



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 31 March 2005
between

Applicant: Ms Gabriela Marques **Respondent:** St Pierre Park Hotel

Adjudicator: Mrs T J Le Poidevin

Nature of Dispute:

The Applicant claimed unfair dismissal against the Respondent on the grounds that she had been dismissed on 11 December 2004 without notice for having unlit candles and a toaster in her room when alternative catering facilities available to her were inadequate for her needs. The Applicant also claimed that the Respondent had failed to provide her with a written statement of the reason for her dismissal on 11 December 2004.

The Respondent claimed that the Applicant had been fairly dismissed on 11 December 2004 and that the reason for the dismissal related to her conduct, under Section 6(2)(b) of the Law. A written statement of the reason for her dismissal had been issued in accordance with the Law.

Adjudicator's Decision:

After considering all the evidence, I find that Ms Marques was fairly dismissed on 11 December 2004 by reason of her conduct.

Ms Marques' claim that the Respondent did not provide her with a written statement of the reason for her dismissal is unfounded and, therefore, disregarded.

Accordingly, I make no award.

Amount of Award (if applicable): None

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 T. J. Le Poidevin

Date

14/04/05



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

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

1. The claim

- 1.1 The Applicant had indicated in Section one of her Form Emprot 1 that her employer, St Pierre Park Hotel, had failed to provide her with a written statement of the reason for dismissal. However, as the Respondent did issue a letter dated 17 December 2004, initially attempting delivery care of Staff Accommodation at St Pierre Park Hotel and thereafter attempting delivery at an alternative address via Recorded Delivery, I have disregarded this claim.
- 1.2 The comments made within Section 10 of Form Emprot 1 indicate that Ms Marques' claim was for unfair dismissal as a result of no notice of dismissal being given to her.

2. Representatives

- 2.1 The Respondent, St Pierre Park Hotel, was represented by Mr Andre Bourcier, General Manager, and Miss Laura Wishart, Personnel Manager.
- 2.2 The Applicant, Ms Gabriela Marques, was represented by a friend, Mr Stuart Jordan.

3. Interpreter

- 3.1 The interpretation services of Mrs Isabelle Demenezes were provided throughout the Hearing.

4. Witnesses

- 4.1 Ms Marques gave evidence on her own behalf.
- 4.2 Ms Natalia Nunes, Assistant Housekeeper, and Mr Erwan Bertrand, Duty Manager, gave evidence on behalf of the Respondent.

5. Documents

- 5.1 The Applicant tabled a bundle of documents marked EE1.
- 5.2 The Respondent tabled a bundle of documents marked ER1.
- 5.3 At the request of the Adjudicator, the Respondent tabled a Disciplinary Procedure document, marked ER2, during the Hearing.

6. Findings of Fact

- 6.1 The Respondent employs approximately 110 staff, a number of whom are of Portuguese nationality.
- 6.2 The Applicant had been employed by the Respondent as a Canteen Assistant from 7 December 2002 until her dismissal on 11 December 2004.
- 6.3 The Respondent has three staff blocks accommodating approximately 90 employees and the Applicant resided in the newest of the three staff blocks at the time of her dismissal.
- 6.4 Section 31 of the Respondent's Staff Residence Rules clearly states that no candles are permitted in staff accommodation.
- 6.5 On 14 February 2004 and 10 March 2004 the fire alarm was activated by the smoke detector in Ms Marques' room. The former incident was thought to have resulted from either cigarette smoke or ironing and the latter from a defective kettle.
- 6.6 As a result of a fire in an employee's room within the staff accommodation on 7 July 2004, caused by a tea light positioned on top of a television, the Respondent had reviewed its policies regarding the use of tea lights/candles in the rooms.
- 6.7 On 12 July 2004 Laura Wishart issued a memo to all employees forbidding them to use candles in their bedrooms and corridors to protect their safety and that of their colleagues and warning them of the penalty of instant dismissal for violating this rule.
- 6.8 On 10 December 2004 the fire alarm was activated by the smoke detector in Ms Marques' room as a result of a toaster being used within the room. A number of unlit candles were also found in the room.
- 6.9 Mr N. F. Acton of the States of Guernsey Fire Brigade attended the alarm call on 10 December 2004 and advised that the toaster in Ms Marques' room be removed.
- 6.10 On 11 December 2004 the Applicant was dismissed on the grounds of gross misconduct for using a toaster on the floor of her bedroom and having candles in her room.

- 6.11 The Respondent permitted the Applicant to stay in the staff accommodation for a further week following dismissal, following the removal of the candles and toaster.

7. Respondent's Submission

- 7.1 On behalf of the Respondent, Mr Bourcier stated that Ms Marques was dismissed for repeatedly contravening their handbook and flouting their Health & Safety Policy, putting the lives of other employees in jeopardy. Throughout his submission, he referred to documents within the bundle ER1.
- 7.2 All new employees went through a period of training and induction by Miss Wishart and, as part of this process, the Health & Safety Policy, Staff Residence Rules and Disciplinary Procedure were explained and, in the case of non-English speaking staff, verbally translated by an appropriate interpreter. In the case of Ms Marques, the Head Housekeeper, Helaine Heuiar, was the interpreter at this time.
- 7.3 It was common practice within the hotel for all documents, instructions and other important information to be verbally translated for non-English speaking staff by appropriate interpreters.
- 7.4 There had been several incidents involving the Fire Brigade being called to attend the staff block as a result of staff using equipment in their rooms.
- 7.5 Two such incidents had been evidenced in Ms Marques' room on 14 February 2004 and 10 March 2004.
- 7.6 In July 2004, as a result of a serious incident whereby a candle burnt through a television set, the Fire Brigade highlighted their concern that candles were present in a number of rooms and Mr Bourcier considered that he would have been negligent in his duties if he had not brought this to the attention of the staff.
- 7.7 Mr Bourcier held a meeting with the staff on 8 July 2004, attended by Ms Marques, to explain the seriousness of the situation, particularly as the interior of the staff block was made of wood, and advise that any further occurrences of burning candles in the rooms would result in instant dismissal. Portuguese and Latvian interpreters were present to translate and ensure understanding.
- 7.8 Following this meeting Laura Wishart issued a memo to all employees to reinforce his message.
- 7.9 Mr Bourcier explained that as well as having a duty of care towards his employees, he also had to consider his insurance liabilities and the Fire Brigade's time to attend each call-out.
- 7.10 On 10 December 2004, the fire alarm sounded as a result of a toaster being used in Ms Marques' room. Upon inspection by the Duty Manager, Erwan Bertrand, it was noticed that a toaster had been used, was still smoking and had scorched

the carpet. A number of used but unlit candles, approximately six or seven, were present. He remembered one candle in particular, a large cream coloured one which was between one third and half used and some small round ones. The incident was subsequently reported by Mr Bertrand to Mr Bourcier who made arrangements to meet with Ms Marques the following day.

- 7.11 Referring to the Respondent's Disciplinary Procedure, ER2, Mr Bourcier confirmed that he was familiar with the use of disciplinary procedures in general and had advised Ms Marques of the reason for the meeting and given her the opportunity to be accompanied. As Ms Natalia Nunes would be present as interpreter she declined to be accompanied.
- 7.12 During the meeting on 11 December 2004, Ms Nunes was present as interpreter as was Tobias Kallies, one of the Duty Managers. At this meeting Ms Marques was made aware of witness statements and given the opportunity to state her case. She admitted to using the toaster but stated she had not burned the candles that day which implied that she had burned them on an alternative occasion. She was crying and saying she was sorry.
- 7.13 Mr Bourcier did not recall advising Ms Marques of her right of appeal.
- 7.14 Mr Bourcier advised Ms Marques that she would be dismissed for gross misconduct as a result of her using a toaster and having candles in her room.
- 7.15 Whilst Ms Marques' previous disciplinary record had extended to verbal warnings regarding the use of equipment in her room, overloading electricity sockets, etc., her work ethic had been good. Mr Bourcier was sorry to see her leave but he had to protect the safety of his staff.
- 7.16 Mr Bourcier allowed Ms Marques to remain in her room for one week beyond her termination date after removing the toaster and candles and being provided with an assurance that her actions wouldn't be repeated during this time. He gave her two weeks' pay as a gesture of goodwill.
- 7.17 Whilst it was noted that Ms Marques had used the toaster in her room as she did not like the canteen food, Mr Bourcier confirmed that there were two small kitchens in the staff block where facilities could be used. Regular room checks were carried out by Ms Wishart and he was not aware of other employees keeping equipment in their rooms.
- 7.18 Two other employees had since been dismissed for using candles in their rooms.
- 7.19 Mr Bourcier concluded by stating that Ms Marques had been dismissed for gross misconduct due to her continually ignoring warnings by himself and members of his staff in relation to items of equipment and candles being within her room which could have lead to the fatality of other employees. Fire Brigade attendance was becoming more and more repetitious and the insurance cover within the staff block could become null and void if he did not take his health and safety responsibilities seriously. As Ms Marques had ignored previous warnings, he considered that he had no alternative but to dismiss her.

8. The Applicant's Submission

- 8.1 Ms Marques' disputed using candles in either of the rooms she had occupied in the staff accommodation, saying they were only there for decoration. No-one had seen them lit.
- 8.2 Ms Marques' produced a number of different candles, some of which were boxed and some loose, stating that these were her candles and even though she was Catholic, she had not used them as she knew it was not permitted.
- 8.3 Ms Marques said that the candles she had had in her room on 10 December 2004 had not been removed from her room as she had put them all away before a staff block check had been made. She could bring all the candles in from that day as she still had them.
- 8.4 With regard to the toaster, Ms Marques explained that she was making toast in her room because the canteen food was not good and she had not eaten all day. Whilst she confirmed that the toaster setting was too high, she disputed the allegation that she had burned the carpet and said that there was no photographic evidence of this.
- 8.5 Ms Marques stated that, whilst there were kitchens within the staff block, there was no cooker and if employees left any of their equipment in the kitchens it was removed.
- 8.6 Ms Marques also stated that other employees within the staff accommodation had equipment such as slow cookers and kettles in their rooms and, whilst Ms Wishart carried out regular room checks, she always pre-warned staff which gave them the opportunity to remove these items.
- 8.7 Ms Marques confirmed that the gross pay figure in Section eight of the Emprot 1 form representing 13 week's pay should read GBP2,340.00 and apologised for this error. She also confirmed that she had been provided with payment in lieu of holiday entitlement.
- 8.8 The incident on 14 February 2004 had been caused by Ms Marques' partner smoking in the room.
- 8.9 Ms Marques confirmed that the incident on 10 March 2004 was caused by a defective kettle and that she knew that kettles were not allowed to be used in the rooms.
- 8.10 Ms Marques confirmed that when she occupied either Room 33 or 45 in the staff accommodation, she was fully aware of what could and couldn't be permitted in the rooms and the reasons why these rules were in place.
- 8.11 Mr Jordan considered that it was very unfair that there weren't proper kitchen facilities for staff, particular as they weren't allowed to use equipment in their rooms and stressed the need for this to be looked into for others in the future.

- 8.12 Ms Marques confirmed that she was pre-advised of the reason for the meeting with Mr Bourcier et al on 11 December 2004. She also confirmed that Natalia was present and interpreted everything for her, she had an opportunity to put her case forward at the meeting but was not given another chance.
- 8.13 She was permitted to stay in her room for a further week after her dismissal but as she did not have another job to go to, she stayed with her son for two months before securing alternative employment.
- 8.14 Mr Jordan concluded by stating that Ms Marques did not dispute the facts that the fire alarms had been set off, she had used a kettle and toaster in her room and candles were present in her room. She did, however, dispute that the candles had been lit. She felt that she had been unfairly dismissed because regardless of whether she had left a kettle or toaster in the kitchen areas or in her room, they would have been removed and she needed to eat.

9. Conclusion

- 9.1 In accordance with the Respondent's Health & Safety Policy, its employees are reminded that they "have the legal responsibility to take reasonable care for their own health and safety and to other persons who may be affected by their acts of omissions" and "disregard by any employee of the company's safety rules shall be sufficient cause for suspension from duty with the possibility of dismissal". In this respect, I believe that the Respondent clearly communicated its stance with regard to the prohibition of staff having candles or equipment in their rooms and made every effort to remind them of the very serious consequences of these actions, particularly following the fire in July 2004.
- 9.2 It would have been helpful if important notices from the Respondent (e.g. policies, procedures and instructions) were written in the native language of its employees, however, these were verbally conveyed in Portuguese to Ms Marques by interpreters both during her initial induction and during the remainder of her employment. Ms Marques also admits being aware of the rules with regard to keeping candles and using equipment in her room.
- 9.3 Ms Marques had been verbally warned about previous infringements and evidence was produced to support two previous Fire Brigade call-outs which had resulted from the smoke detector in her room being activated.
- 9.4 The use of a toaster in Ms Marques' room and the presence of candles on 10 December 2004 was considered by the Respondent as being intolerable and the subsequent action to summarily dismiss on the grounds of gross misconduct was reasonable in the circumstances.
- 9.5 Whether the Respondent's catering facilities were adequate or not is not a matter for this Hearing.

- 9.6 Whether the candles discovered in Ms Marques' room were used or not is difficult to establish as these were not produced at the hearing and the Respondent's allegation that they were used is disputed by the Applicant. Whilst the memos issued by Ms Wishart state that the use of candles in the staff accommodation would result in instant dismissal, the Staff Residence Rules clearly state "no candles in staff accommodation". Therefore, either way, the Applicant was in breach of the rules.
- 9.7 Whilst the Respondent's written Disciplinary Procedure was lacking in detail, I consider that the actual disciplinary process used in Ms Marques' case was fair and reasonable in the circumstances despite the Respondent's failure to advise her of the right of appeal.
- 9.8 Based on the evidence submitted, I consider that the actions taken by the Respondent in summarily dismissing the Applicant on the grounds of gross misconduct were reasonable in the circumstances.

10. Decision

- 10.1 I, therefore, find that Ms Marques was fairly dismissed on the grounds of her conduct under Section 6(2)(b) of the Law on 11 December 2004 and make no award.

Signature of Adjudicator:

Mrs T. J. Le Poidevin

Date:

14/04/05