

THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: Mr Timothy Leadbeater
Represented by: Not Present

Respondent: Channel Islands Lines (Guernsey) Limited (in Liquidation)
Represented by: Not Present

Tribunal Members: Mrs Paula Brierley
Mrs Christine Le Lievre
Mrs Joanne de Garis

Hearing date(s): 7 August 2020

Decision of the Tribunal

The Applicant made a claim of unfair dismissal contrary to section 6(1) and (2) of The Employment Protection (Guernsey) Law, 1998, as amended.

Having considered all the evidence presented, and with due regard to all the circumstances, whether referred to in this judgement or not, the Tribunal unanimously found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed and therefore makes no award.

Mrs P Brierley
.....
Signature of the Chair

14 October 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, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH. (Telephone: 01481 717056) Email: 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. Introduction

- 1.1. The Applicant, Mr Timothy Leadbeater, represented himself but informed the Secretary to the Tribunal on the morning of the hearing that he would not be attending due to illness. The Applicant had not indicated that he would be calling any witnesses.
- 1.2. The Applicant claimed that he had been unfairly dismissed within the meaning of section 6(1) and (2) of the Law, noting that the reason for the dismissal was not a reason relating to his conduct but one relating to his capability or qualification for performing work of the kind which he was employed to do; and material thereto was the absence of intention and the presence of carelessness in the Applicant's omissions leading to his dismissal.
- 1.3. The Respondent, Channel Islands Lines (Guernsey) Limited, in the form of Joint Liquidators, Roberts and Toynton of Grant Thornton had alerted the Tribunal Service ahead of the Tribunal date, by letter dated 3 June 2020, that it would not be appearing at the Tribunal Hearing. Further stating that, having reviewed the ET1 and ET2 and as the matters relating to the claim had occurred prior to liquidation, therefore having discussed with the former management of the Company, they believed that the response in the ET2 provided relevant detail.
- 1.4. The Applicant submitted a bundle (EE1 refers) containing Forms ET1 and ET2, the Applicant's Statement of Main Terms of Employment signed on 30 May 2018, disciplinary invite letter dated 5 February 2020 (with attached notes of the disciplinary hearing also dated 5 February 2020, payslips for December 2018, April 2018, May 2018, September 2019 and February 2020), copy of a disciplinary procedure, a document titled "APPENDIX 1" containing (i) an outline of gross misconduct, including suspension, (ii) disciplinary, capability and grievance procedures and (iii) data protection.
- 1.5. The Applicant confirmed by email, to the Secretary to the Tribunal, on the morning of the hearing that the Tribunal should determine the case based on the papers submitted.
- 1.6. The Tribunal requested a copy of the 'caution' the Applicant had allegedly received from the police and also a copy of the letter of dismissal. The Applicant said that he

did not have a copy of either, therefore he was asked to obtain a copy of his police record. The Applicant subsequently sent, by email, a copy of the Certificate of Caution (verbal) issued by the Guernsey Police on 16 February 2020 at 17:30 (EE2 refers)

- 1.7. The Secretary to the Tribunal contacted the liquidators asking for a copy of the dismissal letter sent to the Applicant. This was not received.

2. Summary Of Evidence

- 2.1. The Applicant was employed by the Respondent from 30 October 2017 as a Lorry Driver pursuant to a statement of main terms and conditions signed and dated 30 May 2018 (EE1 refers)
- 2.2. On 16 January 2020, the Applicant had been tasked to make a delivery to a customer in St Peter Port which necessitated him driving along the Lower Pollet where some overhead scaffolding had been erected for building works.
- 2.3. The lorry caught the fitting on the scaffolding, causing the Applicant to reverse back from underneath the scaffolding and along the Lower Pollet (the incident).
- 2.4. The incident did not cause any harm, injury or damage to person or property, it did create a temporary gridlock in the Lower Pollet which caused the Guernsey Police to investigate and take the Applicant's details.
- 2.5. The Applicant, having been unable to make the delivery, returned to the Respondent's office and reported the incident.
- 2.6. Sometime around the 24 January 2020, the Applicant received a telephone call from the Guernsey Police requesting him to produce his commercial driving licence and insurance.
- 2.7. The Applicant searched at home for his commercial driving licence on the weekend of 25 and 26 January but could not find it, and he therefore completed and sent off to the DVLD an application for a duplicate licence or alternatively a licence renewal on the basis that he believed that the licence was due to expire towards the end of February 2020.
- 2.8. On or around the 29 January 2020, the Applicant received a telephone call from the DVLD advising him that his licence had expired in autumn 2019, and that he needed to take a blood test and medical in order to renew it (licence issue).
- 2.9. The Applicant was shocked to learn of the expiry of the licence, which had been a complete oversight on his part and wholly unintentional as he would have never driven knowingly without a valid driving licence.
- 2.10. The Applicant proceeded to inform the Respondent and the Guernsey Police of the licence issue and arrange to have a blood test on 7 February 2020.

- 2.11. On 5 February 2020, the Applicant attended an investigation meeting, into the licence issue, conducted by the Respondent's Operations Manager and witnessed by its Freight Admin Assistant, at which time the Applicant explained the unintentional nature of his actions, that he understood the implications of them, and that the blood test and medical were required because he had a damaged liver.
- 2.12. At the conclusion of the investigation meeting, by letter dated 5 February 2020 from the Operations Manager (EE1 refers), the Applicant was invited to attend a disciplinary hearing on 12 February 2020 at 10 am in relation to the licence issue. The Applicant was suspended on full pay up to that hearing.
- 2.13. The alleged instance of misconduct is set out in the invite letter of 5 February 2020 as follows:-
"Failure to comply with Company Policy and the law: you were unable to provide your valid driving licence when requested to do so, whereby you said it was out of date and you needed to renew it, rendering you unable to complete the role you are employed to carry out. You also stated that you understood the implications of this and that you have driven both your own personal vehicle and the company truck in the time you have not had a valid licence. You also failed to make us aware there was any issue with renewing your licence, which forms part of our drivers policies and handbook."
- 2.14. The Applicant noted in his ET1 that the letter of 5 February, 2020 enclosed a copy of the investigation notes made by the Operations Manager together with a copy of the Respondent's disciplinary procedure, but did not include documentation to support the allegation and no evidence from any other witnesses who might have been interviewed as part of the investigation into it.
- 2.15. The Respondent in its ET2 notes that there were no witnesses as the Applicant had been driving his truck alone, further noting that at the investigation the Applicant had admitted driving both his private vehicle and commercial vehicle but said he thought he was covered by his licence. This is corroborated by the investigation notes which are signed by the Applicant (EE1 refers).
- 2.16. On 10 February 2020, the Applicant saw his GP who advised him that he had failed his blood test on 7 February 2020 as his blood contained too high a level of indicators of liver damage such that he would have to wait a further month before taking another test to allow the indicator levels to fall.
- 2.17. The news coupled with the forthcoming disciplinary hearing on 12 February 2020, and potential action against the Applicant by the Guernsey Police compounded his distress to such an extent that his GP signed him off work for a period of one month on grounds of "stress related problems".
- 2.18. The Applicant attended the disciplinary hearing on 12 February 2020, which was conducted by the Respondent's Head of Group Operations with its Group HR Manager acting as a witness and note taker.

- 2.19. The Applicant brought his brother as a friend to accompany him at the Hearing, but he was not allowed to attend. In line with the Respondent's Disciplinary Procedure the employee had a right to be represented by a work colleague, or a trade union official (EE1 refers). The right to be accompanied and who that could be was also set out in the invite letter dated 5 February 2020 (ET2 refers):
"you have the right to be accompanied to this meeting with a fellow worker or a Trade Union representative (of a union which you are a member). If the person you would like to accompany you is not able to attend on Wednesday 12 February 2020 please give me a call to re-arrange. In any event the hearing can only be postponed for a maximum of 5 working days."
- 2.20. The Respondent noted, in the ET2, that they had given the Applicant the option of having a colleague or a union representative when he was not allowed to have his brother attend the disciplinary meeting with him. However, he declined this option.
- 2.21. The Applicant noted in his ET1 para 22 that he attended the hearing despite being signed off work with stress because he did not know whether he had to attend or not, and upon handing a copy of his sick note to the HR Manager she enquired whether he was "OK" to carry on.
- 2.22. The Applicant responded by enquiring whether he should be carrying on if he was signed off with stress, to which the HR Manager replied that it was entirely his decision whether to carry on or wait until his sick note expired.
- 2.23. The Respondent in their ET2 said that the Applicant had been told it was "entirely your decision to carry on today even though off sick you can, if you don't want to we can wait till sick note runs out, if you want to go ahead we can stop at any time". The Respondent further noting in their ET2 that the Applicant had noted that the HR Manager had come over for the hearing, to which the HR Manager replied "that doesn't matter you have to be comfortable" to which TL said "OK".
- 2.24. The Applicant said that before he was fully able to process the choice he had been given by the HR Manager, the Hearing Manager proceeded to continue with the Hearing anyway by launching into a more extensive version of the allegation which had never been put to the Applicant before and included the assertion that he had brought the Respondent into disrepute.
- 2.25. The Applicant then enquired whether the Hearing would be more or less the same later if it were postponed now because he was signed off work, in response to which the HR Manager said that the hearing could put more stress on the Applicant and that they could stop. However, the Hearing Manager again proceeded to continue with the Hearing anyway by informing the Applicant that it was his chance to provide an explanation and there were a few questions for him.
- 2.26. The Respondent said in their ET2 that it was the Applicant's perception that whether or not the hearing was delayed the outcome would be the same, further stating that they do not make pre-decisions before hearing the colleagues' evidence. Further noting that they were referring to the process being the same.

- 2.27. The Respondent in their ET2 further noted that, at no point throughout the disciplinary hearing did the Applicant ask to stop.
- 2.28. The Applicant said that he therefore felt under pressure to continue with the Hearing, even more so when the HR Manager had flown over from Jersey to attend, and in any event he was given the clear impression that there would be no difference in outcome if it went ahead on another day such that he would only be delaying the same decision whatever it was going to be.
- 2.29. The ET1 states that, the Hearing Manager, and on one occasion the HR Manager, then put their questions to the Applicant in relation to the Incident and the Licence Issue, to which the Applicant responded candidly and openly including with regard to the potential for action against him by the Guernsey Police.
- 2.30. In particular, the Applicant emphasised that he had acted without any intent to drive without the Licence because he did not realise it had expired, and he had given two years of trustworthy service to the Respondent.
- 2.31. The Respondent notes in their ET2 that, during the hearing, the Applicant stated that he was unaware to drive without a valid licence would invalidate the Respondent's insurance and his own.
- 2.32. The Hearing was adjourned for approximately 30 minutes whereupon the Hearing Manager asked some further questions of the Applicant.
- 2.33. The Hearing Manager then concluded that the Applicant had failed to adhere to drivers' and company policies by driving without licences and insurance and that he had broken the bond of trust between employee and employer such that there was no option other than to dismiss him for gross misconduct.
- 2.34. The Respondent said that the Applicant was dismissed following an adjournment and was sent a letter of dismissal. Despite requesting the letter from both parties, the Tribunal has not had sight of the letter. The Respondent, in their ET2, included the following extract of the dismissal letter:-
"Having considered the situation in detail and your previous work ethic, I have reached the conclusion that along with the above (reasons) and the bond of trust being broken, you are guilty of gross misconduct".
- 2.35. Thereafter, the Applicant was notified that he could appeal the decision to the Respondent's Chief Executive Officer by letter, should he so wish.
- 2.36. By letter dated 13 February 2020, the Hearing Manager confirmed the Applicant's dismissal with immediate effect on 12 February 2020 by reason of the bond of trust being broken and gross misconduct, the Applicant alleges that this is a new version of the Allegation (EE1 para 32 refers). EE1 shows an extract of the dismissal letter (which was unavailable to the Tribunal) as follows:-
"Failure to comply with Company Policy regarding our Drivers and Vehicle Operators Policy and the Law, whereby as a professional driver (which you are employed as) you drove a company vehicle without a valid licence, making the company insurance

invalid, therefore putting yourself and the public at risk whilst out in that vehicle. You also failed to make the company aware that your licence had not been renewed until there was an incident in the truck where the Guernsey Police were involved, therefore bringing the company name into disrepute. You stated that this may result in a court case as you were unable to provide a valid licence when required to do so by the police, you said you did not realise your licence should have been renewed in October 2019 and that you need medical certificate with clear blood levels to regain this licence. The Highway Code Guernsey, states that drivers must have “a valid driving licence in the appropriate category for the vehicle you intend to drive or ride and that you adhere to any conditions attached to the licence”.

- 2.37. According to the Applicant in the ET1 para 33, the letter concluded by informing the Applicant that he had the right to appeal his dismissal for “gross misconduct” exercisable to the HGO within seven days, and it enclosed a copy of the hearing notes written up by the HR Officer together with copies of the Paul Davis Freight Services Drivers and Vehicle Operators Policy (“Drivers Policy”) and the Disciplinary Procedure.
- 2.38. The Respondent stated in their ET2 (last paragraph refers) that they take it very seriously that one of their “colleagues” had been driving one of their trucks without a valid licence for a period of approximately 3 months, therefore nullifying their insurance and bringing their company name into disrepute.
- 2.39. The Applicant stated in the ET1 para 34 that he had no recollection of seeing the Drivers Policy before and it had not been shown to him at either the investigation meeting or the Hearing, and nor had the Highway Code or the relevant “Law” as referred to in the New Allegation been shown or specified to him at the investigation or Hearing.
- 2.40. The Applicant purports that he had an exemplary record of employment with the Respondent and had a clean disciplinary record such that he was astounded that he had been dismissed on the spot.
- 2.41. The Applicant says that by letter dated 13 February 2020, following a request made by the Applicant, the HR Manager provided him with a copy of his contract of employment and a generic Channel Island Lines drivers handbook (“Drivers Handbook”), which he also had no recollection of seeing before and had not been shown to him at either the investigation meeting or the Hearing.
- 2.42. On 16 January 2020, four days after the Applicant’s dismissal, the Guernsey Police offered the Applicant a verbal caution for driving on a public highway whilst not being a holder of a driving licence (“Caution”), which he accepted (EE2 refers).
- 2.43. The Applicant noted in his ET1 para 38, that it was his understanding that the Caution, which he further notes is not a criminal conviction, was offered to him in recognition of the particular mitigating circumstances concerning the Licence Issue coupled with the fact that the States of Guernsey no longer issue warnings or reminders to licence holders that their licences are about to expire, such that many islanders have unwittingly found themselves driving without valid licences.

2.44. The Applicant noted in his ET1 para 39 that he chose not to appeal the Respondent's decision to dismiss him because the appeal had to be made to the same person who took the decision to dismiss him, namely the HGO, and he had no trust and confidence that an appeal would be determined fairly especially as it was evident to him that the Respondent had made up its mind to dismiss him at the outset.

2.45. In the ET2 the Respondent set out an extract of the letter of dismissal which stated:
*"You have the right to appeal against the decision to dismiss you for gross misconduct. Any appeal should be sent in writing within seven days to:
Andrew Jehan CEO
Paul Davis Freight Services Limited"*

2.46. At paragraph 40 of the ET1, the Applicant purports that the dismissal was unfair within the meaning of The Employment Protection (Guernsey) Law 1998 as amended ("Law") for the following reasons:

- The principle reason for the Applicant's dismissal for the purpose of section 6(1) and (2) of the Law was not a reason relating to his conduct but one relating to his capability or qualifications for performing work of the kind which he was employed to do; and material thereto was the absence of intention and the presence of carelessness in the Applicant's omissions leading to his dismissal;
- In consequence of the Respondent confounding the reason for the Applicant's dismissal, it wrongly instituted a disciplinary procedure against him rather than a performance improvement or other appropriate procedure;
- The disciplinary procedure followed by the Respondent was unreasonable and unfair for reasons that included the following:
 - i. The Respondent failed to carry out as much investigation into the Incident and the Licence Issue as was reasonable in all the circumstances, which investigation should have examined exculpatory and mitigating factors as well as aggravating factors;
 - ii. The Respondent failed to provide the Applicant with all relevant laws, policies and the Highway Code on which it relied in dismissing him in advance of the Hearing or even at the Hearing itself;
 - iii. The Respondent failed to allow the Applicant's brother to accompany him to the Hearing when, given the nature of the content of the Hearing and the circumstances, it would have been reasonable for him to act as the Applicant's friend and would have caused no prejudice;
 - iv. The Respondent placed the onus of deciding whether the Hearing should be postponed on the Applicant, instead of bearing the onus itself and postponing the Hearing of its own decision in light of the Applicant's sick note and his vulnerability;
 - v. The Respondent unduly influenced the Applicant into continuing with the Hearing despite his being signed off work with stress;
 - vi. The HR Manager, who was present at the Hearing as a witness and note taker, wrongly took on an active advisory and inquisitorial role during

the Hearing and self-recorded such involvement in the notes of the Hearing;

- vii. The Respondent aggrandised the Allegation at the Hearing from what it was when notified to the Applicant after the investigation, without any advance warning or explanation;
- viii. The Respondent wrongly prejudged the outcome of the Guernsey Police action into the Licence Issue in reaching its decision to dismiss the Applicant;
- ix. The Respondent wrongly relied on the Drivers' Handbook and/or the Drivers Policy in dismissing the Applicant when such documentation had no application to his employment with the Respondent or he had not been made aware that such documentation had application;
- x. To the extent that the Drivers Handbook and/or the Drivers Policy did apply to the Applicant's employment, the Respondent failed to take into account the provisions thereof (and the Respondent's failings thereto which contributed towards the position in which the Applicant found himself) which stated that the employer will ensure that drivers are in possession of a current and valid driver's licence for the appropriate class of vehicle they drive, and that licences are checked regularly or annually by a manager;
- xi. The decision to dismiss was taken in breach of the Disciplinary Procedure insofar as it provided for extenuating circumstances which contraindicated dismissal and the decision to dismiss to be taken by representatives of the board of directors of the Respondent rather than the HGO;
- xii. The Respondent failed to take into account the Applicant's lack of intention in respect of the Licence Issue, his good employment record and his clean disciplinary record in reaching the decision to dismiss him;
- xiii. The Respondent dismissed the Applicant on the basis of the New Allegation when it bore little resemblance to and/or was far more extensive than the original Allegation which initiated the Hearing;
- xiv. The Respondent's dismissal of the Applicant fell outside the band of reasonable responses open to it in all the circumstances where any other potential sanctions short of dismissal were reasonable and appropriate, including a final warning and the Applicant's suspension on no pay until he obtained a renewal of the Licence which he may have obtained shortly upon the expiry of his sick leave in any event; and
- xv. The Appeal was expressed to be made to the person who took the decision to dismiss the Applicant when previously he had been notified that an appeal was to be made to the CEO.

3. The Law

- 3.1. The Law referred to in this section in The Employment Protection (Guernsey) Law, 1998, as amended.
- 3.2. Claims of unfair dismissal are governed by Section 6 of the Law: General provisions relating to fairness of dismissal

6. (1) In determining for the purposes of this Part of this Law whether the dismissal of an employee was fair or unfair, it shall be for the employer to show –
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
 - (b) that it was a reason falling within subsection (2).
- (2) For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which –
- (a) related to a capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) related to the conduct of the employee,
 - (c) was that the employee was redundant,
 - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under the law of Guernsey, or
 - (e) was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (3) Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 [and 15], the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

4. Facts Found

- 4.1. The Applicant was employed by the Respondent from 30 October 2017 as a lorry driver.
- 4.2. The Applicant's main terms and conditions are set out in a "Statement of Main Terms and Employment" which was signed by the Applicant and a representative of the Respondent on 30 May 2018.
- 4.3. The Statement of Main Terms and Conditions refers to the requirement to have a valid driving licence. It also states, "loss of your driving licence may result in the termination of your employment and depending on the circumstances, may include summary dismissal."
- 4.4. On 30 April 2020, the Respondent passed a special resolution to place the Company in Guernsey Member's Voluntary Liquidation.
- 4.5. 16 January 2020 there was an incident which the Applicant was involved in whilst driving a lorry in his capacity as a lorry driver for the Respondent.

- 4.6. Following the incident, the Applicant was asked by the Guernsey Police to produce his driver's licence.
- 4.7. The Applicant was unable to produce the licence as he could not find it.
- 4.8. On requesting a copy, he found that his licence had expired some months previously and, as a consequence, had been driving both the Respondent's, and his personal vehicle, without a valid driving licence.
- 4.9. The Applicant had to have a blood test as part of his licence application.
- 4.10. Due to stress the Applicant was signed off work.
- 4.11. An investigation meeting was held on 5 February 2020, with the Respondent's Operations Manager and the Freight Admin Assistant.
- 4.12. Following the investigation meeting the Applicant was invited to a disciplinary hearing with the Head of Group Operations.
- 4.13. The Hearing was held on 12 February 2020.
- 4.14. The invite letter, dated 5 February 2020, stated that the Applicant could be accompanied by a "fellow worker or a Trade Union representative". The disciplinary procedure stated that an employee had the right to be represented by a work colleague or trade union representative.
- 4.15. Appendix 1, which contained the disciplinary, capability and grievance procedures, is referred to in the Applicant's Statement of Main Terms of Employment, as containing "important policies and procedures to be followed during your employment".
- 4.16. Appendix 1 lists examples of gross misconduct. The list includes,
- "Failing or neglecting efficiently and diligently to discharge their duties or otherwise being in serious breach of the obligations under the Contract of Employment
 - any act or omission which puts the Company, its staff or clients at risk, financially or physically
 - any act or omission which brings or is likely to bring disrepute to the Company"
- 4.17. Under the disciplinary procedure document, examples of gross misconduct include:-
- Serious breach of Company rules, procedures or legislation
 - Gross negligence or incompetence
- 4.18. The invite letter, dated 5 February 2020, outlined the alleged instance of misconduct as "failure to comply with Company Policy and the law".

- 4.19. Following the disciplinary hearing on 12 February 2020 the Applicant was summarily dismissed.
- 4.20. The Tribunal has not had sight of the dismissal letter or the notes of the hearing.
- 4.21. Both the Applicant and Respondent agree that the Applicant was given the right to appeal but there is a disagreement as to who the appeal was to.
- 4.22. The Applicant did not appeal the decision.
- 4.23. The Applicant was offered, and accepted, a caution from the Guernsey Police dated 16 February 2020.

5. Conclusion

- 5.1. It is disappointing that the Tribunal were unable to have sight of the dismissal letter or the notes of the disciplinary hearing held on 12 February 2020.
- 5.2. The Tribunal does not accept the Applicant's argument that the reason for dismissal was not a reason relating to his conduct but one relating to his capability or qualification for performing work of the kind which he was employed to do. It is noted that the Applicant accepts (ET1 40 (a) refers) that it was a careless omission, albeit one without intent. Carelessness and neglect are conduct, the result of his careless conduct leading to the omission of renewing his licence lead to him to not having a licence, which was not only in breach of his contract of employment because he did not have the qualification to do the job he was employed to do, but also resulted in the company's insurance cover being invalid putting the company at risk.
- 5.3. The Tribunal considers it reasonable that the expected standard for a professional lorry driver would be that they ensure that their driving licence is valid, therefore in this situation disciplinary procedure is the appropriate procedure to follow because not having a valid driving licence is in breach of the Statement of Main Terms of Employment and falls into the examples of listed for Gross Misconduct.
- 5.4. The Tribunal does not agree with the Applicant's allegation, that the Respondent failed to carry out as much investigation into the incident or the licence issue as was reasonable in the circumstances. As per the Applicant's Statement of Main Terms of Employment, as a Lorry Driver for the Respondent, it was a requirement that he held a valid driving licence, it was acknowledged by the Applicant that he did not, and had not for some months, held such a valid licence. It was also noted in his Statement of Main Terms of Employment that the loss of his driving licence may result in his termination of employment. Additionally, Appendix 1 which was referred to in the Statement of Main Terms of Employment, set out examples of Gross Misconduct, three of which were relevant to the licence issue:-
- *"Failing or neglecting efficiently and diligently to discharge their duties or otherwise being in serious breach of the obligations under the Contract of Employment;*

- *Any act or omission which puts the Company, its staff or clients at risk, financially or physically;*
- *Any act or omission which brings or is likely to bring disrepute to the Company.”*

- 5.5. In accordance with the Respondent’s disciplinary procedure, the Applicant was invited, with due notice, to a disciplinary hearing and given his opportunity to put his case forward to be considered. The disciplinary hearing also gave the Applicant opportunity to put his case forward. The Tribunal accepts the Respondent’s statement that there were no other witnesses. It is also noted that the Respondent did not deny that he no longer had a valid driver’s licence and that there were challenges with getting it renewed for medical reasons.
- 5.6. At the point of dismissal the Applicant was unable to fulfil the requirements of his duties for which he was employed.
- 5.7. The Tribunal is unable to determine the Applicant’s allegations that the Respondent failed to provide the Applicant with all relevant laws, policies and the Highway Code on which it relied in dismissing the Applicant as there was no evidence put forward to support this allegation such as the meeting notes of 12 February 2020 or the dismissal letter. However, the Tribunal notes that the Highway Code is a publicly available document and one that a professional driver should be familiar with.
- 5.8. In not allowing the Applicant’s brother to accompany him, the Respondent was not denying the Applicant a right, it was clearly stated in the invite letter as well as the disciplinary procedure who could accompany the Applicant.
- 5.9. The Tribunal notes that the Applicant was asked if he wanted the hearing to go ahead, it is considered that that was a reasonable question to be posed to the Applicant at that time and under the circumstances. Only the Applicant would have been in the position to know how he felt about continuing. The Tribunal further notes that in the notes of the investigation meeting held on 5 February, 2020 the Applicant had stated that he wanted the matter “dealt with sooner rather than later”.
- 5.10. No evidence had been put forward to support the allegation that the Respondent unduly influenced the Applicant into continuing with the Hearing.
- 5.11. There is no evidence to support the allegation that the HR Manager took on an active advisory and inquisitorial role during the Hearing and self-recorded such involvement in the notes of the Hearing.
- 5.12. There is no evidence to support the claim that the Respondent aggrandised the Allegation at the Hearing from what it was when notified to the Applicant after the investigation, without any advance warning or explanation.
- 5.13. There is no evidence to support the allegation that the Respondent wrongly relied on the Drivers Handbook and/or the Drivers policy in dismissing the Applicant when

such documentation had no application to his employment with the Respondent or he had not been made aware that such documentation had application.

- 5.14. There was no evidence submitted to support the allegation that it is stated anywhere that the “employer will ensure that drivers are in possession of a current and valid driver’s licence for the appropriate class of vehicle they drive, and that licences are checked regularly or annually by a manager.”
- 5.15. The Tribunal does not agree that the decision to dismiss was in breach of the Disciplinary Procedure insofar as it provided for extenuating circumstances which contraindicated dismissal and the decision to dismiss to be taken by representatives of the board of directors of the Respondent rather than the HGO. The Tribunal notes that the disciplinary procedures state at Stage 3 – Dismissal “A final discussion will take place with the HR Manager or Director, or alternatively depending on the nature of the case, with representatives from the Board of Directors”.
- 5.16. Regarding the allegation by the Applicant that the Respondent failed to take into account the Applicant’s lack of intention in respect of the Licence Issue, his good employment record and his clean disciplinary record in reaching the decision to dismiss him, the Tribunal has sympathy with the point raised that it would seem there was no intention in respect of the licence issue. However, there is no evidence to support the statement of good employment record and clean disciplinary record. The Tribunal also notes in the ET2, the extract of the dismissal letter states, “having considered the situation in detail and your previous work ethic, I have reached the conclusion that along with the above (reasons) and the bond of trust being broken, you are guilty of gross misconduct”.
- 5.17. The Tribunal is not persuaded that the Respondent dismissed the Applicant on the basis of a new allegation bearing little resemblance to and/or was far more extensive than the original allegation which initiated the Hearing.
- 5.18. The Tribunal is satisfied that the Respondent made its decision based on the facts known to it at the time, ie that the Applicant did not have a drivers licence, had not had one for some time and had only, at that time made the Respondent aware, that there was a medical test required for the renewal which the Applicant had to have retaken and therefore felt that the trust had been broken.
- 5.19. The Tribunal is persuaded that that it was a reasonable response on the part of the Respondent to dismiss the Applicant because the evidence put before it shows that the absence of the licence was not disputed, that the licence had been invalid for a number of months thus causing the Respondent’s insurance to be invalid, that it was clear in the Statement of Main Terms of Employment that a valid driver’s licence was a condition of employment and the consequences of not having one.
- 5.20. Without sight of the dismissal letter the Tribunal is unable to determine who the appeal was expressed to be made to.

6. Decision

- 6.1. Having considered all the evidence presented, and with due regard to all the circumstances, whether referred to in this judgement or not, the Tribunal unanimously found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly dismissed and therefore makes no award.

Mrs P Brierley

14 October 2020

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Signature of the Chair

Date