



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

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

Hearing held on 27 September 2006

between

Applicant: Mr Martyn Denning and Respondent: INK Limited

Tribunal Chairman: Mr P Woodward

Side Members: Mr J Guilbert and Ms K Tracey

Nature of Dispute:

During the period 27 April 1987 to 27 February 2006, Mr Martyn Denning was employed as a Manufacturing Manager. Mr Denning claimed that, on the 27 February 2006, his employer informed him that the company had ceased operation and that he was dismissed with immediate effect. Mr Denning subsequently claimed that the company failed to observe multiple elements of the recommended redundancy procedures contained in the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy"; and this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent gave testimony to the Tribunal but chose not to contest this allegation.

Tribunal Decision:

After carefully considering all the evidence and submission, and giving due weight to the size of the company and the available resources to deal with this dismissal, the Tribunal found that under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, Mr Martyn Denning was unfairly dismissed by the Respondent.

Amount of Award (if applicable): £18,108.79

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

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

1.0 The Claim

During the period 27 April 1987 to 27 February 2006, Mr Martyn Denning was employed as a Manufacturing Manager. Mr Denning claimed that, on the 27 February 2006, his employer informed him that the company had ceased operation and that he was dismissed with immediate effect. Mr Denning subsequently claimed that the company failed to observe multiple elements of the recommended redundancy procedures contained in the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy" and this constituted an unfair dismissal under The Employment Protection (Guernsey) Law, 1998 as amended. The Respondent gave testimony to the Tribunal but chose not to contest this allegation.

2.0 Representatives

- 2.1 Advocate T Crawford represented Mr Denning.
- 2.2 Mr Littlewood appeared for the company.

3.0 Witnesses

- 3.1 For the Applicant
Mr M Denning
- 3.2 For the Respondent
Mr Littlewood

4.0 Documents

- 4.1 For the Applicant: Documents identified as EE1 and EE2.

5.0 Findings of Fact

- 5.1 Mr Denning was employed by INK Limited (the "Company"), his total period of employment being between 27 April 1987 and 27 February 2006, this period including credited continuous service with previous owners of the business.

6.0 Testimony given by Mr Littlewood

- 6.1 Mr Littlewood was given permission to address the Tribunal even though he had already stated prior to the hearing that he did not wish to contest the proceedings, and repeated this assertion twice after he had taken an oath. He informed the Tribunal that he first became actively involved with INK Ltd in October 2004. The company owed significant debts to his company (Cams Ltd) and rather than seek immediate payment of these debts through the Royal Court he engaged in discussions with then Directors of INK and offered to give advice and support to assist them in resolution of their difficulties.
- 6.2 He was shown "the books" and decided that the company was insolvent to a sum in excess of half a million pounds. He provided a loan of £100,000 against his personal security and, as a result, wages continued to be paid and the arrears in rent of company premises were paid.
- 6.3 In the following 18 months he took on the role of Operations Director for INK Ltd and was a member of the Board of Directors. In this period he alleges that he became aware that fellow Directors had been less than candid as to the financial state of the company. Monies allegedly available in a Lloyds Bank account could not be traced, and the situation deteriorated despite

his attempts to reduce operating costs, for example he achieved a major reduction in waste disposal costs.

- 6.4 The collapse of the Company became increasingly inevitable with the departure of a fellow Director (Mr Edminston) who apparently left the company without notice in late 2005 and took no further role in subsequent proceedings. Also Mr Littlewood was critical of the way certain contracts were handled in this period, some fell behind schedule and others were not to standard.
- 6.5 Closure became inevitable after two major banks declined to advance any further funds and Mr Littlewood was forced to “close the doors” on the 27 February. He called a meeting of all employees on the afternoon of the 27 February and announced the cessation of business.
- 6.6 Mr Littlewood stated (under oath to the Tribunal) that he agreed with the applicants that their dismissal had been unfair, but alleged that other Directors of INK Ltd were more to blame than him for the final demise of the company. He stated that INK Ltd had not been liquidated at the end of February 2006 and all remaining assets of the Company had been “arrested” by HM Sheriff and this remained the current position. He stated there were no funds to pay any employee claims whether arising from a possible judgment from this Tribunal or indeed to pay any other contractual claims that the company may have against it.
- 6.7 The Tribunal thanked Mr Littlewood for his testimony and informed him that, as he had formally confirmed that he did not intend to contest any of the Applicants claims for unfair dismissal, he could be excused from the Hearing, although he was welcome to stay if he so chose as a member of the public.

7.0 Testimony from Mr Martyn Denning

- 7.1 **(The tribunal would like to record at this point that other applicants who had alleged unfair dismissal against INK Ltd, and who were present, were sworn in prior to this testimony and were advised that they would be requested during their own Hearing to confirm if they wished to adopt the following testimony for themselves)**
- 7.2 Martyn Denning (the "Applicant") was employed by INK Limited (the "Company"), a general commercial printing company, as Manufacturing Manager.
- 7.3 On Monday 27 February 2006, it became apparent through employees conversing with each other that neither the Applicant nor other employees had been paid their February salaries by the Company, which would normally have appeared in their bank accounts during the course of the previous weekend. Some of these employees therefore requested that a meeting be held with the Company's management to discuss the matter.
- 7.4 At approximately 1:00pm on 27 February 2006, Mr Mark Littlewood ("Mr Littlewood"), whom the Applicant understands was a director, company secretary and owner of the Company, called the Applicant and the Company's other employees to a meeting in the “Hand Finishing” Department. The meeting was not called on notice and the Applicant was not informed in advance as to what the meeting was about, although he assumed it would be about the non-payment of employees' salaries. Mr Littlewood attended the meeting with an individual called Ken Crosby ("Mr Crosby"). It is the Applicant's understanding that Mr Crosby had been appointed as Finance Director of the Company in late 2005. However, the Applicant was informed at the meeting that Mr Crosby had resigned this post and was present at the meeting to support Mr Littlewood.
- 7.5 Mr Crosby advised Mr Littlewood in front of the Applicant, and the other employees at the meeting, that it was no longer financially viable for the Company to continue operating its

business; although Mr Littlewood stated that he wished the business to continue operating, Mr Crosby stated that it was not worth keeping the business going. Mr Littlewood then blamed the current financial situation of the Company on the "bad workmanship of the employees", which upset the Applicant and the other employees as he believed this to be untrue. At the end of the meeting Mr Littlewood declared that there was only a certain amount of money remaining to pay the employees and that he would share it out proportionately amongst them.

- 7.6 Prior to this meeting, the Applicant had not been advised that the Company was in such extreme financial difficulties, although he was aware that the Company had recently taken some poor management decisions, such as allowing a valuable shipment of materials to be destroyed by rain/seawater during transit by virtue of the company transport chosen for this shipment, and had been struggling to pay its bills by virtue of it having problems in obtaining supplies.
- 7.7 At approximately 1:30pm on 27 February 2006, Mr Littlewood informed the Applicant together with the other employees that they were being dismissed and that they would each be paid a percentage of February's salary and no other payments. Mr Denning was particularly concerned that Mr Littlewood chose this very difficult moment to allege that the present position had come about due to poor workmanship by the employees; this allegation was strongly rebutted in the Hearing by Mr Denning.
- 7.8 Mr Littlewood then handed the Applicant and the other employees a letter dated 27 February 2006 from him as Company Secretary (attached as Exhibit A) and sent them home. The letter was addressed "to whom it may concern" and stated the following: *"It is with regret that we confirm that INK Limited ceased printing as of midday today and that the company has closed its doors to further business. All staff have been sent home and become creditors of the company for their February salaries. Please offer every assistance in this difficult time."*
- 7.9 The Company paid the Applicant by automated bank transfer a final salary payment in the sum of £650.00, which equated to approximately one quarter of his contracted monthly salary. The Company gave the Applicant no notice of the termination of his employment and no pay in lieu of notice as required by his contract of employment. The Applicant stated that whilst this communication did not explicitly state that he was redundant nor did it formally confirm that his individual contract of employment had been terminated that he presumed that his dismissal was by reason of redundancy.
- 7.10 The Applicant referred to the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy" and stated that in contradiction of the recommended steps to be taken the company had failed in discharging its obligations, as detailed below.
- 7.11 The Applicant testified that three months previously he and his colleagues had been approached by management and asked to take a 30% pay-cut, however there was no indication that without taking this measure that redundancies would occur; and indeed it seemed to Mr Denning that no other significant measures were taken to minimise or avoid redundancies prior to making him redundant.
- 7.12 There was no advance warning that redundancies may have to take place from within the Company.
- 7.13 There was no individual consultation with the Applicant, nor consultation with his trade union (Amicus) with regard to the redundancy prior to the Applicant being made redundant.
- 7.14 There was a complete failure to provide the Applicant with adequate information concerning the redundancy, nor was there time to comment, and finally no opportunity to make

representations prior to him being made redundant.

- 7.15 There was a failure to give consideration as to whether alternative work could be offered to the Applicant prior to making him redundant. The management kept the workforce totally in the dark as to the dire economic straits it was in. Mr Denning testified that even in the final days of February that there was still a significant work activity, thus it was not possible to gauge by observation that the company was due to close its doors.
- 7.16 There was an “en masse” dismissal along with all the other employees by means of a circular letter, rather than an individual notification of his dismissal.
- 7.17 Finally Mr Denning testified that there was no provision for a right of appeal against the dismissal.

8.0 Closing Statement by Advocate Crawford

- 8.1 (The tribunal would like to record at this point that other applicants for alleged unfair dismissal against INK Ltd were advised that they would be requested during their own Hearing to confirm if they wish to adopt the closing statement for themselves. Further to this each of the applicants was provided with a copy of the Closing Statement at this time; document EE2 refers).**
- 8.2 The Closing Statement summarised the testimony given by Mr Martyn Denning and emphasised the total disregard of the Department of Commerce and Employment's Code of Practice entitled "Handling Redundancy".
- 8.3 Particular attention was drawn to an alleged “nonchalant” attitude taken by the Respondent toward the practice of good industrial relations and the total lack of consultation either with individual employees or with the Union (Amicus)
- 8.4 Advocate Crawford submitted that even if the company was deemed to be small and so lacking in management resources to apply a detailed redundancy procedure, such as could be found in larger companies, that the company still had a duty to apply a fair procedure and take all reasonable steps to avoid redundancies becoming necessary. In his submission INK Ltd fell woefully below any standard of fairness or equity in dealing with this dismissal
- 8.5 Whilst Advocate Crawford conceded that non observance of the Commerce and Employment Code of practice in relation to handling redundancies (The “Code”) was not in and of itself a reason to render the dismissal unfair it did lead one to consider whether the employers were fair or reasonable within the meaning of the current law. Advocate Crawford drew the attention of the tribunal to the decision in *Brehaut V Milvus Software Ltd* (2003) which found an employer to have unfairly dismissed because of lack of prior consultation and further the decision in *Brehaut V White & Company* (2003) where lack of observance of the “Code” was a significant determining factor in the finding of an unfair dismissal.

- 8.6 Advocate Crawford drew attention to the total failure to consult and the absence of any appeals procedure. Indeed the Applicant had not been provided with any personal letter of dismissal and the Company had failed to provide contractual notice payments. Advocate Crawford confirmed that he understood the Tribunal had no authority to deal with this contractual issue.
- 8.7 Advocate Crawford submitted that even though the company was in dire economic straits prior to the closure that there had still been an opportunity to deal with the employees with dignity and the Directors could have at least attempted to observe the “Code” in their dealings with the Applicant
- 8.8 In summary the Advocate Crawford on behalf of the Applicant contended that he was unfairly dismissed from his employment with the Company within the meaning of sections 5(2)(a), 6(2)(c) and 6(3) of the Employment Protection (Guernsey) Law, 1998 as amended by reason of the Company's failure to follow a fair and reasonable procedure in relation to this dismissal

9.0 Conclusions

- 9.1 The Tribunal was impressed by the dignity and bearing of the Applicant in presence of his previous employer. It would seem to the Tribunal that the Applicant was using somewhat restrained language when referring to a “nonchalant” attitude being taken by the employer towards good industrial relations.
- 9.2 It is the opinion of all three Tribunal members that Directors of INK Ltd, having had responsibility for the employment of more than 25 employees in this jurisdiction, signally failed to discharge their responsibilities toward Mr Martyn Denning and his work colleagues as compassionate and concerned employers.
- 9.3 The Tribunal accepts that the company was in a dire financial position; however that does not excuse the requirement to keep a workforce informed when their livelihoods are at stake.
- 9.4 The Tribunal takes account of the influential UK ruling in *Polkey V Dayton Services Ltd*

In Polkey v A.E. Dayton Services Limited [1988] AC 344, HL, Lord Bridge stated that “... in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation”.

The judgement included 4 basic principles of fairness ‘which should always be considered’ in situations of redundancy:

- 1. The duty to consult the employee*
- 2. The duty to warn of redundancy*
- 3. The duty to establish fair criteria for the selection of employees*
- 4. The duty to explore alternatives to redundancy.*

Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too.

- 9.5 These principles are very relevant to the application by Mr Denning and it evident from the testimony given that none of them were observed by the Directors of INK Ltd

9.6 The Tribunal also notes the previous Guernsey Adjudications referenced in the closing statement by Advocate Crawford and whilst not bound by these decisions take note of the lack of consultation and lack of adequate process in those cases leading to findings of unfairness.

9.7 The Tribunal notes that the Applicant was not provided with an individual letter of dismissal and had to assume the closure was due to the economic circumstances of the company whilst being criticised on his final day of employment for “poor workmanship”. It would seem to the Tribunal that this compounded the error of total lack of procedure and demonstrated a total disregard of 19 years previous good service to the employer.

10.0 Decision

10.1 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, the Tribunal finds that this dismissal was unfair within the meaning of sections 5(2)(a), 6(2)(c) and 6(3) of the Employment Protection (Guernsey) Law, 1998 as amended by reason of the Company's failure to follow a fair and reasonable procedure in relation to this dismissal

10.2 An award of £18,108.79 is awarded, having been determined by the inspection of payslips relating to the Applicant's final six months employment with INK Ltd and verbal testimony given during the Hearing.

Signature of Tribunal Chair: Mr P Woodward

Date: 18 October 2006