



# COMMERCE AND EMPLOYMENT

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

**FORM EMPROT 3**

For office use only.

Case No: UD034/05

## EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998 NOTIFICATION OF ADJUDICATOR'S DECISION

On a complaint of unfair dismissal, suffering a detriment for refusing, or proposing to refuse, to work on a Sunday or failure by an employer to provide a written statement of reason(s) for dismissal, this award, (subject to the rights of appeal to the Royal Court, as set out in the Law), is legally binding and is the final decision of the Adjudicator.

**Adjudication Hearing held on Thursday 22 December 2005**

**between**

**Applicant: Mr Robin Davidson**

**Respondent: Technical Building Services Ltd**

**Adjudicator: Ms Georgette Scott**

### **Nature of Dispute:**

Mr Robin Davidson claimed he had been unfairly dismissed from Technical Building Services after finishing work on Friday 29 September 2005. He claimed he had been called to the office and told that as a result of poor workmanship his contract was being terminated. Mr Davidson said that there had been no prior warnings regarding his work and that the specific circumstances given for terminating his contract were inaccurate and he had been dismissed without reference to any form of Disciplinary Procedure.

Mr Davidson also claimed that the employer failed to provide a written statement of the reason(s) for his dismissal. Mr Ken Tailby, Managing Director of Technical Building Services, said that Mr Davidson had a long track record of producing poor quality work and that two particular work projects had been carried out so poorly that he had no alternative but to dismiss Mr Davidson. Because of the seriousness of the faulty workmanship he regarded the matter as a dismissible offence, as Mr Davidson had failed in his duty of care.

### **Adjudicator's Decision:**

I find that Mr Robin Davidson was unfairly dismissed. There is compelling evidence that Mr Tailby of Technical Building Services Limited expected a duty of care from his employees towards their work but disregarded their rights to a fair disciplinary process. Mr Davidson was dismissed without proper investigation into his claims of inaccuracies in the evidence for his poor workmanship, without recourse to any form of warning system, and without any form of appeal against the dismissal.

I find that Mr Tailby did produce a written statement of the reason(s) for dismissal and therefore make no award for that claim.

**Amount of Award (if applicable): £7,198.13**

Signature of Adjudicator:

Ms Georgette Scott

Date:

18/01/06

NOTE: Any award made by an Adjudicator may be liable to Income Tax  
Any costs relating to the recovery of this award are to be borne by the Employer

The detailed reasons for the Adjudicator's Decision are available on application to the Secretary to the Adjudicators, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF

**1.0     Representatives**

- 1.1     For the Applicant:     Mr Robin Davidson, Applicant
- 1.2     For the Respondent:     Mr Ken Tailby, Director of Technical Building Services Ltd.

**2.0     Witnesses**

- 2.1     As above.

**3.0     Documents**

- 3.1     The Applicant submitted a typed statement plus supporting documentation – marked as EE1.
- 3.2     The Respondent submitted an “aide memoire” entitled “Duty of Care” which he read to the Hearing – marked as ER1.

**4.0     Findings of Fact**

- 4.1     Mr Robin Davidson was employed as a Technician by Technical Building Services Ltd between March 2003 and 29 September 2005.
- 4.2     The company was three years old and was a sister company to Timber Treatments Limited of which Mr Tailby was also Managing Director.
- 4.3     Technical Building Services Ltd. provided external insulation, specialist renders and fire proofing.
- 4.4     At the time of the Hearing, the firm had two employees, Mr Tailby plus a Technician. During the time Mr Davidson was employed by the company, there were five employees, Mr Tailby plus four technicians, one of whom, Mr McCloy, undertook the role of foreman. Company employee numbers fluctuated in relation to demand for work.
- 4.5     On 29 September 2005, Mr Tailby called Mr Davidson to the office. Mr Tailby advised Mr Davidson that he was unhappy with his work and referred particularly to two projects, one of which had been completed six weeks previously.
- 4.6     Mr Davidson received no warnings regarding the quality of his work during his employment with the company.

**5.0     Respondent's Submissions**

- 5.1     Mr Tailby submitted that Mr Davidson was a poor workman and claimed he had a long track record of producing poor quality work and that two particular work projects had been carried out so poorly that he had no alternative but to dismiss Mr Davidson.
- 5.2     Mr Tailby reported that in July 2005 work had begun on a project at Elizabeth College. Up to that point he had been happy with the quality of work produced by Mr Davidson. He had cause to make casual comments regarding Mr Davidson's work previously but no more.

- 5.3 The insulation work on Elizabeth College was found to be inaccurately applied and had to be rectified leading to the job taking double the man hours that should have been required, an increase which could not be charged to the client.
- 5.4 Mr Tailby advised that before he was able to deal with the matter he broke his arm and therefore could not address the problem until his return to work.
- 5.5 Asked why his foreman could not attend to this disciplinary matter in his absence, Mr Tailby advised that it was not the sort of level of supervision that he delegated to Mr McCloy.
- 5.6 Mr Davidson continued to work for the company without any warning or comment regarding the quality of his work.
- 5.7 In September 2005, Mr Davidson was working on a plastering job that was found to be substandard by Mr McCloy and Mr Tailby.
- 5.8 Asked why he did not discipline by means of a warning, Mr Tailby responded that he felt trust and confidence had broken down. He would ordinarily warn for lack of punctuality and such matters but not in relation to such a serious lack of quality of work. He had thought of charging Mr Davidson for the financial loss but decided instead that it was better if he let Mr Davidson go.
- 5.9 Because of the seriousness of the faulty workmanship Mr Tailby said he regarded the matter as a dismissible offence, as Mr Davidson had failed in his duty of care.
- 6.0 Applicant's Submission**
- 6.1 Mr Davidson reported that he enjoyed his work with Technical Building Services and was given no indication by Mr Tailby or Mr McCloy that his work was anything but satisfactory.
- 6.2 The date of his dismissal was the first indication he had that Mr Tailby was unhappy with his work.
- 6.3 On 29 September, Mr Davidson was dismissed when he was called to the office and told by Mr Tailby that due to his poor workmanship he was "letting him go". When he asked Mr Tailby for details of the poor workmanship he was advised that it was in relation to the insulation work on Elizabeth College, which he had finished six weeks earlier and on the plastering work job he was working on that week.
- 6.4 Mr Davidson tried to protest and said that the work he referred to regarding the current plastering job was being done by a colleague, Mr Davidson stated that he had told this colleague that the work looked incorrect; Mr Tailby dismissed his protest advising that he, Mr Davidson, was on the site and that was good enough for him. Mr Davidson also tried to protest that the Elizabeth College work was finished weeks previously, but to no avail.
- 6.5 Mr Davidson also reported that he was untrained in the insulation work that was installed at Elizabeth College and was doing the work under the supervision of the foreman, Mr McCloy.

## **7.0 Conclusions**

- 7.1 Technical Building Services is a small company, with a fluctuating number of staff, that relies upon its reputation for survival. Whilst poor quality of work is a serious matter for a small company such as Technical Building Services and each employee has a duty of care to provide good quality of work in a timely manner, those employees are also entitled to be advised in a fair, equitable and timely manner when their workmanship falls below the accepted standards and given an opportunity to improve.
- 7.2 It is clear from Mr Tailby's account of the events that led to Mr Davidson's dismissal that no warning had been given to Mr Davidson, in spite of Mr Tailby's claim that Mr Davidson had a long track record of poor workmanship; however, he also said that up to July 2005 he had been happy with the quality of work produced by Mr Davidson, this was when the work on Elizabeth College began.
- 7.3 Even though Mr Tailby broke his arm at the time when Mr Davidson was undertaking this project and he said he was therefore unable to discipline Mr Davidson, the Adjudicator finds it hard to believe that he could not have attended a meeting with Mr Davidson and Mr McCloy to deal with the matter, or have written to him to advise that a meeting would be held on his return.
- 7.4 No immediate meeting was held on Mr Tailby's return to work and consequently Mr Davidson was continuing to work unaware of the allegations of his poor workmanship.
- 7.5 In allowing Mr Davidson to continue to work and compound his alleged poor workmanship the matter had increased to a level where Mr Tailby felt compelled to dismiss. In doing so Mr Davidson was not allowed the opportunity to redress any failings and prevent his dismissal.
- 7.6 When dismissing Mr Davidson, Mr Tailby ignored his protests and suggestions that others had done the plastering work, therefore suggesting inadequate investigation into the facts of the matter.

## **8.0 Decision**

- 8.1 I find that Mr Robin Davidson was unfairly dismissed. There is compelling evidence that Mr Tailby of Technical Building Services Limited expected a duty of care from his employees towards their work but disregarded their rights to a fair disciplinary process. Mr Davidson was dismissed without proper investigation into Mr Davidson's claims of inaccuracies in the evidence for his poor workmanship, without recourse to any form of warning system, and without any form of appeal against the dismissal and I therefore make an award of £7,198.13 under this claim.
- 8.2 I find that Mr Tailby did produce a written statement of the reason(s) for dismissal and therefore make no award for this element of the claim.

Signature of Adjudicator:

Ms Georgette Scott

Date:

18/01/06