

**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 27th January 2005

between

Applicant: Mr Gary de Garis & Respondent: Brittain Hadley Partnership CI Ltd

Adjudicator: Mr Peter Woodward

Nature of Dispute:

Mr Gary de Garis claimed that he had been unfairly dismissed by reason of unfair selection for redundancy and lack of fair procedure.

The company denied the claim, asserting that in selecting Mr Gary de Garis for redundancy, and given the nature of his role, there was in essence a "pool of one" when considering who should be selected for redundancy.

The company further stated that given the small size of the company that it was not possible to apply the detailed redundancy procedures employed by larger organisations. Brittain Hadley held that having consulted the Board of Industry Code of Practice for Handling Redundancy (December 2001) they had followed the principles of fair procedure as detailed in section 10 of that document.

Adjudicator's Decision:

After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the Company I find that that Brittain Hadley Partnership CI Ltd. failed to demonstrate a fair and objective basis for redundancy selection and did not consult appropriately with Mr de Garis prior to his dismissal. I therefore find that the dismissal of Mr de Garis was unfair under the provisions of the Employment Protection (Guernsey) Law, 1998.

Amount of Award (if applicable): £11,691. 51

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.

Signature of Adjudicator

Mr Peter Woodward

Date

4/2/2005



EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998
REASONS FOR ADJUDICATOR'S DECISION

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998.

1.0 The Claim

- 1.1 The claim was brought by Mr Gary de Garis, the Applicant, against Brittain Hadley Partnership CI Ltd., the Respondent, for Unfair Dismissal.
- 1.2 Mr de Garis claimed in his EMPROT 1 that he had been unfairly dismissed by reason of unfair selection for redundancy and that there was lack of fair procedure in the dismissal process.
- 1.3 The Company denied the claim in their EMPROT 2 on the grounds that:
 - 1.3.1 He had been employed as a senior project manager and the projects that might have required senior project management skills had not subsequently materialised.
 - 1.3.2 Whilst Mr de Garis had acquired some building surveying skills that he was not a Chartered Surveyor and this prevented the Company from reallocating him to other duties.
 - 1.3.3 The nature of the work undertaken by Mr de Garis and the resultant fee invoicing was insufficient to enable the applicant to be cost effective.
 - 1.3.4 Given the size of the company and his senior position in the firm that he formed a "pool" of one.
 - 1.3.5 There had been "continuous dialogue" between Mr de Garis and one of the Directors with reference to the Company's financial state prior to the dismissal on July 6th 2004, and indeed Mr de Garis had indicated to this Director that he was seeking other employment outside Brittain Hadley. The company had formed the view that this constituted sufficient consultation.

2.0 Representatives

- 2.1 Advocate Paul Richardson of Collas Day represented Mr de Garis.
- 2.2 Mr Alan Fulford, a Director of Brittain Hadley, represented the Company.

3.0 Witnesses

3.1 For the Applicant

- 3.1.1 Mr Gary de Garis.
- 3.1.2 Mrs Julie de Garis.

3.2 For the Respondent

- 3.2.1 Mr Graham Hollingsworth.

4.0 Documents

- 4.1 A bundle of documents marked EE1 was tabled by the Applicant.
- 4.2 The Company tabled three bundles of documents, marked ER1, ER2, and ER3.

5.0 Findings of Fact

- 5.1 Mr de Garis was employed by Brittain Hadley from 24 June 2002 until 6 August 2004.
- 5.2 In June 2003 the firm's Director of Architecture and a senior Architect resigned to set up their own practice, and further staff departures followed, in total five employees left the Company around this time.
- 5.3 Project Management activity was reduced in 2003, however building surveying and other work continued to keep staff at the Company occupied in the latter part of 2003.
- 5.4 The Company continued to experience trading difficulties in late 2003 and into 2004 and as a consequence one of the two owner/directors announced his intention to retire.
- 5.5 A new owner/director (Mr Alan Fulford) was appointed in March 2004.
- 5.6 The two owner/directors, Mr Alan Fulford and Mr Graham Hollingsworth conducted a major review of every facet of the Company's activities through the months of April, May and June 2004.
- 5.7 At the conclusion of the business review the two owner/directors concluded that staffing costs were too high and reductions in cost had to be made.
- 5.8 Mr de Garis was dismissed on July 6 at a meeting that commenced at 5.45pm on that day at the offices of Brittain Hadley.

6.0 Evidence and Submissions

- 6.1 Mr Alan Hollingsworth on behalf of Brittain Hadley responded to questions put by Mr Alan Fulford.
- 6.2 Mr de Garis was introduced to him by Mr Peter Franklin. Whilst Mr de Garis had spent many years in Australia he was locally qualified and had specialised in Project Management. Mr de Garis was appointed on the basis of future projects which Brittain Hadley hoped to secure but were not yet confirmed. He stated that to the best of his knowledge Mrs de Garis had secured employment in Guernsey before she left Australia which in his opinion allowed Mr de Garis to take some risk in accepting a speculative role.
- 6.3 Mr Hollingsworth stated that the anticipated projects did not materialise due to very onerous indemnity clauses that were imposed on local contractors. He stated this was further complicated by the fact that Mr de Garis was not a Chartered Building Surveyor and indeed caused RBS to decline a proposal by the Company in 2003.
- 6.4 Once Mr de Garis joined the Company he undertook a range of other duties including:
- 6.4.1 Overseeing architectural work.
- 6.4.2 Marketing.

- 6.4.3 Preparing tenders.
- 6.4.4 Contract administration.
- 6.4.5 Resolving "end of contract" issues.
- 6.5 Mr Hollingsworth stated that the role offered to Mr de Garis was speculative due to the competition from UK practices and the practice of larger companies in providing their own Project Management resources. However he did not communicate the lack of firm Project Management assignments when Mr de Garis joined the Company in mid 2002 as he was still hopeful they would materialise.
- 6.6 Mr Hollingsworth drew attention to a copy of the Contract of Employment for Mr de Garis which could be found in the bundle EE1 and noted that it provided for Mr de Garis to assist other employees when reasonably required to do so.
- 6.7 Mr Hollingsworth described the difficult trading situation in late 2003 and his own personal commitment to keep the Company afloat by working extremely long hours. He stated everybody in the Company had to be flexible at this time.
- 6.8 Mr Hollingsworth stated he was familiar with Board of Industry Code of Practice on Redundancy as he consulted it in 2003 when he was anticipating the possible liquidation of the Company.
- 6.9 When asked if there had been verbal communication with Mr de Garis as to potential redundancy he stated that there had been ongoing discussions with Mr de Garis from mid 2003, often on a weekly basis. Attention was drawn to "Footnote 6" in ER1 which indicated that Mr de Garis was very aware of the risks to his continuing employment with Brittain Hadley in October 2003. Mr Hollingsworth also stated that he had offered lodgings to Mr and Mrs de Garis from mid 2002 onwards in his own house and that this led to close contact with them and frequent discussions as to the situation with Brittain Hadley as they shared meals and often spent the evenings together.
- 6.10 Mr Hollingsworth stated that in those ongoing discussions both he and Mr de Garis had instigated the topic of precarious job security for Mr de Garis. In addition he had had been made aware by Mr de Garis of his job applications to other organisations including "Comprop".
- 6.11 Mr Hollingsworth was asked if Mr de Garis could have qualified as a Chartered Surveyor and he stated that this should have been possible via a "Fast Track" process with the appropriate examining body. He stated the process would have required a record of professional development, a thesis, and an interview.
- 6.12 When asked if the Qualified Chartered Surveyor status for Mr de Garis would have made a difference to the situation he stated that it would have assisted in that Mr de Garis would not have needed to be supervised in his surveying role and that the Company might have gained more work. Mr Hollingsworth indicated that Mr de Garis might have obtained this level of qualification in Project Management. Attention was drawn to "Footnote 8" in ER1 and clauses 6.2.3 and 6.23.3 in this document as supporting evidence.

- 6.13 Mr Hollingsworth was asked if Mr de Garis had sought to obtain Chartered status and responded that to his knowledge Mr de Garis had not pursued this qualification.
- 6.14 **Cross Examination by Advocate Richardson**
- 6.14.1 Mr Hollingsworth confirmed that prior to the recruitment of Mr de Garis that the Company had conducted work in three areas, Architecture, Projects and Chartered Building work. The project work was varied including work on the "Market Development", "The Bordage", "Ansbacher HQ Building", "The Royal Hotel Site, and in Poland. This project work was carried out by Mr Hollingsworth, Mr Brittain and by architects.
- 6.14.2 Mr Hollingsworth confirmed that a Mr Mathew Le Poidevin had joined the Company on a part time basis in September 2003 and had become full time in March 2004, but stated that he did not have a Project Management role, he had been employed as a part time Clerk of Works.
- 6.14.3 Mr Hollingsworth was asked if he ever had reason to complain to Mr de Garis as to the quality of his work and he stated that this had never been the case and that he had relied on Mr de Garis as his second in command during late 2003 and early 2004.
- 6.14.4 Advocate Richardson asked Mr Hollingsworth if there had ever been a discussion re Mr de Garis injecting cash into the Company and Mr Hollingsworth stated that he had not instigated such discussions and that Mr de Garis had stated that he would not wish to invest cash into the Company.
- 6.14.5 Mr Hollingsworth confirmed that Mr Fulford joined the Company as a Director in March 2004, had injected some cash into the Company and together with Mr Hollingsworth had commenced a full business review. He stated that Mr de Garis was not involved in this review.
- 6.14.6 Mr Hollingsworth confirmed that as part of this review the decision was taken to make Mr de Garis redundant.
- 6.14.7 Advocate Richardson put it to Mr Hollingsworth that there had been no communication of the redundancy decision to Mr de Garis until Mr de Garis was given the letter of redundancy on the 6 July 2004. Mr Hollingsworth denied this and stated there had been regular discussions with Mr de Garis, typically on a fortnightly basis, as to the security of his role and workload.
- 6.14.8 Advocate Richardson asked Mr Hollingsworth if he recalled a discussion on the evening of the 4th July 2004 with Mr and Mrs de Garis when they raised the issue of job security for Mr de Garis. Mr Hollingsworth stated that he had come from the airport that evening and was feeling ill; he had no recollection of such a meeting taking place, neither did he recall stating that Mr de Garis should not be concerned re job security as a big commission was coming in. He stated he would have been foolish to make such a statement.
- 6.14.9 Advocate Richardson asked Mr Hollingsworth when in his opinion had the business review concluded and Mr Hollingsworth stated that the review was concluded when they gave Mr de Garis his letter on the 6 July 2004.

- 6.14.10 Mr Hollingsworth stated that he had met with Mr Fulford on the morning of the 6th July 2004 to confirm the redundancy of Mr de Garis but that there was no written memorandum or notes as to what was decided. He further confirmed there was no attempt to discuss the impending redundancy with Mr de Garis during that day. He stated that having reviewed the BOI code of practice for Handling Redundancy that he believed they had complied with this code and no further discussion was necessary.
- 6.14.11 Mr Hollingsworth stated in response to a question from Advocate Richardson that he had discussed the pool of employees from which the selection had been made. He stated that they had considered the entire technical staff, and had also considered the total Company except the directors.
- 6.14.12 Advocate Richardson put it to Mr Hollingsworth that this testimony was at variance with the Company statement in the EMPROT 2 that had stated there was a pool of one, namely Mr de Garis. Mr Hollingsworth responded that whilst they considered all the employees they selected the Project Management role as a pool of one.
- 6.14.13 Advocate Richardson asked Mr Hollingsworth to describe the criteria that was applied to all the employees when they were all considered as part of the pool. Mr Hollingsworth responded that they considered the skills, workload, staff costs and whether a redundancy would make sense, but he also confirmed that there was no written record of these deliberations or the application of these criteria to the staff.
- 6.15 Further responses to additional questions put to Mr Hollingsworth by Mr Fulford**
- 6.15.1 Mr Hollingsworth was asked if on joining the Company Mr de Garis had been aware that current project management activities were in the process of completion and that there were no new confirmed projects. Mr Hollingsworth stated that Mr de Garis was fully aware of this situation and was advised to seek new projects as part of his personal marketing efforts. Mr Hollingsworth reiterated that Mr de Garis knew his role was speculative.
- 6.15.2 Mr Hollingsworth was asked to give further detail of his consultations with Mr de Garis. Mr Hollingsworth stated that Mr de Garis had often commented on lack of work and was openly seeking alternative employment. Also he stated that due to their sharing a house there were frequent discussions with Mr de Garis as to his continuing job security and that he actively encouraged Mr de Garis to become involved in other aspects of the Company activity and to become professionally qualified.
- 6.15.3 When pressed on the issue of employee pools Mr Hollingsworth stated that the BOI Code of Practice did not refer to pools of employees in section 10 of that document.
- 6.15.4 When asked as to the reason for Mr de Garis to quit the office immediately on being notified as to his redundancy Mr Hollingsworth stated that Mr de Garis had access to confidential data and it was not appropriate for him serve his notice.

6.16 Statement by Mr Fulford from Witness Stand

- 6.16.1 The review was conducted to include all employees, Mr de Garis was not individually targeted.
- 6.16.2 Mr Fulford commented on the economic rationale for the redundancy of Mr de Garis and he stated that the Company used a salary multiplier of 2.8 as a satisfactory return on any fee-earning employee. He stated that Mr de Garis was consistently and significantly below this level of fee earning. Refer to ER1 paragraphs 14 through 17 of the statement by Brittain Hadley on page three.
- 6.16.3 Mr de Garis had been engaged on low value projects in 2004.
- 6.16.4 No requirement in section 10 of the Code of Conduct to consider a pool of employees.
- 6.16.5 Lack of Chartered Surveyor status was a significant disadvantage for Mr de Garis in a senior role and he did not seek to close the gap by obtaining this qualification. Mr Fulford drew attention to the insurance indemnity requirements for qualified personnel.
- 6.16.6 In sharing a house with Mr Hollingsworth there was frequent opportunity for consultation and there is no definition of consulting in the code.
- 6.16.7 The Company took all reasonable steps to protect his employment by involving Mr de Garis in other activities.

6.17 Cross Examination of Mr Fulford by Advocate Richardson

- 6.17.1 Mr Fulford was asked if any staff had been recruited since the redundancy of Mr de Garis and he responded that they had hired an architect.
- 6.17.2 Mr Fulford was asked if he was aware of the BOI code of practice prior to the dismissal of Mr de Garis and replied that he had been aware of the code.
- 6.17.3 Advocate Richardson asked if Mr Fulford had given thought to developing a redundancy procedure prior to the dismissal of Mr de Garis and Mr Fulford stated that he had not.
- 6.17.4 Mr Fulford agreed with Advocate Richardson that to his knowledge no notes or records were kept as to conversations between Mr Hollingsworth and Mr de Garis in relation to possible redundancy.
- 6.17.5 Mr Fulford was asked if he had consulted with Mr de Garis personally in relation to the proposed redundancy and Mr Fulford confirmed that no such consultations had taken place and did not think it appropriate that he should consult.
- 6.17.6 Advocate Richardson asked if Mr Fulford had made the decision to make Mr de Garis redundant on the 6th July 2004. Mr Fulford replied that the decision was made with Mr Hollingsworth on the 2nd July 2004 and that the testimony from Mr Hollingsworth was incorrect on this matter.
- 6.17.7 When Mr Fulford was questioned by Advocate Richardson as to whether he believed that he complied with the BOI Code of Practice he stated that he was

sure that Brittain Hadley had complied with the principles of the code in relation to small companies.

- 6.17.8 Advocate Richardson enquired as to why in an official tender to the States of Guernsey which was referenced in Tab 8 of EE1 that Mr Matt Le Poidevin had been termed a Project Manager. Mr Fulford stated that this was an oversight on his part.
- 6.17.9 Advocate Richardson asked Mr Fulford if he had considered offering reduced hours or salary to Mr de Garis rather than make him redundant. Mr Fulford stated that this was not a consideration as the Company had the capacity to perform all his duties after his redundancy.
- 6.18 Mr de Garis gave testimony as follows in response to questions from Advocate Richardson**
- 6.18.1 Mr de Garis confirmed he had joined Brittain Hadley as he perceived there were a number of Project Management opportunities in Guernsey and that Brittain Hadley had such opportunities on their books.
- 6.18.2 Mr de Garis stated that his wife did not have an offer of employment in Guernsey prior to leaving Australia and that he did not view his role with Brittain Hadley to be speculative. He stated that he would not have uprooted himself and his wife from Australia if he had viewed the role as speculative.
- 6.18.3 Mr de Garis confirmed that he and his wife had taken lodgings with Mr Hollingsworth in mid 2002 and had paid an appropriate rent.
- 6.18.4 Mr de Garis stated that he commenced work with Brittain Hadley in June 2002 and whilst he expected to undertake Project Management found that he was given other activities such as Building Survey work, Evaluation Studies in Alderney and Lease Termination for the Prudential.
- 6.18.5 On the issue of the quality of his work for Brittain Hadley he considered he had met all required standards and referred to Tab 9 in EE1 which contained a reference from Brittain Hadley after his redundancy on the 6th July 2004.
- 6.18.6 Mr de Garis was asked to comment on his potential to obtain a Chartered Surveyors qualification (RICS) and stated that he had contacted the appropriate body in 2002 on his own initiative. The response from RICS was not clear in his opinion and due to intense work pressures the issue fell by the wayside. He then subsequently contacted the local college authorities in May 2004 and they stated he could become a "member" of the appropriate body; however the redundancy occurred before this could be progressed. Mr de Garis stated that he had never been quizzed by Directors on this issue and it was not communicated to him that membership of the RICS would assist his future job security.
- 6.18.7 Mr de Garis stated that until Mr Fulford arrived in March 2004 he had been fully involved in discussions as to the future of the Company, but after March 2004 he was excluded from any such discussions, he was no longer consulted on possible market opportunities, people issues or work issues.
- 6.18.8 Advocate Richardson asked Mr de Garis if prior to 6th July 2004 he had been told he might be made redundant. Mr de Garis stated very clearly that no such indication had been made to him.

- 6.18.9 Turning to the evening of July 4th 2004 Mr de Garis alleged that there was a discussion between himself, his wife and Mr Hollingsworth. During this alleged conversation he asked Mr Hollingsworth if there was anything he should know arising from the business review. The alleged response from Mr Hollingsworth was to refer to "usual financial issues" but no indication of impending redundancy.
- 6.18.10 Advocate Richardson referred Mr de Garis to Tab 3 EE1, The Notice of Redundancy and asked when was Mr de Garis given this letter? Mr de Garis stated he was given the letter at 5.45 pm in a meeting with Mr Alan Fulford. Mr de Garis stated that he was shocked and "gobsmacked" by this act as there had been no prior warning of this event. Mr de Garis stated that despite his shock he thanked Mr Fulford for his directness and asked what compensation he would receive. Mr Fulford stated he would receive his contractual one month's notice and that he was required to vacate the office in fifteen minutes. Mr de Garis stated that he was shocked by this demand and asked why, but received no reason for needing to vacate the office. Mr de Garis added that he was not requested to make a handover to any other employees of his work or write any form of status report.
- 6.18.11 Mr de Garis stated that as he could not take all his possessions with him on the evening of the 6th July he returned to the office the following morning. He was confronted by Mr Fulford who told him not to touch the computer system and that he should leave the office within fifteen minutes.
- 16.18.12 Mr de Garis stated that whilst he understood that there was a "metric" relating his salary to fees earned he was not told that failure to meet the metric would result in redundancy.
- 16.19 Cross examination of Mr Gary De Garis by Mr Alan Fulford**
- 16.19.1 Mr de Garis agreed that his role in June 2004 was made up of "bits and pieces", however he stated that he could only undertake the work he was allocated by the Directors.
- 16.19.2 Mr Fulford asserted that Mr de Garis had been involved in the business review by being asked to submit projections of three to six month future workload and by being involved in discussions re the billing of future jobs, and finally that he had attended team meetings to discuss workload. Mr de Garis agreed that he had provided data on request but denied that he had attended any team meetings which discussed workload.
- 16.19.3 Mr Fulford asserted that he had given Mr de Garis the opportunity to talk with him. Mr de Garis stated he did not recall this.
- 16.19.4 Mr Fulford stated that Mr de Garis had access to Company computer systems, client lists, and commercially sensitive data. Mr de Garis agreed the first two points but denied he had access to commercially sensitive data.
- 16.19.5 Mr Fulford asked Mr de Garis if he could be mistaken as to the date of the meeting with Mr Hollingsworth (i.e. 4th July 2004) Mr de Garis stated there was no room for doubt. Mr Fulford then asked Mr de Garis if a question as to job security was an inappropriate question to put to Mr Hollingsworth at his home. Mr de Garis stated that Mr Hollingsworth should not have misled him by stating

that a big new opportunity was in prospect and that he should not have concerns re his job security.

6.20 Adjournment

6.20.1 At this point in the proceedings Mr Fulford expressed dissatisfaction with the hearing. He stated that he had not received the Applicant's bundle until the 24th of January and that consequently he had been at a disadvantage in preparing the case for his Company. He also stated that some of the testimony during the hearing had been unexpected and was at variance with the testimony of himself and Mr Hollingsworth. He stated that he needed more time to refute statements that had been made.

6.20.2 The hearing was reconvened and Mr Fulford immediately requested that he make a statement. He proceeded to inform me that he had reflected on the hearing process and was, on reflection, fully satisfied with the process. He stated that without reservation he withdrew any complaint.

6.20.3 I responded that it was very important that all relevant issues must be given consideration and that, if he wished, we could recall Mr Hollingsworth for a further examination. Mr Fulford stated that this was not necessary and that we should proceed with the rest of the hearing.

6.21 Testimony of Mrs de Garis led by Advocate Richardson

6.21.1 Mrs de Garis confirmed that a discussion did occur between Mr Hollingsworth, herself and her husband on the evening of the 4th July 2004 and that Mr Hollingsworth had not led her husband to think that he should have concerns as to job security.

6.21.2 Mrs de Garis confirmed the first she knew as to the redundancy of her husband was on the evening of the 6th July 2004.

7.0 Closing Statements

7.1 Mr Fulford

7.1.1 Following a full business review there was no choice but to make Mr de Garis redundant.

7.1.2 Testimony by himself and Mr Hollingsworth made it clear why it had to be Mr de Garis rather than any other member of staff who had to be made redundant.

7.1.3 Brittain Hadley followed the three principles outlined in the BOI code of practice when small companies had to make employees redundant. The decision did not come totally out of the blue for Mr de Garis and the ongoing discussions with Mr Hollingsworth should be considered as appropriate consultation.

7.1.4 Mr de Garis did not have enough work to keep him occupied and despite attempts to involve him in other work this was to no avail.

7.1.5 Subsequent experience post the redundancy proved that his work could be absorbed by other staff and proved the redundancy was justified.

7.2 Advocate Richardson

- 7.2.1 Mr de Garis was hired as a Project Manager; however there is disagreement as to whether the role was speculative. If the inference is that the role was always under threat of redundancy this is disputed.
- 7.2.2 Mr de Garis joined the Company as generalist and was mostly used as such during the whole of his employment.
- 7.2.3 It is accepted by the Applicant that there was a degree of communication between him and Mr Hollingsworth in late 2003 as to the state of the Company, however with the arrival of Mr Fulford in March 2004 all such communication appears to have dried up.
- 7.2.4 It is accepted that Mr de Garis knew that a review was being conducted in the period March 2004 to July 2004, but did not know much beyond this. An employee may know a Company is ailing but this does not meet the test of consultation during which an employer should use his best efforts to mitigate the impact of the redundancy.
- 7.2.5 Mr de Garis has stated very clearly that the first he knew of a redundancy situation was on the evening of 6th July 2004.
- 7.2.6 Testimony has been given by the Respondents that the decision was made to make Mr de Garis redundant on the 2nd July, however when Mr de Garis asked for an update on the 4th July there was no attempt to describe the potential redundancy or consult with him.
- 7.2.7 The Applicant contests that this was a genuine redundancy. With reference to page 65 EE1 the two tests stated in this document are not met. Firstly with reference to paragraph (a) the Company continued to act as Project Managers and with reference to paragraph (b) Mr de Garis operated in a generalist role and it is not suggested that the generalist role diminished.
- 7.2.8 If the assertion in section 7.12 is not accepted then the question still remains - did the employer act reasonably and act in accordance with the guidance set out in pages 3, 4, 5 and 6 of this code? Mr Fulford has stated that pool procedures were irrelevant, however the totally confusing testimony and submissions given by the Respondents does not support this statement. Evidence given shows that the Directors were totally confused as to what approach they should have taken. Equally the assertion that the generalised discussions with Mr de Garis in late 2003 should stand as adequate consultation does not seem to meet the aims of the Code of Practice. Finally Mr de Garis was given no opportunity to explore the possibility of downgrading, reduced salary or part time working.
- 7.2.9 The cessation of employment for Mr de Garis was arbitrary and sudden. Attention was drawn to UK Authorities in the bundle EE1 tab 10. In the case of Polkey V A Dayton services the House of Lords noted that when a branch manager called Mr Polkey out of the blue and handed him his redundancy notice and then had Mr Polkey driven home immediately that the tribunal had characterised this as "There could be no more heartless disregard of the code of practice than that".

- 7.2.10 The adjudicator reminded all present that whilst such Authorities indicated how a similar case might have been judged in the UK the findings of such cases are not binding on the adjudication of this case.

8.0 Conclusions

- 8.1 There was clearly some conflicting evidence in the submissions made by the Applicant and the Respondent.
- 8.2 It is evident that Brittain Hadley experienced a difficult trading situation in the period late 2003 to mid 2004.
- 8.3 Testimony from both parties confirms that whilst Mr de Garis was appointed with the job title Senior Project Manager that he undertook a wide range of other duties during his period of employment with Brittain Hadley.
- 8.4 The submission by the Respondents that the role was understood to be speculative and that consequently Mr de Garis should have understood that his role was always under threat of redundancy does not seem credible. The facts are that Mr de Garis remained in his role for over two years and has testified that as late as the 4th July 2004 Mr Hollingsworth had informed him that new opportunities were in prospect. Also Mr Fulford had joined the Company in March 2004 and had injected new cash into the business, Mr de Garis might reasonably assume in the absence of any firm information from either Director that the Company would continue to employ him.
- 8.5 The Respondents suggested that Mr de Garis added to the precariousness of his position by not pursuing professional qualifications. However even if this was so I am persuaded from his testimony that Mr de Garis did not have this issue sufficiently drawn to his attention, or the possible implications.
- 8.6 There is confused testimony from the Respondent as to whether a pool of employees should have been considered or whether Mr de Garis was undertaking responsibilities which effectively made him a "pool of one". I am persuaded that insufficient attention was given to this issue and that there was overlap between the role of Mr de Garis and others employed by the Respondent. Indeed Advocate Richardson has suggested that due to the continuance of Project Management activity after the July 6 departure of Mr de Garis that the Company did not have a redundancy situation as defined by the Guernsey Law. I am nevertheless persuaded that there was a diminution of work within Brittain Hadley in mid 2004, however there is little clarity as to whether this was related solely to work conducted by Mr de Garis prior to the redundancy. I am persuaded that there was not a fair and objective basis for redundancy selection.
- 8.7 The Applicant suggests that Mr Hollingsworth should have responded with clarity on the 4th July in response to questions as to job security. I am mindful that this discussion was held in Mr Hollingsworth's house and that he might have felt constrained to answer fully. However the testimony from Mr de Garis would seem to indicate that Mr Hollingsworth responded with an overly optimistic view of the situation.
- 8.8 The Respondents held that regular discussions between Mr de Garis and Mr Hollingsworth were a sufficient communication to satisfy the principle of consultation before final decisions were reached. Having considered the

testimony of both parties I am not persuaded that Mr de Garis was consulted appropriately as to a potential redundancy situation.

8.9 Turning to the nature of the redundancy communication it would seem that Mr de Garis was genuinely shocked and surprised by the way in which the communication of the redundancy occurred on the 6th July. At this critical moment the employer did not extend any opportunity for Mr de Garis to explore alternatives and indeed he was asked to vacate the office within 15 minutes after two years of good and faithful service. One could take the view that at 5.44pm of that evening he is apparently a trusted and senior employee performing his role to the best of his ability however by 6.00 pm he is required to be off the premises and have cleared his desk. The intent of the code of practice is to ensure that redundancy situations are dealt with with dignity and that the employer should show concern for the affected employee. This was clearly not demonstrated in this case and I am not persuaded that the Company took all reasonable steps to avoid or minimise redundancy as set out in the BOI code of practice.

8.10 There was no provision for Mr de Garis to make any kind of internal appeal as to his redundancy. Given the small size of the Company, and testimony from Mr Fulford that established that there were no non executive directors to hear such an appeal, it was probably not practical. However the lack of an appeal process would seem to place any even greater weight on Brittain Hadley to follow a fair process.

9.0 Decision

9.1 After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the Company I find that that Brittain Hadley Partnership CI Ltd. failed to demonstrate a fair and objective basis for redundancy selection and did not consult appropriately with Mr de Garis prior to his dismissal. I therefore find that the dismissal of Mr de Garis was unfair. In accordance with the provisions of the Employment Protection (Guernsey) Law, 1998, I award Mr Gary de Garis three month's pay, namely £11,691.51.

Signature of Adjudicator: Mr Peter Woodward

Date:

4/2/2005.