



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 7 April, 2005**

**between**

**Applicant: Mr Patrick Hanley**

**Respondent: Jacksons (C.I.) Limited**

**Adjudicator: Mrs Carol Harvey**

**Nature of Dispute:**

**Mr Hanley made a claim against Jacksons (C.I.) Limited that he had been unfairly dismissed under Section 5(2)a of the Employment Protection (Guernsey) Law, 1998.**

**Mr Gary Rouget, General Manager of Jacksons (C.I.) Limited, maintained that Mr Hanley had been fairly dismissed under one of the potentially fair reasons under Section 6(2) of the Law.**

**Adjudicator's Decision:**

**Having considered all the evidence presented and the representations of the parties, and having due regard to all the circumstances, I consider that a dismissal occurred and that, although there was evidence that over a period of time there were grounds for dismissal under Section 6(2) of the Law, the failure of the Respondent to follow a fair and reasonable procedure, as set out in the Company Disciplinary Policy & Procedure, undermined the Applicant's ability to defend himself. Therefore I uphold Mr Hanley's claim of unfair dismissal.**

**Amount of Award (if applicable) : £7,271.57**

**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: Mrs Carol Harvey**

**Date: 13/04/05**



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

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

**1. The Claim**

- 1.1 The Applicant, Mr Patrick Hanley, made a claim under the Law arising from his employment as a Car Sales Executive for Jacksons (C.I.) Limited.
- 1.2 Mr Hanley claimed that the actions of the Respondent have given grounds for him to make a claim of unfair dismissal under Section 5(2)a of the Law and that the Respondent had failed to follow a fair procedure as detailed in the Company Disciplinary Policy & Procedure, or to follow the Department of Commerce and Employment's Code of Practice, and that therefore he had been unfairly dismissed.
- 1.3 The Respondent, Jacksons (C.I.) Limited contested the claim arguing that the dismissal had been fair under Section 6(2) of the Law.

**2. Representatives**

- 2.1 Jacksons (C.I.) Limited was represented by Mr Gary Rouget, General Manager.
- 2.2 Mr Patrick Hanley was assisted by Mr Gary Bynam who also confirmed that he would not be called as a witness, as originally advised to the Secretary to the Adjudicators.

**3. Witnesses**

- 3.1 For the Respondent:  
Mr John Cooke, Sales Controller

**4. Documents**

- 4.1 **Entered by the Applicant**  
A bundle of documents, marked EE1  
An extract from the company handbook, marked EE2
- 4.2 **Entered by the Respondent**  
A bundle of documents, marked ER1

## **5. Findings of Fact**

- 5.1 Mr Patrick Hanley was employed by Jacksons (C.I.) Limited as a Car Sales Executive from 1 February 2003 to 12 February 2005.
- 5.2 A dismissal took place and Mr Hanley met the eligibility criteria to make a claim of Unfair Dismissal.
- 5.3 The effective date of termination was 12 February 2005.

## **6. Clarification of Salary Details**

- 6.1 As there was a disparity regarding the amount of salary paid over a three month period, this matter was dealt with prior to hearing evidence relating directly to the termination of employment.
- 6.2 Mr Hanley had based his calculation of salary on the months October, November and December amounting to a figure of £8,037.68.
- 6.3 Jacksons (C.I.) Limited had based their calculation of salary on the months November, December and January amounting to a figure of 7,271.57.
- 6.4 Mr Bynam confirmed on behalf of Mr Hanley that he had based his calculation on the wrong three-month period and that the period and figure stated by the Respondent were accurate.

## **7. Respondent's Submission of Evidence**

### **Mr Gary Rouget**

- 7.1 Mr Rouget, General Manager, opened the case on behalf of Jacksons (C.I.) Limited, by referring the Hearing to the letter confirming notice of termination to the Applicant dated 13 January 2005.
- 7.2 He stated that this gave the reasons for the termination of employment and that these were related to his conduct in how he performed his role as a Car Sales Executive and not his ability.
- 7.3 He stated that the Applicant's performance had been monitored over a period of time, mainly through the reports produced following "Mystery Shops" by both SEAT (UK) and Mitsubishi (UK) representatives.
- 7.4 These reports had been discussed informally with the Applicant and no formal record had been kept of these discussions.
- 7.5 Mr Rouget made reference to an incident which occurred during April 2004, relating to the Applicant leaving a vehicle unlocked with the

windows down and the engine running, outside of the Company premises at the close of business.

- 7.6 Reference was also made to a transaction which had been completed by the Applicant during April 2004, where he had approved a valuation of a vehicle without referring back to the Sales Controller for approval and which the Respondent believed resulted in a loss of a £2,000 profit margin. This incident was also considered to be one of gross misconduct.
- 7.7 Following these incidents, Mr Rouget confirmed that a formal verbal warning had been given to the Applicant. The warning had been given when he had been called to a meeting, where the contents of a formal letter were read, the Applicant was then given a copy of this letter and offered the opportunity to discuss the contents. (a copy of the letter dated 22 April 2004 is in Bundle ER1).
- 7.8 Mr Rouget stated that the two incidents were considered to be serious gross misconduct issues and also stated that following the discussions the Applicant acknowledged that they were serious matters. It was confirmed that no formal records were kept of these discussions.
- 7.9 Mr Rouget confirmed that as far as he was aware it was normal practice for a pre-prepared letter to be issued and read verbatim prior to any discussions taking place.
- 7.10 It was clarified by Mr Rouget that, between April 2004 and January 2005, no further formal meetings were held with the Applicant regarding his performance or the issues which had arisen as a result of the "Mystery Shops". Any matters were discussed on an informal basis with no records being maintained.
- 7.11 In response to questions asked, regarding the Company Disciplinary Procedure, Mr Rouget confirmed that this formed part of the Contract of Employment.

**Mr Bynam questioned Mr Rouget**

- 7.12 Mr Bynam began by asking questions relating to the Applicant's reliability and appearance in the workplace. The Respondent confirmed that both were of acceptable levels and that there were no issues relating to either point.
- 7.13 In response to questions relating to the training received by the Applicant, the Respondent confirmed that Mr Hanley had attended some courses in relation to products, including a two-day course, but that the majority of the training occurred on a daily basis within the role.

- 7.14 With regard to questions relating to appraisals, the Respondent confirmed that no formal appraisal had taken place.
- 7.15 In response to questions relating to serious complaints from customers, the Respondent again confirmed that there was no written evidence of any formal complaints and that the issues had arisen from the reports produced as a result of the "Mystery Shops".

## **8. Applicants Submission of Evidence**

- 8.1 Prior to the Applicant submitting his evidence, at the request of the Respondent it was confirmed by the Adjudicator that she was aware that a complaint of Unfair Dismissal had also been lodged by Mr Bynam against the Respondent and that matters relating to this complaint were not relevant during this Hearing.
- 8.2 The Respondent confirmed that they did not have issue with Mr Bynam assisting the Applicant with the delivery of his case.
- 8.3 The Applicant began by stating that up to the time of the termination he was not aware of any issues relating to his performance or of any reasons for there to be any problems or concerns. He stated that he believed that he was in fact one of the top sales executives.
- 8.4 The Applicant confirmed that he had been requested to attend a meeting in April 2004 and that, during this meeting a letter was read out to him by the Respondent listing the issues and confirming that a verbal warning was being given.
- 8.5 The Applicant acknowledged that he had left the vehicle running and unlocked and that potentially it could have been taken and that this was a serious offence.
- 8.6 With regard to the valuation of a vehicle and the subsequent transaction, the Applicant stated that he believed that, in the absence of the Sales Controller, he had the authority to agree the deal and therefore did not agree that this was an error.
- 8.7 Referring back to the meeting in April 2004, the Applicant stated that he had not been given prior warning of the meeting and that subsequent to that meeting he had not been requested to attend any further meetings between April 2004 and his dismissal in January 2005.
- 8.8 With regard to the dismissal, the Applicant stated he had been advised by Mr John Cooke that Mr Gary Rouget wished to have a word with him in the office, when he asked if he had 'done something wrong', no response was given.

- 8.9 The Applicant stated that at the meeting he was advised by Mr Rouget that he was being 'let go' and that this was due to his performance. He also stated that he was advised that he would be requested to leave immediately and that he would not be required to work his notice period.
- 8.10 The Applicant stated he was surprised by this, particularly as he believed he was one of the top sales executives, an opinion he had gained from the information on the sales board which, he stated, showed on several occasions he was either top or second salesman; this personal view was affirmed as no issues or concerns had been brought to his attention prior to the meeting.
- 8.11 The Applicant confirmed that, during the meeting, he was given a letter advising him that his employment had been terminated and the reasons for it, but that as he became very upset and emotional he did not immediately read the letter, but waited until he got home.
- 8.12 At the end of meeting, the Applicant went back to his desk and was accompanied by Mr Cooke, who advised him of a potential opening with another car sales company and that he would be happy to help him obtain this role.
- 8.13 In response to questions from the Adjudicator, the Applicant confirmed that he had not received prior notification of the meeting; nor had he been notified that he may be accompanied at such a meeting and that he had a right of appeal against the decision that had been made - both entitlements laid down by the company's own Disciplinary Procedure. He also stated that he was surprised that he was requested to leave immediately and not required to work his notice.

#### **Mr Rouget questioned the Applicant**

- 8.14 Mr Rouget asked questions relating to the valuation of a vehicle, the subsequent agreement made with a purchaser, and whether or not the Applicant would normally make decisions which impacted on the profit that the company would make without referring in the first instance to the Sales Controller, Mr John Cooke.
- 8.15 In response the Applicant stated that when Mr Cooke was away from work or on a day off, then he would make this type of decision.
- 8.16 Mr Rouget stated that this should not have been the practice and that as a result the Company had made a considerable loss on the vehicle.

## **9 Closing Statements**

### **Mr Gary Rouget**

- 9.1 Mr Rouget stated that he had nothing further to add to what had already be stated or asked, apart from to confirm that the Company had made a vehicle available to the Applicant for the period of his notice in order that it would be easier for him to travel and find alternative employment.
- 9.2 In response to questions put by the Adjudicator, Mr Rouget confirmed that the Applicant had not been given the opportunity to appeal against the dismissal and that during the period April 2004 to January 2005, no further meetings had been held.
- 9.3 He further confirmed that, whilst he was aware the Company had a disciplinary procedure he was not fully aware of the process.
- 9.4 Mr Cooke confirmed that a heated conversation had taken place with the Applicant as a result of a video, made during training given by one of the motor car companies, which demonstrated the poor levels of customer service the Applicant displayed. During this conversation it was stated that the Applicant had been told that he could lose his job if he did not improve; it was, though, confirmed that this had not formed part of a formal disciplinary process and that no records were kept. It was also confirmed that no follow up action was taken as a result of this conversation.
- 9.5 In response to questions put by the Adjudicator, Mr Rouget stated that the decision to dismiss was taken due to the poor performance, general behaviour and the feedback received, particularly from the "Mystery Shops", as high customer-service levels are a core requirement of the role.

### **Mr Gary Bynam**

- 9.6 Mr Bynam stated that he had nothing further he wished to add and confirmed that there were no further questions that the Applicant wished to be put forward to the Respondent.
- 9.7 In response to a question put by the Adjudicator, the Applicant confirmed that he was aware of the reports resulting from the "Mystery Shops" but had not had sight of all of them.

## **10. Summary by Adjudicator**

- 10.1 I first considered the evidence put forward by the Respondent regarding the performance of the Applicant, in relation to his role as Sales Executive for the Company, in particular the reports which resulted from the "Mystery Shops".

- 10.2 Evidence was submitted in the bundle ER1 in the form of reports that showed there were areas for concern regarding the level of service being provided. However, these concerns were only followed up in an informal manner and were not discussed in relation to the formal procedures of the Company.
- 10.3 Consideration was given to the conduct of the Applicant in relation to leaving a vehicle with the engine running, windows down and outside the Company premises at the close of business and I acknowledge that this could be considered to be a serious disciplinary issue.
- 10.4 With regard to the matter relating to the valuation of a vehicle and the subsequent agreement, again it is acknowledged that the manner in which the Applicant dealt with this could be considered by the Respondent to be a disciplinary issue.
- 10.5 In considering the actions taken by the Respondent, in relation to the performance issues, and whilst acknowledging that some conversations had taken place, at no point was the Applicant made aware that any of these conversations would form part of any disciplinary proceedings, nor were any notes or records kept.
- 10.6 In giving evidence, the Respondent stated they did have a Disciplinary Procedure and that this formed part of the contract of employment as well as being included in the employee handbook.
- 10.7 As it had been established through the evidence given, that the Respondent did have potential grounds for disciplinary action, which may lead to the dismissal of the Applicant, in relation to his performance, the crucial point is whether or not they followed a fair procedure.
- 10.8 Whilst it is not a requirement of the Law to follow the Code of Practice issued by Commerce & Employment, if an employer is to be considered to have acted reasonably in dismissing an employee, then certain procedural steps must be carried out, which are reasonable in relation to the size and nature of the organisation.
- 10.9 These procedures will be relevant to all disciplinary matters and will include investigating fully and fairly any complaints and hearing what the employee wishes to say in explanation or mitigation; the opportunity to be accompanied by a colleague at such meetings should also be given, along with the right to appeal against any final decisions.
- 10.10 All of these provisions are set out in the Respondent's own Disciplinary Procedure, which is included in both the contract of employment and the employee handbook.



- 10.11 Whilst a verbal warning had been issued to the Applicant in April 2004 in relation to issues surrounding performance, this took the form of a pre-written letter being read out at a meeting, following which the opportunity was given to the Applicant to respond.
- 10.12 However, it should be noted that from its own evidence the Respondent confirmed that the Applicant was not given prior notice of the meeting nor afforded the opportunity to have a colleague present. Nor was the Applicant given the opportunity to appeal the decision made. Further, the Respondent's own procedure requires that any formal verbal warning be confirmed in writing, signed by both parties and placed on the employee's file for a period of six months (at which time, presumably, the warning expires).
- 10.13 Consideration was then given to the events which took place between April 2004 and the dismissal of the Applicant in January 2005.
- 10.14 During this time, whilst there is evidence that showed there were grounds for concerns regarding the performance of the Applicant, again these were not dealt with in a formal manner nor as laid down by the Company's Disciplinary Procedure.
- 10.15 In the Respondent's evidence, it was confirmed that they did not hold any formal meetings nor keep records of conversations held with the Applicant. They further confirmed that at no time was the Applicant advised that his employment may be at risk.
- 10.16 Given the size of the organisation and in particular given that a full disciplinary procedure is incorporated into both the contract of employment and the employee handbook there is a level of expectation that the Respondent will follow a fair and reasonable procedure.
- 10.17 However, through their own admission this procedure was not followed and I therefore rule that Mr Hanley was unfairly dismissed due to the actions of the Respondent and their failure to follow an appropriate disciplinary process.
- 10.18 In accordance with section 20 of the Employment Protection (Guernsey) Law, 1998, I make an award of three months' pay, namely £7,271.57.

Adjudicator's Signature:

Mrs Carol Harvey

Date:

13/04/05