



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 14 October and 10 November 2005

between

Applicant: Mr Robert Le Page and Respondent: John Thompson Autorestorers Ltd

Adjudicator: Mr Peter Woodward

Nature of Dispute:

Mr Le Page claimed that his employer had terminated his employment unfairly during a heated confrontation with his employer on the 12 May 2005.

Mr Thompson, the Managing Director of John Thompson Autorestorers Ltd claimed that the dismissal was due to a failure of Mr Le Page to follow company rules and procedures. Mr Thomson asserted that dismissal only occurred after a series of verbal and written warnings and that in the circumstances the dismissal was fair.

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 and the available resources to deal with this dismissal, I find that John Thompson Autorestorers Ltd failed to demonstrate a fair and objective process for the dismissal of Mr Le Page: I therefore find that the dismissal of Mr Le Page was unfair under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended.

Amount of Award (if applicable) : £3,208.96

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 P Woodward

Date: 23 November 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.

1. The Claim

- 1.1 The claim was brought by Mr Robert Le Page, against John Thompson Autorestorers Ltd, the Respondent, for Unfair Dismissal.
- 1.2 Mr Le Page claimed in his EMPROT 1 (Application Form) that he had been unfairly dismissed.
- 1.3 John Thompson Autorestorers Ltd denied the claim in their EMPROT 2 (Response Form) on the grounds that
Mr Le Page had constantly abused company rules, in relation to Health and Safety codes, time keeping, absence from work and not paying attention to College of Further Education rules.

2.0 Representatives

- 2.1 Mr Le Page was represented by Ms Rachel Eeles.
- 2.2 John Thompson Autorestorers Ltd was represented by Mr John Thompson.

3.0 Witnesses

3.1 For the Applicant

- 3.1.1 Mr Robert Le Page
- 3.1.2 Mr Glenn Wheatley

3.2 For the Respondent

- 3.2.1 Mr Tim Davey
- 3.2.2 Mr John Thompson

3.3 Called by the Adjudicator

- 3.3.1 Mrs Jennifer Fox
- 3.3.2 Mr Peter Winter

4.0 Documents

- 4.1 Documents marked EE1, EE2 and EE3 were tabled by the Applicant.
- 4.2 The Respondent tabled documents, marked ER1, ER2, ER3 and ER4.

5.0 Findings of Fact

- 5.1 Mr Le Page was employed by John Thompson Autorestorers Ltd from 25 March 2002 until 12 May 2005 as an Apprentice Panel Beater.
- 5.2 Mr Le Page entered into a formal apprenticeship agreement with his employer in the trade of 'Panel Beating' for the period 1 September 2002 until 31 August 2007; this apprenticeship being formally recognised by the States of Guernsey.
- 5.3 Mr Le Page had his contract of employment verbally terminated on the 12 May 2005.
- 5.4 There was no agreement by the parties as to what constituted three months pay.

6.0 Evidence and Submissions

6.1 Evidence given by Mr Tim Davey, body-shop Manager, John Thompson Auto-restorers Ltd

- 6.1.1 Mr Davey gave testimony at length on the alleged non-compliance of Mr Le Page to company Health and Safety rules. He stated that Mr Le Page had been constantly reminded throughout his period of employment of his breaching of the safety procedures. He cited examples of failure to wear overalls, safety glasses and safety shoes and that, in early 2005, one breach was so serious that he had sent Mr Le Page home. Mr Davey stated that in the event of an accident caused by Mr Le Page it would be the company that was liable rather than Mr Le Page. Mr Davey drew attention to items seven and eight in ER1, which he thought were demonstrative of the employer's concern that Health and Safety rules should be observed. Finally Mr Davey gave testimony that when Mr Le Page suffered an eye injury on the 17 June 2004, it was due to non compliance with the wearing of safety goggles, and that whilst he had offered Mr Le Page immediate A&E treatment Mr Le Page had declined this offer and worked to the end of his normal working hours. The result was that the injury to the eye was aggravated; he refuted any allegations that he had not taken appropriate steps to support Mr Le Page or that he had prevented him from attending the A&E department during normal working hours.
- 6.1.2 He also stated that Mr Le Page had been frequently late and that on occasion he had to ring Mr Le Page at his home as he had overslept. The company was so concerned that he was oversleeping that on his 'college release' days they required him to attend his workplace at his normal start time of 8.00am to ensure that he then attended college on time.
- 6.1.3 As part of his apprenticeship studies Mr Le Page attended a college in Bridgewater, England, and Mr Davey expressed his concern that despite the existence of very clear 'bad weather procedures' Mr Le Page had on one occasion disobeyed these rules and not notified the college as to his movements.
- 6.1.4 Mr Davey also referred to college reports (10A and 10B in ER1 refers) which, in his view, indicated a marked deterioration in Mr Le Page's college studies in the period 2003 to 2005.
- 6.1.5 Mr Davey expressed concern that Mr Le Page was not being attentive to his work and was critical of welding work carried out by Mr Le Page on the day of his dismissal. He stated that the panels were misaligned and there were gaps and holes in the welding. Mr Davey believed this was not up to the standard for a 3rd year experienced apprentice.
- 6.1.6 By the March 2005 Mr Davey was so concerned with the deterioration with concerns re attitude, timekeeping and breaches of Health and Safety rules that he wrote to Mrs Fox, Mr Le Page's mother (item 4 ER1 refers); hoping she would intervene and persuade Mr Le Page to improve his conduct at work. He stated that he did not receive any response to this letter.

- 6.1.7 Mr Davey drew attention to a series of three written disciplinary warnings that had been issued to Mr Le Page, commencing the 13 July 2004 and culminating in a letter of dismissal on the 12 May 2005 (Tab 5 EE1 refers). Mr Davey stated that Mr Le Page was only too aware of the requirement to improve his work performance and had failed to do so during this period.
- 6.1.8 Mr Davey alleged that the account given by Mr Le Page of the dismissal on the 12 May 2005 in his EMPROT 1 was untrue and that Mr Thompson would give evidence contradicting this statement.
- 6.1.9 Mr Davey stated that Mr Le Page had come into the workplace on the 13 May 2005 but did not stay. He expressed the opinion that if Mr Le Page had discussed the situation with Mr Thompson that morning that he would have been given another chance.

Cross Examination by Ms Eeles

- 6.1.10 Ms Eeles asked Mr Davey if Mr Thompson was easily angered. Mr Davey denied that this was so, but did confirm that Mr Thompson shouted at employees from time to time.
- 6.1.11 Ms Eeles asked if Mr Thompson swore at employees, and Mr Davey stated that Mr Thompson used the word 'fuck' on occasion in discussion with employees but that this was typical of language used in a manual trade. He could not recall that Mr Thompson had called Mr Le Page "fucking useless" as alleged by Ms Eeles.
- 6.1.12 Mr Davey confirmed that Mr Le Page did not have a key to the workshops and would have to wait to be admitted to by others. He stated that Mr Le Page was often late by up to five to ten minutes and on occasion was up to 45 minutes late. On further questioning he confirmed that Mr Le Page did make up this time at the end of the day, although he insisted this was at his demand.
- 6.1.13 Ms Eeles asserted that Mr Le Page actually worked more unpaid overtime than just for making up time. Mr Davey agreed on further questioning that possibly Mr Le Page had stayed at work for 30 to 45 minutes after normal finishing time on a few occasions.
- 6.1.14 Ms Eeles brought the attention of Mr Davey to the 2003 college reports for Mr Le Page (Tab 6 EE1 refers) and gained his agreement that both the academic achievements and the attendance record were those of a good student, and Mr Davey agreed that Mr Le Page had been recommended by the Company for the States of Guernsey Apprentice of the Year scheme in 2004.
- 6.1.15 Mr Davey refuted any allegation that he had not acted promptly in relation to the eye injury incident on the 17 June 2004, however he did agree that the company withheld pay on the 18 June when Mr Le Page was certified unfit to work. He asserted this was reasonable, as Mr Le Page had not complied with Health and Safety regulations.
- 6.1.16 He agreed that the company did not have a staff handbook and stated that they followed the disciplinary procedures provided by the Department of Commerce and Employment.
- 6.1.17 Ms Eeles drew the attention of Mr Davey to the Commerce and Employment Advisory Booklet on Discipline at Work (Tab 4 EE1) and then asked Mr Davey questions as to his use of Verbal Warnings. Mr Davey agreed that he had no written record on file or in a diary of any of the numerous verbal warnings that he stated he had given Mr Le Page. He testified that these warnings were for misbehaviour, chatting too much and issues such as throwing a roll of masking tape. He confirmed that he did not advise Mr Le Page of any potential appeal against these verbal warnings, stating that Mr Le Page did not object. Mr Davey also stated that he gave verbal warnings to other employees and stated these could be at a level of four to five per week for a workforce of seven employees.
- 6.1.18 Mr Davey was asked if he had set a time limit to any of these verbal warnings after which they would be disregarded, he stated that he did not set time limits on the warnings but that he never held these misdemeanours against Mr Le Page.

- 6.1.19 Ms Eeles turned to the issue of the 'Written Warning' dated 13 July 2004 (Tab 5 EE1 refers). Mr Davey asserted that this would not have been issued to Mr Le Page without a meeting, however he testified that Mr Le Page was not allowed a colleague to attend this meeting, nor was he allowed to sign the document as a fair and accurate record, nor was he given any opportunity to appeal against the fairness of the warning. Ms Eeles noted that there were no timescales for improvement in the letter, and that it was very vague as to the misdemeanours, however Mr Davey stated that they would typically have said that the warning stood for a couple of weeks and that Mr Le Page was well aware of his failings.
- 6.1.20 Ms Eeles then reviewed the document entitled 'First Written Warning' dated 30 December 2004 (Tab 5 EE1 refers). Mr Davey stated that as with the warning issued on 13 July 2004 this would not have been issued to Mr Le Page without a meeting, however he testified that Robert was not allowed a colleague to attend this meeting, nor was he allowed to sign the document as a fair and accurate record, nor was he given any opportunity to appeal against the fairness of the warning. He rejected the assertion of Ms Eeles that the warning was vague but agreed that he had not kept a specific record as to times and dates of alleged incidences nor were there stated timescales for required improvements contained within this Warning.
- 6.1.21 Ms Eeles then reviewed the document entitled 'Final Written Warning' dated 24 March 2005 (Tab 5 EE1 refers). Mr Davey stated that as with previous warnings this was issued to Mr Le Page after a meeting with him, however he testified that Mr Le Page was not allowed a colleague to attend this meeting, nor was he allowed to sign the document as a fair and accurate record, nor was he given any opportunity to appeal against the fairness of the warning. Ms Eeles pointed out that the letter did not specify the alleged 'lateness' dates or the alleged 'time wasted', nor did it specify what the 'attitude' issues were. Mr Davey replied that if he had to write everything down he would not be performing his role as a manager.
- 6.1.22 Turning to the 'Instant Dismissal' letter dated 16 May 2005 (Tab 5 EE1 refers); Ms Eeles asked what the circumstances were on the 12 May 2005 that led to the dismissal. Mr Davey stated that whilst there was a heated discussion between Mr Thompson and Mr Le Page that he not heard Mr Thompson state to Mr Le Page that he was "fucking terminated" nor did he see Mr Thompson grip the upper arm of Mr Le Page in an act of remonstrance; he believed Mr Thompson's account that Robert had "made faces" behind his back as he went to answer the telephone and he thought that Mr Le Page was being insolent in his posture and demeanour.
- 6.1.23 Mr Davey concurred that there was no disciplinary hearing on the day of the 12 May 2005, nor was Mr Le Page given any subsequent right of appeal against the decision to dismiss.
- 6.1.24 Ms Eeles asked Mr Davey if Mr Le Page had stolen any items from the company or damaged any property belonging to other employees. Mr Davey replied not to his knowledge.
- 6.1.25 Ms Eeles asked if Mr Le Page had bullied or harassed any employee in the period leading up to the dismissal. Mr Davey replied that he had not.
- 6.1.26 Ms Eeles asked if Mr Le Page had brought the company into disrepute. Mr Davey replied that this was not the case.
- 6.1.27 Ms Eeles referred Mr Davey to the Commerce and Employment Code of Disciplinary Practice and Procedures in Employment (Tab 4 page 33 refers); she asked Mr Davey if Mr Le Page's conduct had approached this level of seriousness found in paragraphs 10 and 11 of this code. Mr Davey responded that it had not; however he had used the previous Code of Practice issued by the States of Guernsey, not this one.

Re-examination of Mr Davey by Mr Thompson

- 6.1.28 Mr Davey agreed that Mr Le Page had visited the workshop on 13 May 2005, but had not waited to see Mr Thompson to attempt to achieve a reconciliation.
- 6.1.29 When asked why Mr Le Page had been entered into the '2004 Apprentice of the Year' competition Mr Davey replied that it was done to boost his confidence.
- 6.1.30 Mr Davey agreed with Mr Thompson that in his opinion Mr Le Page had fully understood the gravity of the warnings that had been issued to him and he also agreed that companies of their size and resources would not keep the type of records that Ms Eeles had asserted they should.

Evidence given Mr John Thompson of John Thompson Autorestorers Ltd

- 6.1.31 Mr Thompson stated that his company had a set of Company Rules and used the Employment Code of Disciplinary Practice and Procedures in Employment (Table 4, Page 33 refers) as a guide. He also noted that the Company went to significant lengths to post all necessary Health and Safety Regulations prominently throughout the Workshop.
- 6.1.32 Ms Eeles asked Mr Thompson if he was particularly upset on the 12 May 2005 due to the breakdown of the spray-booth Mr Thompson replied that whilst he was "not over the moon" that he just had to accept it as one of those things that happen.
- 6.1.33 Mr Thompson testified that the workshop was noisy on that day and that voices would have to be raised to for people to hear each other; however he did not recollect Mr Le Page shouting just before the discussion which led to the dismissal. He denied grabbing Mr Le Page's arm or losing his temper, however he did state that he was "no angel" and that he "did swear". He agreed that he did tell Mr Le Page that his apprenticeship was terminated. He insisted that he stayed cool and collected during this conversation.
- 6.1.34 Mr Thompson stated that the final events that led to his decision to dismiss were that he knew Mr Le Page had made faces and finger gestures and demonstrated a lack of respect for his management. He stated that Mr Le Page had been given numerous warnings and in his opinion no longer wished to be employed by his company. Mr Thompson said that he had required Robert to go home following this bad behaviour and his refusal to do so led to the decision to dismiss.
- 6.1.35 Mr Thompson stated that he had subsequently made notes of the meeting but in his opinion, as he was the boss he did not need Mr Le Page to verify their accuracy. He also confirmed that he had not advised Mr Le Page of any right to appeal his decision to dismiss.
- 6.1.36 Ms Eeles drew attention to the Instant Dismissal letter of the 16 May 2005 and asked if these were the four reasons for the dismissal. Mr Thompson stated they were correct but there were other reasons as well and stated that "in the real world this is how things happen".
- 6.1.37 Ms Eeles asked Mr Thompson if he believed that Mr Le Page had a right to know the exact reasons for his dismissal and Mr Thompson replied, "yes, but only to a certain extent".
- 6.1.38 Ms Eeles drew the attention of Mr Thompson to the EMPROT 2 and an apparent contradiction between the stated reasons for the dismissal in the 'Instant Dismissal letter'. Mr Le Page stated that it was an overall sum of issues that led to the dismissal.
- 6.1.39 Mr Thompson commented that Mr Le Page had been a good employee but had chosen to go down another road, lost his respect for authority and lessons had to be taught; if Mr Le Page had returned on the 13 May 2005 he probably would still be employed to this day.

Evidence given by Mr Glenn Wheatley

- 6.1.40 Mr Wheatley is a qualified panel beater who was in employment with John Thompson Autorestorers Ltd on 12 May 2005. He testified that, in his opinion, Mr Le Page was hard working even when unsupervised and did not chat or loiter any more than other members of staff. He made the observation that he thought Mr Le Page was picked on by Mr Thompson more than other employees. He thought that the criticism of his work by Mr Thompson was sometimes justified, but sometimes not. He testified that he had heard Mr Thompson shout at Mr Le Page using the expression "fucking useless".
- 6.1.41 Mr Wheatley testified that Mr Davey normally behaved "okay" in his dealings with Mr Le Page, however in the opinion of Mr Wheatley offered little in the way of encouragement and would not often give the benefit of the doubt.
- 6.1.42 Mr Wheatley testified that he was in the workshop on the 12 May 2005 and that in his opinion Mr Thompson was not in a good mood. He had not heard Mr Le Page shout at Alan, a work colleague, in a sarcastic tone as alleged by Mr Thompson and Mr Davey.
- 6.1.43 Mr Wheatley stated that he was approximately four metres away when a discussion between Mr Thompson and Mr Le Page commenced at approximately 4.30pm. He stated that he saw Mr Thompson take a firm grip of Mr Le Page's arm and that he was shouting at Mr Le Page. Whilst he was too far away to hear the conversation he thought that Mr Thompson was displaying aggressive body language toward Mr Le Page.
- 6.1.44 Mr Wheatley then observed a three-way conversation between Mr Le Page, Mr Thompson and Mr Davey. After this conversation Mr Le Page left the workshop but not before telling Mr Wheatley that he had been sacked, and Mr Wheatley observed that he seemed very upset.
- 6.1.45 Mr Wheatley testified that during the period he was employed with John Thompson Autorestorers Ltd he was not issued any documentation relating to the way in which disciplinary/grievance issues might be handled.

Cross Examination by Mr Thompson

- 6.1.46 Mr Wheatley agreed that he had left the employment of John Thompson Autorestorers Ltd on good terms.
- 6.1.47 When asked by Mr Thompson why, having observed the discussion on the 12 May 2005, he did he not speak up or intervene. Mr Wheatley stated that he did not think it was his place to get involved.
- 6.1.48 Mr Thompson asserted that Mr Wheatley's version of the events was not correct. Mr Wheatley insisted that he had testified as to an accurate recollection of his memory.
- 6.1.49 Mr Wheatley agreed that he had received a copy of the 2005 Company Rules and that there were a number of Health and Safety notices posted in prominent locations throughout the Workshop.

Evidence given by Mr Le Page

- 6.1.50 Mr Le Page agreed that he had been given the Company Rules dated 2004, which can be found in EE1 Tab 4 Page 17, sometime during the year of 2004.
- 6.1.51 Mr Le Page testified that on occasion during his employment with the company he felt bullied by Mr Thompson and that Mr Thompson would lose his temper with him and used expressions such as "fucking useless" toward him.
- 6.1.52 Mr Le Page disagreed that Mr Davey offered to take him to the A & E department on 17 June 2004, following his eye injury, and had been told to continue to work throughout the day by Mr Davey. He was also upset, at that time, that given he was medically

certified as unable to attend work the following day, the company had docked a day's pay in contravention of their stated sick pay scheme.

- 6.1.53 Turning to the Written Warning contained in Tab 5 EE1 Page 37 Ms Eeles asked Mr Le Page if he had understood the verbal warnings that preceded this document. He stated that he had not understood the specific reasons for the verbal warnings and that to his knowledge Mr Davey had not followed any disciplinary process in administering these warnings.
- 6.1.54 Mr Le Page testified that he was given the Written Warning dated 13 July 2004 without any prior discussion or a meeting with Mr Thompson, he alleged he was not told of any specific allegations and was not advised of any right of appeal against this warning.
- 6.1.55 Mr Le Page testified that in his opinion the First Written Warning issued by Mr Davey on 30 December 2004 was not justified. He alleged that what Mr Davey termed chatting was often his need to consult with qualified employees as to techniques, procedures and general advice for completing his tasks.
- 6.1.56 Mr Le Page testified that in his opinion most of the criticisms to be found in the Final Written Warning dated 24 March 2005 were not justified. He agreed that he was occasionally late but asserted he always made up the time and also worked unpaid overtime in addition. He had no idea what the term 'time wasting' meant. He stated that the parts that he was alleged to have taken without permission were four screws that he took from the store for a car he was working on; he stated that Mr Davey had accused him of theft. Finally he had no idea what the issues were with his attitude and no idea as to what he needed to do to improve.
- 6.1.57 Mr Le Page stated that he was given the warning of the 23 July 2005 during a meeting with Mr Thompson and Mr Davey but was not shown any specific data on his lateness nor specific information on the other issues contained in the letter, he alleged that the meeting lasted no more than five minutes and was not advised of any right of appeal.
- 6.1.58 Mr Le Page stated that whilst employed with the company he had never seen the Disciplinary Code contained in Tab 4 EE1.
- 6.1.59 Recalling the events of 12 May 2005 Mr Le Page thought that Mr Thompson was already in a bad mood due to the breakdown of the spray-booth earlier in the day. He stated that both Mr Thompson and Mr Davey had approached him circa 4.30pm; looked at the car he was working on, and suggested he had another employee check his work. Mr Davey then walked away to respond to a telephone call and Mr Le Page called out to Alan, a fellow employee, asking him to check his work. However before this could happen he stated that Mr Thompson alleged that he had been pulling faces behind Mr Davey's back and Mr Le Page replied this was not true. At this point Mr Thompson grabbed him by the arm and stated that, "your fucking apprenticeship is terminated". Mr Le Page stated that he responded "fine" and walked away to collect his tools. At this point he testified that Mr Davey came up to him and asked what had happened. Mr Le Page again denied that he had pulled faces.
- 6.1.60 Mr Le Page stated that Mr Davey was in the office at the time of the dismissal and in his opinion would not have witnessed these events. He stated that Mr Wheatley was close to him and Mr Thompson whilst he was being dismissed.
- 6.1.61 Mr Le Page testified that there was no disciplinary hearing on 12 May 2005, nor was he given any right to appeal. He could not think of any rule or company procedure he failed to comply with during that day.
- 6.1.62 Mr Le Page stated that he had written the letter of 14 May 2005 (Tab 2 EE1 refers) as he did not know the reasons for the dismissal. He stated that the letter he received in response from Mr Thompson (Tab 5 EE1 Page 41 refers) was not correct. He had obeyed all the orders he had been given on 12 May 2005, and did not understand what was being alleged in the letter as to his questioning of Mr Davey. He refuted the allegation that he

had walked away from Mr Davey whilst Mr Davey was talking to him on that day and stated that he had not 'made faces' behind the back of Mr Davey.

- 6.1.63 Mr Le Page was referred to the EMPROT 2 (Tab 1 EE1 page 8 refers). He conceded that he might not always have worn his overalls or safety shoes and that on one occasion due to bad weather there had been delays in returning from Bridgewater and that had resulted in him missing one day's work. However, in considering the reasons for dismissal listed in box three of the EMPROT 2 he denied that that he had misbehaved or failed to obey orders.
- 6.1.64 Mr Le Page drew attention to his 2003 college reports (Tab 6 EE1 refers) and stated to the Hearing that his examinations and college assessments indicated that he had been dedicated to his studies.

Cross-examination by Mr Thompson

- 6.1.65 Mr Le Page agreed with Mr Thompson that the company did have staff meetings which he attended, and that he was encouraged to speak up. He agreed that during these meetings he was reminded of his duties but did not agree that this was an appropriate place to raise issues relating to his verbal or written warnings.
- 6.1.66 Mr Thompson brought the attention of Mr Le Page to a college report (ER 10B refers) dated 18 February 2005 which indicated concern by his tutors as to less satisfactory progress being made than in previous terms.
- 6.1.67 Mr Le Page was referred a photograph of the workshop (ER20 refers). He refuted the allegation of Mr Thompson that given the positioning of cars in the workshop on the 12 May 2005 that Mr Wheatley could not have seen the act of dismissal.
- 6.1.68 Mr Le Page confirmed that he had received and signed the Health Check List (ER8 refers), and was aware that if he abused the regulations he could harm other employees. He also agreed that Health and Safety posters were posted in the Workshop, however he stated that he was not aware that he was dismissed on 12 May 2005 due to breaches of the Health and Safety regulations.
- 6.1.69 Mr Le Page denied that he had broken his confidentiality agreement with the company by discussing his salary with others.
- 6.1.70 Mr Thompson put it to Mr Le Page that both the verbal warnings and the written warnings were for his own good. Mr Le Page stated that he did not know that.
- 6.1.71 Mr Le Page repeatedly denied that he had acted as alleged by the company on the 12 May 2005, he also repeated his version of events on that day.

Evidence Given By Mrs Fox

- 6.1.72 Mrs Fox testified that Mr Le Page was her son.
- 6.1.73 Mrs Fox agreed that she had received a letter from John Thompson Autoresstorers Ltd in March 2005 asking her if she might intervene to help resolve the differences between Mr Le Page and his employer. She stated that as Mr Le Page was an adult that she did not think it appropriate for her to get involved.
- 6.1.74 In response to a question from Mr Thompson, Mrs Fox stated that she was worried about his apprenticeship but still felt it was not her place to discuss these issues with the employer.
- 6.1.75 Mrs Fox agreed with Mr Thompson that there had been an occasion when Mr Le Page had overslept and he had not attended work until after 10 a.m. and then had subsequently been sent home by the employer.

- 6.1.76 Mrs Fox stated in response to a question from Ms Eeles that she normally picked Mr Le Page up from work circa 5.15pm. to 5.20pm. and, on occasion, after 5.30pm.

Evidence Given By Mr Winter

- 6.1.77 Mr Winter stated that he was a qualified panel beater currently employed by John Thompson Autorestorers Ltd.
- 6.1.78 Mr Winter stated that he had had a clear view of Mr Le Page and Mr Thompson on the 12 May 2005 and that at no point did he see Mr Thompson grab Mr Le Page by his arm. However, under questioning from Ms Eeles he conceded that he was working some 10 to 15 metres from the incident and that he had been working under a car for some part of this discussion.

7.0 Closing Statement by Respondent

- 7.1 Mr Thompson stated that Mr Le Page had been a good employee until the end of 2004.
- 7.2 Mr Le Page was sent home on 12 May 2005, but was not dismissed.
- 7.3 Mr Le Page had been aggressive and disrespectful on 12 May 2005.
- 7.4 Mr Le Page had chosen to disregard previous warnings and his eventual dismissal was not just related to 12 May 2005.
- 7.5 Mr Le Page was not bullied but there were incidences of negligence and non-compliance with Health and Safety rules that had to be corrected by him.
- 7.6 Mr Thompson asserted that they had done everything possible as an employer, to address the various issues they had with Mr Le Page.
- 7.7 Mr Thompson stated that the company disputed Mr Wheatley's recollection of the events of 12 May 2005.
- 7.8 Mr Thompson stated that as a small employer they had complied with the requirements of Discipline Code of Practice and used a less formal procedure than might have been used by a larger company.
- 7.9 Mr Thompson wished Mr Le Page well in his future career.

Closing Statement by Applicant

- 7.10 Ms Eeles submitted her closing statement in written form (EE1 refers).
- 7.11 Ms Eeles referred to the Employment Protection (Guernsey) Law, 1998 and the requirement in law to prove that there was a dismissal within one of the approved categories and that the employer must have acted reasonably in dismissing the employee.
- 7.12 Referring to section 5(2)(a) of the Law, Ms Eeles stated that the employer was alleged to have used the words "your fucking apprenticeship is terminated". Ms Eeles stated that it would be inconceivable that one could view this statement as anything other than a dismissal within the meaning of the Law.
- 7.13 Ms Eeles referred to the testimony relating to the incident of 12 May 2005 and the supporting evidence of Mr Wheatley as to what had occurred.
- 7.14 Ms Eeles dismissed the assertion by Mr Thompson that Mr Le Page had merely been sent home on 12 May 2005 and not dismissed; she drew attention to the letter written by Mr Thompson on 16 May 2005 justifying the reasons for an instant dismissal (Tab EE1 Page 41 refers). Ms Eeles stated that under section 5(4)(b) of the Law that the effective date of termination could be none other than 12 May 2005.
- 7.15 Ms Eeles then turned to the issue of the fairness of the dismissal. She stated that guidance might be sought from a ruling by Lord Denning MR in the case of *Abernethy v Mot, Hat and Anderson* 1974 in which he stated that "*the principal reason for the dismissal should be known to the employee before he is dismissed or he must be told at the time of dismissal. The employer can only rely on the reason in fact for which he dismissed the*

employee, if the facts are known or sufficiently made known to the employee". Ms Eeles argued that John Thompson Auto Restorers Ltd could not rely on any grounds for the dismissal, as they were not known at the time of dismissal.

- 7.16 Ms Eeles argued that even if her previous point was not accepted then the employer could only rely on the grounds set out as reasons for the Instant Dismissal in the letter dated 16 May 2005 (Tab 5 EE1 Page 41 refers), not on any additional grounds cited in the EMPROT 2.
- 7.17 Ms Eeles stated that a primary determination of fairness was to apply the test of reasonableness in section 6(3) of the Law, taking account of the size and administrative resources of the employer's undertaking. Ms Eeles argued that the employer's response was not within any band of reasonable responses. In her view the dismissal was a not a reasonable or proportionate response to the alleged actions of Mr Le Page.
- 7.18 Ms Eeles also drew attention to a number of procedural failings; that no records were kept of disciplinary meetings, nor was Mr Le Page allowed to be accompanied by a fellow employee to disciplinary hearings. Ms Eeles argued that Mr Le Page was not told specifically what the allegations were against him, he was not given the opportunity to improve within specified time limits and he was not told of his right to appeal.
- 7.19 Ms Eeles argued that in considering all the written warnings there was no reference to the Disciplinary Code of Practice, despite the assertion by the employer that this was their primary guide on proper procedure.
- 7.20 Ms Eeles argued that it would be wrong for Mr Thompson to argue that he could not reasonably follow the Code of Practice as he only employs seven employees, and referred to the Guernsey case of Micropublishing-v-Gary Solway (2001) in which the Bailiff had stated that the need for a clear and structured procedure for both initial warnings and the dismissal procedure had nothing to do with the size of the employer.

8.0 Conclusions

- 8.1 The testimony and evidence submitted showed that the events of the 12 May 2005 were recalled somewhat differently by the Applicant and the Respondent, however the Adjudicator is persuaded by the Applicant that he was instantly dismissed, and in forceful terms, by Mr Thompson on that day. Further, Mr Thompson sought to justify the reasons for what he termed an instant dismissal in a letter to the Applicant dated 16 May 2005. Therefore the issue turns to the fairness of the dismissal.
- 8.2 The Adjudicator is also persuaded that the four reasons stated in the section three of the EMPROT 2 by the employer for dismissal should be those which are considered as to the fairness of the dismissal. The adjudicator notes that they are in principle consistent with the reasons given in the letter of instant dismissal of 16 May 2005.
- 8.3 Both the Applicant and the respondent made significant reference in their testimony to the Disciplinary Practice and Procedures in Employment Code of Practice, issued under section 31 of the Employment Protection (Guernsey) Law, 1998. The employer claimed that they had done their best within the limited resources of a small company to adhere to the principles of the code. The Applicant asserted that actions of the management of John Thompson Auto Restorers Ltd fell well short of the standards laid out in the section 'Essential Features of Disciplinary Procedures' which the Code states could be adapted and incorporated by smaller establishments.
- 8.4 The Adjudicator considered that in attempting to apply the Code in this particular case, the employer had failed to achieve an appropriate standard in regard to a number of key areas including the following:
- 8.4.1 The disciplinary warnings issued to Mr Page in the period July 2004 to March 2005 were arguably very vague and were written in such terms that it is most unlikely that Mr Le Page understood what the required corrective actions were, nor how his success in meeting company standards would be measured. It is significant that Mr Davey testified he was in the habit of issuing several verbal warnings a week to his workforce; this testimony would seem to demonstrate some confusion in the mind of the employer as to what constituted normal day-to-day management as opposed to warnings for significant

breaches of company rules - which would lead to a formal verbal warning and possibly be followed by further disciplinary action up to and including dismissal.

- 8.4.2 None of the Written Warnings indicated any timescale after which they would be disregarded. The Advisory Code indicates that this is good practice; otherwise an employee might reasonably assume that each warning would have stayed as a black mark on their record forever, and it is reasonable to assume that this is not conducive to an effective long-term employee/employer relationship.
- 8.4.3 The Advisory Code states that the individual concerned should be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached. On this issue, I am persuaded by the evidence offered by Mr Le Page that this did not happen. He was apparently issued these warnings without notice, or with minimal notice, and then expected to accept them without challenge.
- 8.4.4 The Advisory Code states that an individual should have the right to be accompanied by a fellow employee of their choice to any formal disciplinary hearing. The testimony from both the applicant and the respondent indicates that this was never explained to Mr Le Page. He attended each disciplinary meeting unaccompanied by a fellow employee.
- 8.4.5 The Advisory Code states that a careful investigation is required before applying any disciplinary action. Having reviewed the written warnings, and listened to testimony as to their content, the Adjudicator is not persuaded that any of them demonstrate objective and measured investigations, with due comparison to the standard of performance of other employees within this establishment.
- 8.4.6 The Advisory Code states that the employer should provide a right of appeal for any disciplinary action; testimony from both the applicant and respondent clearly indicates that no such appeal process was ever offered.
- 8.4.7 The Advisory Code also proposes that, in serious cases, a brief period of suspension might be appropriate; combined with a thorough investigation of the facts. It is apparent from the testimony offered by the Respondent as to the events of the 12 May 2005 that this was a heat of the moment dismissal. If Mr Thompson had opted for a disciplinary suspension on that day he might have been able to deal with the situation in a more measured and objective manner the following morning.
- 8.4.8 In the opinion of the Adjudicator it is the cumulative weight of these failings which indicate that the principles of natural justice were not applied throughout the disciplinary proceedings.

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 John Thompson Autorestorers Ltd failed to demonstrate a fair and reasonable process in dismissing Mr Le Page from their employment; I therefore find that the dismissal of Mr Le Page was unfair under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended.
- 9.2 The award of £3,208.96 has been determined under Section 20(1) of the Law, read in conjunction with the definition of 'Pay' as provided for under Part IV, General Provisions.

Signature of Adjudicator:

Ms P Woodward

Date: 23 November 2005