant had handed in her notice. If things were so bad, why did the Applicant work not only her notice but five extra days? He submitted that the Applicant's claims were based upon mistaken assumptions and that she had never asked for clarification of what he had meant.
- 3.11 In her closing speech, the Applicant explained that her purpose in bringing the claim was not monetary, but to stop bullying by the Respondent at the workplace. She also submitted that the Respondent's witnesses had merely told the Tribunal what they had been told to say by the Respondent and that their evidence should be treated carefully.

#### **4.0 Legal Framework**

- 4.1 Since the Respondent denied that the Applicant was dismissed, it was for the Applicant to prove, on the balance of probabilities, that she had terminated her contract of employment in circumstances such that she was entitled to terminate it without notice by reason of the Respondent's conduct (see section 5(2)(c) of the 1998 Law). In other words, for a claim of constructive dismissal to be successful, the Applicant must prove on the balance of probabilities that there had been a fundamental breach of the contract of employment (one going to the root of the contract) by the Respondent and that she had not delayed unreasonably before giving her notice.

## **5.0 Facts Found**

- 5.1 The central issue in this case is what caused the Applicant to give notice to the Respondent. The Tribunal unanimously finds that it was the Applicant's belief that if she took her holiday as planned the Respondent would dismiss her. Furthermore, the Tribunal also finds that any acts of "unpleasantness" (whether amounting to bullying or not) from the Respondent towards the Applicant only occurred after she had given her notice to him.
- 5.2 The Tribunal asks itself the question if it is sufficient justification for section 5(2)(c) of the 1998 Law to apply for an Applicant to give notice to her employer based solely upon her subjective anticipation of future behaviour towards her? Whatever the answer to this question of general principle, the Tribunal finds that it is not necessary to explore it since the Applicant not only worked out her two weeks' notice, but also an extra five days. The only reasonable conclusion to be drawn from this is that the Applicant was willing to be exposed to her employer's behaviour during that time and that it could not have been sufficient to justify her terminating her contract of employment without notice within the meaning of section 5(2)(c) of the 1998 Law.
- 5.3 In any event, the evidence before the Tribunal was that the Applicant had given her notice before any perceived objectionable behaviour (whether it occurred or not) actually took place from the Applicant's point of view. As a matter of law, the Applicant's giving notice was not linked to or caused by that behaviour.
- 5.4 On either basis the Applicant's claim for constructive dismissal must therefore fail.

## **6.0 Conclusion**

- 6.1 For the reasons set out above, the Tribunal unanimously concludes that the Applicant was not constructively dismissed. In those circumstances the Tribunal dismisses the Applicant's claim and makes no award.

## **7.0 Costs**

- 7.1 The Tribunal's power to awards costs is discretionary and governed by paragraph 6 of the Schedule to The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 and The Employment Protection (Recoverable Costs) Order, 2006.
- 7.2 Having taken into account all of the material before it, the Tribunal has decided not to award costs to either party.

J Hill

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Crown Advocate J Hill

05 October 2020

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Date