



**EMPLOYMENT AND DISCRIMINATION TRIBUNAL
NOTIFICATION OF TRIBUNAL'S DECISION**

On a complaint made to the Employment and Discrimination Tribunal, as specified below.

Tribunal Hearing held on 12 October 2006

between

Applicant: Mr James Berryman **and Respondent:** Jacksons CI Ltd

Tribunal Chair: Ms Georgette Scott

Side Member: Mr Andrew Vernon

Side Member: Mr Steven White

Nature of Complaint: Mr Berryman claimed unfair dismissal or constructive dismissal as he felt there were issues at work regarding his terms and conditions of employment and his working relationship with his manager, which included intimidation, that were not attended to by Jacksons CI Ltd.

Jacksons CI Ltd claimed that they had dismissed Mr Berryman fairly via redundancy.

Tribunal's Decision:

Having considered all the evidence and the representations of both parties, and having due regard to all the circumstances, we consider that a dismissal occurred by reason of redundancy. In order to claim constructive dismissal Mr Berryman would have had to resign with or without notice by reason of the employer's fundamental breach of contract. As Mr Berryman did not resign prior to being made redundant, there are insufficient grounds for this option. As to unfair dismissal, the panel gave consideration as to whether Mr Berryman had been fairly selected for redundancy and whether the procedure used by Jacksons was fair. The panel found the redundancy procedure pursued by Jacksons to be fair and therefore dismiss the claim and make no award.

Amount of Award (if applicable): Not applicable.

NOTE: Any award made by a Tribunal may be liable to Income Tax

Any costs relating to the recovery of this award are to be borne by the Employer

Signature of Tribunal Chair

Date

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF

REASONS FOR TRIBUNAL'S DECISION

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

1.0 The Claim

- 1.1 Mr Berryman claimed unfair dismissal or constructive dismissal as he felt there were issues at work regarding his terms and conditions of employment and his working relationship with his manager, which included intimidation, that were not attended to by Jacksons CI Ltd.
- 1.2 Jacksons CI Ltd claimed that they had dismissed Mr Berryman fairly via redundancy.

2.0 Representatives

- 2.1 The Applicant represented himself
- 2.2 The Respondent was represented by Mr Richard Millington, Operations Director, and assisted by Mrs Joanne Robinson, PA and HR Officer

3.0 Witnesses

- 3.1 For the Applicant
Mr David Edwards
Mr Martyn Le Sauvage

- 3.2 **For the Respondent**
Mr David Edwards

4.0 Documents

- 4.1 For the Applicant: Form ET1 plus various documents; A bundle of documents marked EE1; A document marked EE2
- 4.2 For the Respondent: Form ET2; A bundle of documents marked ER1; Pages of the Jacksons CI Ltd Staff Handbook marked ER2

Clarification Points

The Applicant had entered a claim of Unfair Dismissal in Box 1 of the Form ET1 but had added documents including letters to the Industrial Relations Service from prior to his dismissal referring to

his mistreatment/ongoing mistreatment and intimidation by his manager at Jacksons CI Ltd (hereon referred to as Jacksons).

Prior to hearing the cases of either side, the panel therefore sought to identify whether Mr Berryman was also making a claim of constructive dismissal. During discussions Mr Berryman clearly articulated that Jacksons had mistreated him and that he had been subject to intimidation from his manager, added to which Jacksons had not attended to his allegations. As Mr Berryman was unrepresented, the panel agreed with Mr Berryman to consider both unfair dismissal and constructive dismissal as claims against Jacksons.

As there was a conflict as to the amount of salary paid to the Applicant during the last six months of his employment, both submissions were discussed and it was subsequently agreed that the sum of £11,040.00 was correct.

5.0 Findings of Fact

- 5.1 Mr James Berryman worked as a Customer Service Advisor for Jacksons at their St Martins Garage between 8 November 2004 and 27 June 2006.
- 5.2 Jacksons St Martins was losing around £50,000 per month during 2006 and still continues to make a loss.
- 5.3 Jacksons St Martins, in a bid to make the franchise more economically viable after their 2006 half year results, sought to make a number of redundancies.
- 5.4 Mr Berryman was made redundant in June 2006.

6.0 Respondent's Submission

- 6.1 Soon after the half-year financial figures were reviewed a decision was reached to pursue economies and redundancies within the St Martins Garage business unit.
- 6.2 A management meeting was held at 12 noon on Tuesday 13 June 2006, at Jacksons St Martins to advise management of the situation, this was followed by an all staff meeting at 2.00 pm that afternoon. Within the all staff announcement made by the Operations Director, Richard Millington was an undertaking to meet with all staff individually on the following Friday to ascertain any ideas they might have for economies within the business and to hear of their thoughts regarding their own positions within the business and whether any of them wished to volunteer for redundancy.
- 6.3 At Mr Berryman's individual meeting with Mr Millington it is claimed that he volunteered for redundancy if the package was right. Mr Millington's handwritten and typed summary notes confirm this.
- 6.4 At a Directors Meeting on Saturday 17 June, the outcome of discussions with staff was discussed. From the minutes of the meeting it was agreed that the criteria for redundancy selection for service advisors would be based on knowledge and experience of the role. In addition it was noted that as part of overall cost reductions the Service Centre could operate with one less headcount.
- 6.5 In parallel with the redundancy process being pursued by Jacksons, Mr Berryman was also the subject of their disciplinary procedure. Mr Berryman had been suspended from work by his manager, Mr David Edwards, General Aftersales Manager, on Friday 16 June 2006 after he had refused to work the following Saturday 17 June in line with the Saturday Rota. Also stated in the letter inviting Mr Berryman to the hearing was Mr Berryman's alleged "general

negative attitude towards the management of the business". The hearing was planned for Thursday 22 June 2006.

- 6.6 In the meantime a further all staff meeting was held on the morning of Thursday 22 June where Mr Millington confirmed which of the staff suggestions for economies would be taken forward and announced that further one to one meetings with staff would take place the following day.
- 6.7 Also on 22 June 2006, Mr Berryman attended his disciplinary hearing in the presence of his manager, Mr David Edwards and the Company's PA and HR Officer, Ms Joanne Robinson.
- 6.8 The minutes of the hearing, which are unsigned by any of the parties, tell of the events of Friday 16 June when Mr Berryman refused to work the following Saturday according to the Rota. Within the minutes Mr Berryman is said to refer to his previous discussions with Mr Millington where he volunteered for redundancy and state that he would still like to be considered.
- 6.9 Mr Millington acceded that from this point forwards the Company failed to adhere to its own disciplinary procedures and failed to advise Mr Berryman of the outcome of the hearing pending the redundancy decisions, leaving him on open-ended suspension. The Company however did continue to pursue the redundancy option for Mr Berryman and believed they followed the guidelines fairly.
- 6.10 Within the bundle marked ER1 Mr Millington submitted emails and draft minutes together with a draft written warning notice to Mr Berryman detailing internal discussions regarding the approval of the documents, which he accepted were never sent to Mr Berryman.
- 6.11 On 23 June an open letter addressed to those members of staff being considered for redundancy was sent to Mr Berryman.
- 6.12 On 27 June Mr Millington met with Mr Berryman at St Martins Garage to confirm that he had been selected for redundancy. Mr Berryman advised that he had no counter arguments to being selected for redundancy as he was going to leave the Company anyway.
- 6.13 On 30 June a letter was delivered by hand to Mr Berryman's address terminating his employment by redundancy, advising him of his severance rights and releasing him from his duties with immediate effect. The Jackson's office did not receive a signed copy of the letter by return.

7.0 Applicant's submission

- 7.1 Mr Berryman's fundamental concerns and dispute with Jacksons were contractual in nature. He had joined Jacksons with a contract that provided for two fixed sum bonus amounts of £2,000 as well as a salary of £21,000 in order to compensate for the fact that he could not join the Company for less than £25,000. His offer letter and Statement of Terms and Conditions allude to this agreement. Due to changes in management immediately after he was recruited, this contractual arrangement was left ambiguous and interpreted to Mr Berryman's detriment by the subsequent manager Mr Coomber, losing him £4,000 due to the loss of the fixed sum bonuses. Fortunately the new regime meant he could earn in targeted bonuses almost the equivalent of the £4,000 and he chose to stay on in the role.
- 7.2 Added to this, changes were made in late 2005 to his and his colleagues Saturday morning working arrangements when one of the Services Advisors left and the work was absorbed by the remaining staff. Offered either an additional £60 per week or the option of continuing to

take a half-day in lieu during the week, Mr Berryman opted for the latter whilst his two remaining colleagues went for the former.

- 7.3 In February 2006 Mr David Edwards became Mr Berryman's new manager. None of the Service Advisors were paid in January for their Saturday morning working. When made aware of this Mr Edwards said they would be paid in February. This did not materialise.
- 7.4 These payments were not made in March or April and, when confronted, Mr Edwards offered Mr Berryman and his colleagues £240 to cover the period owed. Mr Berryman was eventually paid in early May.
- 7.5 Mr Berryman and his Service Advisor colleagues were also taken off the bonus scheme which meant Mr Berryman could no longer "earn" his additional £4,000.00. When he showed Mr Edwards his contract Mr Edwards chose to interpret the contract differently.
- 7.6 During March, at a staff meeting, Mr Edwards advised the staff that they would no longer be paid for Saturday mornings; no explanation was given. In addition, Saturday morning working would now be compulsory. Mr Berryman advised Mr Edwards that according to local employment law he could not make changes to terms and conditions of staff unilaterally without consultation and the agreement of the staff. Mr Berryman's advice was ignored. In addition, given the level of feeling at the withdrawal of pay for Saturday morning working Mr Berryman offered to work all Saturdays provide he received a half day off in lieu. This offer was rejected.
- 7.7 At the beginning of April Mr Berryman and his colleagues were advised by Mr Edwards through their Supervisor, that should one of them not work on Saturday 8 April then they would all receive written warnings and, should no-one work the following Saturday 15 April, then they would all be dismissed. Mr Berryman's Supervisor was included within this edict and he immediately resigned but was subsequently made to work both Saturday 8 and 15 April under threat of loss of his severance pay.
- 7.8 Asked why he and his colleagues did not contact HR or raise a group grievance Mr Berryman pointed out that HR was based in Jersey and had only come into being some months earlier when they had all received staff handbooks and copies of their contracts to sign. Mr Berryman said that he raised the matter of his contractual concerns with the HR officer who delivered the documents (who is junior to Ms Robinson) and was told to raise the matter with his manager.
- 7.9 Mr Berryman spoke of regular staff meetings where Mr Edwards would berate the Service Advisors en masse for poor performance. This was largely a one-way dialogue. He added that meetings sometimes lasted over an hour after hours and were mostly regarding the staff's shortcomings. On one occasion they were made to wave their arms in the air, which Mr Berryman found humiliating. At another meeting during work time Mr Berryman was left close to tears and had to take five days off work, only to return and be called into Mr Edwards's office immediately to have the conversation continue.
- 7.10 Mr Berryman told of an occasion where Mr Edwards had told himself and colleagues that it was his intention on joining the Company to make changes and that if anyone did not like it they could leave.
- 7.11 Mr Berryman sought out another member of management in early June in order to air his grievances and spoke to the General Sales Manager, Mr Gary Rouget, whom he respected and found it easy to talk to. He spoke of his contractual grievances including the loss of £4,000.00 but nothing came of the discussion.

- 7.12 Mr Berryman referred to Mr Millington's notes of their meeting on 16 June where he stated that Mr Berryman "doesn't gel with David his new boss" and queried why this did not prompt an investigation. He advised the tribunal that he was hoping that by remaining at Jacksons and pursuing redundancy that his issues with his manager would be investigated and sorted out.
- 7.13 Mr Berryman advised the tribunal that on the afternoon of 16 June 2006 when it was stated by the Respondent that he had left early after refusing to work the following Saturday, he had left not at 4.00 pm but 6.00 pm. Mr Millington interrupted Mr Berryman's submission to say he accepted Mr Berryman's version of the timing.
- 7.14 Mr Berryman stated that no offers of alternative jobs were made to him during the redundancy process.
- 7.15 With regard to the disciplinary process Mr Berryman queried whether any investigation of the events had taken place particularly as the Human Resources presence was based in Jersey.
- 7.16 Mr Berryman stated that he did not dispute Jacksons redundancy situation. He did not deny volunteering for redundancy if the terms were favourable to him.
- 7.17 He denied that he had reminded his manager Mr Edwards during the disciplinary hearing that he was still interested in the redundancy option.
- 7.18 Mr Berryman claimed that he did not fit the selection criteria for being made redundant by Jacksons as he had both experience and knowledge and was the longest serving Service Advisor.
- 7.19 He referred to Mr Millington's notes of their meeting on 27 June and denied saying that it was sensible and logical for him to be made redundant.
- 7.20 However Mr Berryman admitted that he did not decline the redundancy offer because he could not afford to stay on £4,000.00 less than his previous salary level.

8.0 Cross Examination

- 8.1 Mr Millington stated that the letter advising staff that they had been selected for redundancy and containing alternative jobs was provided at their individual meetings on 27 June 2006 and was read out line by line to each of them. Mr Berryman disputed this.
- 8.2 Mr Millington advised that whilst Mr Berryman may have been the longest serving member of the Service Advisors team his colleagues had years of experience at different garages. He asked Mr Berryman if he was aware of this. Mr Berryman did not dispute this.
- 8.3 Ms Robinson confirmed that investigation had taken place prior to the disciplinary hearing but they had not thought it necessary to interview Mr Berryman before the hearing.
- 8.4 Mr Millington advised that Mr Coomber, Mr Berryman's former manager, was not authorised to change the terms and conditions of staff and had not documented them and that was in part why he left the Company. Asked if recent changes to Saturday working had been documented Mr Millington advised that staff had always been required to work Saturdays on a Rota basis and therefore no change had occurred. Asked about the day in lieu or payment for Saturday working Mr Millington said that had been introduced by Mr Coomber without authority.

9.0 Testimony given by Mr Martyn Le Sauvage, Former Service Advisor

Note: The Respondent initially objected to the testimony of Mr Martyn Le Sauvage as he had left the Company by virtue of a compromise agreement or conciliated settlement that bound him to confidentiality. Following an adjournment the panel agreed to limit Mr Le Sauvage to confirming Mr Berryman's submission and to avoid reference to his own employment or the manner of his leaving the Company.

9.1 Mr Le Sauvage confirmed the occasion where Mr Edwards had berated Mr Berryman early one morning and had left him in an anxious and tearful state and that he had subsequently taken five days sick leave.

9.2 Mr Le Sauvage confirmed Mr Berryman's testimony regarding Mr Edwards' style of management and his meetings with his staff. He also confirmed that it had been the Company's custom and practice, prior to Mr Edwards' management, to receive pay for Saturday working or a half-day in lieu.

10.0 Testimony given by Mr David Edwards

10.1 Mr Edwards confirmed that he had joined Jacksons St Martins in February 2006, and that he was charged with making it more successful and to eliminate the losses.

10.2 He advised that he had checked the firms terms' and conditions and wished to align them. He confirmed that the Service Advisors had received a change to their terms and conditions by the former management and this had not been confirmed in writing. However the Rota for Saturday working stood and changes had to be made given the scale of the losses. It was "take it or leave it".

10.3 Asked about the "waving hands" staff meeting Mr Edwards explained that as a former trainer it was an ice-breaking technique and designed to introduce change and change habits.

10.4 Asked what he felt the nature of his relations with Mr Berryman were Mr Edwards described them as "ranging from very good to frosty".

10.5 Mr Edwards reported that he had asked Mr Rouget to speak to Mr Berryman regarding his issues, and that his report back was simply that Mr Berryman had concerns over Saturday working.

10.6 Mr Edwards denied that he bullied or intimidated staff.

11.0 Conclusions

11.1 It is clear from the testimony of the Respondent that Jacksons was a failing business in need of major change. Redundancy was a viable option and Jacksons pursued the process in a satisfactory way given the size of the organisation and their resources.

11.2 Mr Berryman, despite conflicting statements regarding volunteering for redundancy, did in fact admit that he had volunteered and then latterly accepted the terms of the redundancy package.

11.3 Mr Berryman despite having taken advice about his grievances from a reputable source and having tried to alert both his manager and a peer (Mr Rouget) was left without a positive response to his genuine concerns. At face value the Panel felt that Mr Berryman was alerting the Tribunal to elements of a constructive dismissal case bearing all the hallmarks of intimidation and bullying together with unheard grievances. However, in order for his claim to be accepted as a case for constructive dismissal Mr Berryman's case would have to meet three accepted tests:

- There was a fundamental breach of contract by the employer
- The employer's breach forced the employee to resign
- The employee did not delay too long before resigning

11.4 Mr Berryman meets the first of the above tests as there is sufficient evidence to indicate that his grievances were not attended to, in fact the disciplinary process which ran parallel to the redundancy process was disciplining him for failing to adhere to changes to his contract it was the matter of these changes that he was trying to raise, amongst others, as a grievance. In addition, Mr Berryman's manager, Mr Edwards' style of management was both challenging and intimidating at times.

11.5 However, Mr Berryman fails on the other two tests by not resigning and by delaying and waiting for the hope of being heard prior to being made redundant.

11.6 It is clear that Jacksons failed to respond appropriately to the concerns of its staff over changes to their terms and conditions and had a blinkered attitude to introducing change.

11.7 The fact that Jacksons have put in place HR practices and have readily accepted that their Disciplinary Procedures were transgressed with regard to Mr Berryman gives some anticipation of changes in favour of staff. The Panel do not regard this disciplinary process as connected to Mr Berryman's departure from the Company.

11.8 The Panel find therefore that Mr Berryman was fairly dismissed for reason of redundancy.

12.0 Decision

12.1 Having considered all the evidence and the representations of both parties, and having due regard to all the circumstances, we consider that a dismissal occurred by reason of redundancy. In order to claim constructive dismissal Mr Berryman would have had to resign with or without notice by reason of the employer's fundamental breach of contract. As Mr Berryman did not resign prior to being made redundant there are insufficient grounds for this option. As to unfair dismissal the Panel gave consideration as to whether Mr Berryman had been fairly selected for redundancy and whether the procedure used by Jacksons was fair. The panel found the redundancy procedure pursued by Jacksons to be fair and therefore dismiss the claim and make no award.

Signature of Tribunal Chair

Date:

