



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 26 May 2005

between

Applicant: Stephen Roy Le Tissier and **Respondent:** (St John) Ambulance and Rescue Service, Guernsey

Adjudicator: Mrs Barbara Bartie

Nature of Dispute: This was a claim of Unfair Dismissal by Mr Le Tissier against the (St John) Ambulance and Rescue Service, Guernsey on the grounds that the Service had been wrong to take his absence due to illness as sufficient reason for dismissing him. The Applicant claimed that the Service failed to follow good management practices for managing sickness absence, failed to consult him or his representative prior to dismissal, or properly warn him of the possibility that his job was at risk.

The (St John) Ambulance and Rescue Service maintained that it became impossible to maintain the Service's operations whilst keeping his job open and, having no indication of when he was likely to return to work, they had no alternative but to dismiss him. It stated that agreed procedures were followed.

Adjudicator's Decision: Having considered all the written and oral evidence presented and having due regard to all the circumstances, I consider that the Respondent acted unreasonably in dismissing the Applicant. Accordingly I award the Applicant £8478.99.

Amount of Award (if applicable): £8478.99.

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 Barbara Bartie

Date 2 June 2005

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



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.

Adjudicator's Declaration

At the start of the Hearing I declared that my brother-in-law, Mr Colin Bartie, had been a member of staff of the St John Ambulance and Rescue Service prior to his retirement about five years ago. I could not recall his ever mentioning Mr Le Tissier's name or the operation of the Finance and Administration section. The Applicant and his Representative confirmed that they raised no objection to my acting as the Adjudicator in this case.

1.0 Claim

1.1 This claim was brought by Mr Stephen Roy Le Tissier against the (St John) Ambulance and Rescue Service, Guernsey, (hereinafter referred to as 'the Service' or 'St John's') on the grounds that the Service had been wrong to take his absence due to illness as sufficient reason for dismissing him. The Applicant claimed that the Service failed to follow good management practices for managing sickness absence and had failed to consult with him or his representative prior to his dismissal, or properly to warn him of the possibility that his job was at risk.

1.2 The St John Ambulance and Rescue Service disputed the claim, on the grounds that the Service took the decision to dismiss Mr Le Tissier following the employee's continuous absenteeism for stress related illness over a period, during which it became impossible to maintain the Service's operations whilst keeping his job open and having no indication of when, if at all, he was likely to return to work. It stated that agreed procedures were followed during the absenteeism, with regular contact from the employer to make genuine enquiries on his welfare and progress.

2.0 Representation

2.1 Mr Le Tissier was represented by Mr Azim Hajee, Negotiations Officer of Prospect.

2.2 St John Ambulance and Rescue Service did not attend the Hearing.

3.0 Witnesses

3.1 Mr Le Tissier gave evidence on oath.

4.0 Documents

- 4.1 A bundle of documents marked as EE1 was submitted on behalf of the Claimant.
- 4.2 A submission prepared by Mr Hajee was submitted and marked as EE2.
- 4.3 During the Hearing the Applicant's Contract of Service setting out his terms and conditions of employment was introduced and marked as EE3.
- 4.4 The Respondent had completed the Emprot 2 (Response) form. In addition the Respondent's Advocate had submitted a letter, dated 20 May 2005, advising that the Board of Directors had decided that it would not be an appropriate expenditure of the charity's funds, nor the officers' time, to attend the Hearing.

5.0 Findings of Fact

- 5.1 The Applicant was employed as Financial and Office Administrator at St John Ambulance from 1 May 1995 to 5 November 2004.
- 5.2 From 1995 until 2001 his work had been satisfactory and he had received a letter of appreciation from the Board, which itself later received a letter from the Director of Finance at National Headquarters.
- 5.3 In November 2001, following a discussion with the Chief Ambulance Officer, the line management responsibility for an Administrative Assistant in his section was removed from the Applicant but his salary, which was equivalent to a set grade within the Guernsey Civil Service, was not affected.
- 5.4 The Applicant's relationship with the Chief Ambulance Officer deteriorated from that point until, in August 2003, Prospect lodged a grievance on his behalf. The Service initiated an internal investigation and it decided that disciplinary action against the Chief Ambulance Officer was not warranted.
- 5.5 The Applicant's Representative was advised by letter dated 17 November 2003 that "The investigating officer has reported to the Board that the allegations are not substantiated and no disciplinary action is needed, The Board were informed that the investigation did reveal certain issues pertinent to Mr Le Tissier's employment ... these will be the subject of discussion between Mr Le Tissier and members of the Board." This referred to the removal of the line management responsibility for the Administrative Assistant.
- 5.6 The Chairman of the Board sent a letter dated 29 December 2003 inviting the Applicant to sign a new job description and indicating that a re-evaluation and assessment of his job would follow acceptance of the job description. A response by the Applicant that he was awaiting advice from Prospect resulted in the time limit for signing being extended to 31 January 2004, after which he would be deemed to have resigned. The Applicant was advised on 15 April 2004 that the remuneration for his post had been reviewed and he would not

receive pay increases until the salary entitlement for the Civil Service pay scale at which his post had been re-evaluated reached his current salary.

- 5.7 The Applicant was signed off work for 5 days from 30 April 2004, but as this coincided with a Bank Holiday the period of absence only amounted to one working day.
- 5.8 A meeting between the Applicant's Representative and the Chairman of the Board was arranged for 28 July 2004 but prior to that meeting the Applicant was advised on 8 July 2004 by the Deputy Chief Ambulance Officer that a complaint against him had been lodged by the Administrative Assistant referred to earlier. The following day a second interview with the Deputy Chief Ambulance Officer was curtailed and the Applicant consulted his doctor who issued a certificate that he was unfit for work for one month. That certificate was followed by three others, each of a month's duration.
- 5.9 The Applicant's employment was terminated by the letter dated 5 November 2004, which was sent by recorded delivery.

6.0 The Applicant's Evidence

- 6.1 The Applicant gave evidence concerning the structure of the Service and his areas of responsibility.
- 6.2 He said that his main role had been preparing accounts, budgets and payroll information for the professional side of the Service (as opposed to the voluntary side). His normal working hours were 9 to 5 Monday to Friday and he could not recall being asked to attend to provide urgent information in an emergency.
- 6.3 He was aware that a former member of staff had been engaged on a temporary basis to cover his absence.
- 6.4 About three weeks after he had been signed off ill the Deputy Chief Ambulance Officer, Mr John Beausire, telephoned and asked to speak to him. Although his wife intimated that he was unwell Mr Beausire insisted so he took the call.
- 6.5 The Deputy Chief Ambulance Officer asked how he was and told the Applicant that he had spoken with the Board about garden leave. The Applicant understood garden leave to mean that when you left you did not have to work your notice. The telephone call made him very upset.
- 6.6 His wife subsequently telephoned the Deputy Chief Ambulance Officer in his presence. She told him of the effect his phone call had had on her husband and said that he should not telephone again. About 9 August he received a letter asking for an update and the Applicant telephoned Mr Beausire. He told him that he had good and bad days and was due to see the doctor on 24 August.

- 6.7 He did not receive any cards, fruit, flowers or any expressions of good wishes from the management or staff during his illness.
- 6.8 He had written to both his own doctor and the Service's Medical Advisor indicating that the details of their discussions should not be disclosed to third parties as he had not wanted the staff present at the Board meetings to be party to his medical details.
- 6.9 Before he received the dismissal letter he had anticipated becoming fit to resume work at some stage as there had been more 'good days' than 'bad days'. He had not exhausted the period of full pay and half pay referred to in the Civil Service conditions.
- 6.10 The Applicant said he had done similar work for over 20 years. Although he had felt his present post becoming more stressful he had not looked purposefully for another post because he enjoyed his job.

7.0 The Respondent's Submission.

- 7.1 The substance of the Respondent's submission is contained in the Emprot 2. It states, inter alia,
- 7.2 "The service does not accept any of the allegations contained in the Emprot 1. The Service took the decision to dismiss Mr Le Tissier following the employee's continuous absenteeism for stress related illness over a period during which it became impossible to maintain the Service's operations whilst keeping his job open and having no indication of when, if at all, he was likely to return to work."
- 7.3 "Agreed procedures were followed during the absenteeism with regular contact from the employer to make genuine enquiries on his welfare and progress."
- 7.4 "His absenteeism was treated in accordance with procedures and over 4 months the Service attempted to manage by the use of temporary employees pending his return, however efficient operation of the administrative and financial functions became impossible"
- 7.5 "... the Service ... received permission for its Medical Advisor to contact the employee's doctor ... however permission was not given ... to disclose the information to the Board. The Board therefore had to act with the information it had which led it to conclude the employee would not be returning to work in the near future and there was no alternative but to dismiss him."
- 7.6 "The reason to dismiss the employee was on the basis of his absence due to sickness alone."

8.0 The Applicant's Submission

- 8.1 Mr Hajee explained that it was necessary to outline the events leading up to the day on which the Applicant went off sick in some detail as he contended that the anxiety, which was responsible for the Applicant's absence, was directly attributable to the failure of the Service to exercise the duty of care which would have been exercised by any reasonable employer. The failure of the Service to resolve the issues raised as a grievance by the Applicant had led to an intolerable pressure on him, which resulted in his anxiety state.
- 8.2 Furthermore, as the Respondent was well aware of the historical background to the Applicant's illness more care should have been taken to talk with the Applicant or his Representative, with whom there had been previous contact, both to obtain a clearer picture of the position and look at alternative action.
- 8.3 There was a large discrepancy between the impression given by the Respondent and the reality of the situation with regard to several aspects. He queried whether the Service was over-emphasising the extent to which the Applicant was critical to the efficiency of its emergency services and questioned the use of the phrase 'continuous absenteeism'.
- 8.4 The tone of the letter of dismissal and the Emprot 2 response both imply disloyalty on behalf of the Applicant and that he wanted to 'escape'. Mr Hajee contended that a reasonable employer, not being vindictive against an employee for having the temerity to raise grievance issues, would have taken more care over an employee with nearly ten years' service and would have explored the options more fully.
- 8.5 He invited the Adjudicator to find that the Applicant had been unfairly dismissed and to comment on how things might have been better handled. He considered that, despite the use of the phrase 'with no disrespect to the tribunal' in the Respondent's Advocate's letter of 20 May 2004 it was disrespectful of the Applicant's years of loyal service as well as the adjudication process not to attend to contest the claim. The Applicant also wished the Adjudicator to consider an application for costs.

9.0 Conclusions

- 9.1 I find the Respondent's decision not to attend the Hearing difficult to understand. The assertion that it would not be an appropriate expenditure of the charity's funds, nor the officers' time; to attend is not consistent with the view that there are no grounds for the claim that the dismissal was unfair. A failure to show that the dismissal was fair would potentially cost the Service more than £8,000 so it would have been logical to mount a robust defence. Relying on the written response on the form Emprot 2 without supporting evidence was tantamount to no defence at all yet the Service did not concede the claim and spare the Applicant the anguish of preparing for and attending the Hearing himself.
- 9.2 The grading of the Applicant's post, the merits of the grievance he lodged against the Chief Ambulance Officer, and the outstanding issues at the time of

his dismissal are not matters for the Adjudicator. My sole concerns are to establish whether the reason for the dismissal was potentially fair, and if so, whether, in the circumstances (including the size and administrative resources of the employer's undertaking) the Respondent acted reasonably or unreasonably in treating it as sufficient reason for dismissing the Applicant.

- 9.3 Section 6 (2) (a) of the Law specifies a reason "related to the capability ... of the employee for performing work of a kind which he was employed by the employer so to do;"
- 9.4 and Section 7 states "**capability** means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;"
- 9.5 As shown by the letters of appreciation the Applicant was clearly capable of performing the work for which he was employed from May 1995 until he became unfit due to illness, which rendered him incapable for the time being. The Respondent's reason for dismissing the Applicant was potentially fair.
- 9.6 I have no details of the size of the Respondent's organisation other than the section in which the Applicant was employed. I have no information on the period when temporary staff was employed or the financial implications of so doing. From correspondence, I can identify that there was some liaison with the Civil Service on matters concerning staff, but I cannot presume any advice with regard to handling sickness absence.
- 9.7 In examining the Emprot 2 I find that the tenor of the statements made to be judgmental rather than considerate towards the Applicant's position. The term 'continuous absenteeism' implies frequent unjustified absence rather than absence due to certificated illness for which the Applicant was on medication. The Respondent denies that the stress was work-related and refers to the employee 'admitting' that he was suffering personal domestic problems, but the fact remains that the illness was genuine. Absences in 2003 and earlier in 2004 totalling only two weeks and four days, and five days, respectively are cited as 'for similar symptoms' despite at least one week being due to a viral illness.
- 9.8 The interview which was suspended by the Deputy Chief Ambulance Officer "out of concern for the employee" is referred to again in the statement that Mr LeTissier had 'admitted' he was looking for another job, although this had no influence on the decision to terminate his employment. I question why this comment was made if it had no influence.
- 9.9 No evidence has been provided to show that the efficient operation of the administrative and financial functions of the Service became impossible, as temporary staff were being employed.
- 9.10 The Emprot 2 implies that the consideration of the Applicant's future employment only arose following the receipt of the medical certificate continuing into November, but the Applicant referred to his conversation with the Deputy Chief Ambulance Officer as early as three weeks after his first certificate (for this period of absence) at which garden leave had been

discussed with the Board. The Chief Executive/Chief Ambulance Officer's letter dated 29 September refers to receiving a recent medical certificate which would have terminated some time in October.

- 9.11 There is no evidence of any reason why the Service could not have approached the Applicant's wife or his Representative to obtain further information on his ability to discuss his future options, and it is inaccurate to say that there was no alternative but to dismiss him, given that he had not yet exhausted the periods of full and half pay normally accorded under Civil Service rules to employees with more than nine years' service.
- 9.12 Repeated reference is made to the detrimental effects the Applicant's absence was having on the Service but no evidence has been offered to show them.
- 9.13 The Emprot 2 also refers to "Agreed procedures were followed during the absenteeism with regular contact from the employer to make genuine enquiries on his welfare and his progress in recovery." I cannot identify what constituted the 'agreed' procedures, nor how regular the employer's contacts were. I have no doubt that the employer was genuinely enquiring about his welfare and progress but to what end?
- 9.14 It is not for the Applicant to show that he was unfairly dismissed but for the Respondent to show that it acted reasonably in dismissing the Applicant. I do not consider that a reasonable employer, whatever its size and administrative resources, would have been so unsympathetic towards an employee of nearly ten years' service who was suffering from stress, whether or not that stress was work related. The failure of the Respondent to contact either the Applicant's wife or his Representative to obtain further information, or with a view to discussing his future was a serious omission. Furthermore, the arrival of the dismissal letter by registered post, without any warning, on a weekend, showed a lack of genuine concern.

10.0 Decision

- 10.1 Having had due regard to all the circumstances of the case I consider that the Respondent acted unfairly and unreasonably when dismissing the Applicant and accordingly I award the Applicant £8478.99.
- 10.2 I do not consider that there are any reasons why costs should be awarded in this case. The claim for costs is therefore dismissed.

Signature of Adjudicator:

Mrs Barbara Bartie

Date:

2 June 2005