

REASONS FOR TRIBUNAL'S DECISION

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

The Tribunal was assisted at the Hearing by the services of an interpreter, Mrs Viveiros.

1. The Claim

1.1 The Applicant, Mrs Lollie White, made a claim under the Law arising from her employment as Manageress of Union Street Stores. Mrs White claimed that the actions of the Respondent had given grounds for her to make a claim of unfair dismissal under Section 13(1)(a) of the Law, that the Respondent had failed to follow a fair procedure in the selection for redundancy and that other alternatives to redundancy had not been considered.

1.2 The Respondent, Mr Dean Guille, contested the claim arguing that the dismissal had been fair under Section 6(2)(c) of the Law.

2. Representatives

2.1 The Applicant represented herself .

2.2 The Respondent represented himself.

3. Witnesses

For the Applicant:

3.1 Mr Owen White (Mrs Lollie White's husband).

4. Documents

Entered by the Applicant:

Form ET1 (Application Form).

Entered by the Respondent:

Form ET2 (Response Form); a letter dated 8 April 2006, from Mr Guille to Mrs White confirming his decision to dismiss her on the grounds of redundancy; an undated letter from Mrs White to Mr Guille noting her entitlement to pay in lieu of notice and holiday pay; Union Street Stores Written Terms of Employment for Mrs White effective from 18 July 2005, marked ER1.

5. Clarification Points

- 5.1 The Respondent had indicated in Section 3 of Form ET2 that the Applicant had not been dismissed. It was explained to him that a redundancy was a form of dismissal and quoted Section 5(2)(a) of the Law which states that "... an employee shall be treated as dismissed by his employer, if, but only if the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice." The Respondent subsequently agreed that a dismissal had taken place.
- 5.2 As there was ambiguity regarding the amount of salary paid to the Applicant over the last six months of her employment, both submissions were discussed and it was subsequently agreed by both parties that the figure of £11,407.50 (which had been submitted on the Union Street Stores' Social Security returns) was correct.

6. Findings of Fact

- 6.1 Union Street Stores is a small grocery store, open seven days per week, serving the general public with a range of foodstuffs and other household supplies.
- 6.2 Mrs White was the Manageress of Union Street Stores, having been employed by Mr Guille for over 10 years.
- 6.3 The effective date of termination of Mrs White's employment was 7 April 2006.

7. Respondent's Submission

- 7.1 Mr Guille briefly explained the activities of the Union Street Stores, noting that it was generally staffed, on a day-to-day basis, by one member of staff.
- 7.2 His current staff complement consisted of three part-time staff (one working 22-25 hours per week, one working 6 hours per week and another working 9 hours per week) and a Sunday shop worker (working 8-12 hours). He also helped out himself from time to time.
- 7.3 Mrs White had been working 39 hours per week prior to her dismissal.
- 7.4 He had been the proprietor of other businesses in the past but had since sold them.
- 7.5 Mr Guille explained that Mrs White's redundancy had come about as a result of his need to cut costs due to financial problems.
- 7.6 His financial troubles started after a knife robbery in Union Street Stores in February 2005; following this incident he had felt it necessary to employ an additional member of staff to give some comfort to his employees.
- 7.7 In March 2005, Mrs White left on maternity leave for 20 weeks and he had agreed to pay her for 12 weeks; 6 weeks at full pay and 6 weeks at half pay, with the remainder of her maternity leave being on an unpaid basis. He honoured this commitment and also paid for additional staff to cover her period of absence.
- 7.8 Upon Mrs White's return, he also had to suffer additional costs of staff sickness and holiday pay and increased staff costs to cover these absences.
- 7.9 By the end of 2005 his staff wages had increased from £48,000 to £89,000.

- 7.10 On 8 January 2006, he suffered an uninsured loss when a large amount of money was stolen from his vehicle. This resulted in cheques issued to his suppliers being returned and his suppliers subsequently insisting upon cash on delivery terms for any future orders placed with them.
- 7.11 His deepening financial problems severely affected the cash flow for his business to the extent that he received a court summons. After taking legal advice and discussing his situation with his creditors, he managed to arrange a repayment plan but in order to improve his cash flow, he had to reduce his overheads.
- 7.12 He stated that he had consulted with Mrs White one Sunday morning in February 2006 asking her if she would consider working from 8 am instead of 7 am as the first hour of opening was not profitable. She said she could not do this as it would be difficult for her to park her car and she would also seek legal advice on the matter as such a change would result in a reduction in her hours.
- 7.13 This conversation had taken place in front of an employee who had since left to concentrate on her A levels. Unfortunately, as it was A level results day today, she could not be present at the hearing.
- 7.14 He told Mrs White that he may have to make a redundancy amongst the staff as he was experiencing financial problems and needed to pay his creditors and at that time Mrs White took it that she would be staying, perhaps because she was the manageress and also the longest-serving employee. She did not put forward any ideas as an alternative to redundancy at that time.
- 7.15 Since this conversation he had further commented to Mrs White that his creditors were becoming of more and more concern to him.
- 7.16 He spoke to all his employees in mid March (around the 18th or 19th) to make them aware that there could be a redundancy. At this time, one employee offered to reduce her hours from nine to six. The discussions took place in the shop and he felt that he had been fair in the way he had approached them.
- 7.17 Had Mrs White presented the offer of reducing her hours or pay he would have considered her representation before making a decision.
- 7.18 When it came to the redundancy itself he had to go through a selection process. He wanted to maintain job security but knew he had to make someone redundant. At the same time he wanted to be fair with everyone and minimise the amount of staff affected. He looked at the costs of his part-time employees but knew that making one of them redundant would not have achieved the cost saving required and he needed sufficient staff to ensure his business needs were covered. He considered the length of service of his employees but felt that there were other more relevant criteria to consider in the selection process.
- 7.19 He had been aware for some time that Mrs White had been actively seeking alternative employment, as he had been asked for character references for jobs she was pursuing. It was also common knowledge amongst the staff that she was looking for alternative employment.
- 7.20 He chose Mrs White because:
- she was the only employee who had shown a desire to leave his employment by openly and actively seeking and applying for other job vacancies.

- her cost would achieve the saving he needed to meet the repayment plans to his creditors whereas the alternative would have been to release all his part-time staff which would have prevented him from running his business.

- 7.21 Mr Guille provided Mrs White with a letter explaining the reason for redundancy, offering five weeks' pay and the option to leave now or work the five weeks. Mrs White decided to leave that day rather than continue working. He had given her the choice because he knew she could save money on child-minding fees if she decided to leave straight away. He also thought that paying her five weeks' pay on a weekly basis would be more beneficial to her from a tax perspective.
- 7.22 On 12 April Mrs White came into the shop and handed back the redundancy letter given to her. She had signed it in acceptance of the redundancy payment offered to her.
- 7.23 Mrs White subsequently sent a letter to Mr Guille stating that she was entitled to four weeks pay in lieu of notice and also holiday entitlement up to 30 March. She instructed Mr Guille that she wanted the monies owed to her by 15 April. As he was aware that she had no legal entitlement to redundancy pay, he paid her the four weeks pay in lieu of notice plus holiday pay owed to her on 14 April.
- 7.24 He had not initially been aware of the Code of Practice on Handling Redundancy and thought this was something that should be addressed with all employers.
- 7.25 On 18 May, Mrs White made a claim against him for unfair dismissal.
- 7.26 Mr Guille had covered Mrs White's hours since she left.
- 7.27 He considered that Mrs White had been a very good employee and customers had liked her. She was a hard working, reliable employee and if his current situation was to change at any time he would be first person to give her another job because he thought highly of her. If he had not taken the action he had, everyone would have lost their jobs and the closure of the shop would have also resulted in a loss to the community.
- 7.28 He had never made anyone redundant before or since Mrs White left.
- 7.29 Mr Guille was meeting his repayment plan obligations but still had a substantial amount to pay back to his creditors. His situation had stabilised and he was hopeful that his financial situation would improve. He was a family man who was trying to do his best to keep his head above water and in order to do this he had put his house and vehicle on the market.

8. Applicant's Submission

- 8.1 Mrs White briefly explained her role as Manageress of Union Street Stores. She looked after the shop and the staff and placed orders for supplies.
- 8.2 She had worked for Mr Guille for over 10 years, starting initially on a part-time basis, increasing to full-time about five years ago. At that time his business was making money.
- 8.3 She took a period of 20 weeks' maternity leave last year and had no choice but to return as she needed to work.
- 8.4 At this time the shop was not making any money but regardless of this Mr Guille bought another shop and a paper round. Mrs White considered that someone in financial trouble

would not normally commit themselves in this way and would alternatively be looking at ways to improve their situation.

- 8.5 Mr Guille had asked her in front of another member of staff if she would reduce her hours and start at 8 am instead of 7 am but she said she could not afford to do this. She also felt that her earnings would be used to pay parking tickets if she couldn't get a parking space by coming into work later. Mr Guille had taken her on to do 39 hours per week and she could take him to court if he reduced her hours.
- 8.6 She had gone for another job in a nursing home because he had indicated that he may have to let the staff go and on hearing something like this she had to think about getting another job as she didn't want to be without work.
- 8.7.1 Mr Guille did tell her in February 2006 that his business was going through financial difficulties by saying that the business was going down. He said he was going to throw everyone out and then he changed his mind and said he was going to keep two of the staff on - her and Lisa (an evening worker who worked 9 hours). He was going to tell one of the staff that she would have to find another job but a further conversation resulted in their agreement to work split shifts so that Mr Guille could spend more time with his family.
- 8.8 However, a few weeks after this, on Thursday 7 April, he said he was going to make her redundant and offered her five weeks pay. He suggested that she could stay at home for five weeks so that she didn't have to pay a child minder although he gave her the option of working the five weeks or leave earlier. However, at about 11.30 am that day he said that she had to leave the shop. His words were "I suggest you leave tomorrow". She said he couldn't do that and was really upset so she telephoned her husband. It was not her decision to leave straight away and she felt that she should have had more notice than that.
- 8.9 Her husband asked Mr Guille why he had done this and he said he had no other option other than to let her go because he had a lot of bills to pay and offered to show her husband the bills.
- 8.10 After he had made her redundant she offered to reduce her hours or reduce her pay rather than lose her job.
- 8.11 Mr Guille did not initially provide her with a reference suggesting that she could show prospective employers the redundancy letter he had given her. He did, however, eventually provide one about a week after she telephoned him to request one.
- 8.12 Before she signed the redundancy letter she obtained advice and was advised to sign the letter to get her five weeks pay as this would be better than nothing. She was also advised to write to Mr Guille setting out her entitlements.
- 8.13 Mr Guille subsequently paid her four weeks pay in lieu of notice, plus holiday pay owed.
- 8.14 Mrs White felt that Mr Guille should have done something sooner about his financial problems rather than leave it as long as he did.
- 8.15 She was concerned about her reputation, as Mr Guille had told some of the customers that she had left to go and work for the Co-op. She thought he should tell them that she had been made redundant as they may be under the impression that she had done something dishonest.
- 8.16 She had enjoyed working in the shop and had done her best. She had had no problems and Mr Guille had been a good boss to her.

9. Witness : Mr Owen White

- 9.1 Mr Owen White verified that on Thursday 7 April his wife had telephoned him at approximately 11.30am to tell him that she had been made redundant. He couldn't believe it and asked his manager if he could leave work to go to his wife.
- 9.2 When he arrived she was still serving customers and was extremely upset which, in turn, upset him. Mr Guille explained that he had had no choice but to get rid of her and tried to show him one of his bills but he said he wasn't interested in seeing his bills, he was interested in his wife. He told Mr Guille that he was wrong to dismiss his wife and that he should keep the old staff and let the young ones go. Mr Guille told him that it didn't work that way and that Mrs White was the highest paid employee.
- 9.3 He went back to work and his wife insisted on staying until 2 pm still continuing to serve customers even though she was extremely upset.
- 9.4 He asked Mr Guille if he could give his wife a good reference and he said "Don't you tell me what to do".
- 9.5 His wife left the shop at 2 pm. She had no employment for two or three weeks, which was a difficult time for them as they had bills to pay.
- 9.6 When Mr Guille eventually provided a reference she managed to get a job at the Co-op.
- 9.7 Mr White thought that the way Mr Guille had spoken to his wife was disgusting and felt that he should have at least given her something such as flowers, a bottle of wine or chocolates.

10. Conclusions

- 10.1 Section 6(3) of the Law states that in determining whether the dismissal of an employee was fair or unfair, having regard to the reason shown by the employer, it "shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case."
- 10.2 Mr Guille dismissed Mrs White on the grounds of redundancy.
- 10.3 Section 10 of the Code of Practice on Handling Redundancy notes the principles of a fair procedure, which should be applied within small firms as:
- consulting with employees about redundancy situations well before final decisions are reached;
 - ensuring that there is a fair and objective basis for redundancy selection;
 - taking all reasonable steps to avoid or minimise redundancy, e.g. offering alternative work if it exists.
- 10.4 Given the logistics of Mr Guille's business and his dire financial situation, it was reasonable for him to deduce the need to reduce his overheads in order to continue operating his business and meet the repayments to his creditors.

- 10.5 He clearly identified that he needed to continue running his business in order to repay his debts and decided that the required saving to meet his repayment plan could only be achieved by reducing staff costs.
- 10.6 As an alternative to dismissing Mrs White, he would have had to dismiss all of his part-time staff in order to achieve the required cost saving and he needed his part-time staff to provide cover during the required shop opening times.
- 10.7 Mrs White, as Manageress and a full-time employee, was selected for redundancy because she was the highest paid member of staff and she had been openly seeking alternative employment.
- 10.8 It was clear that some consultation had taken place before the decision to dismiss had been taken, albeit that this had been rather inept.
- 10.9 Although Mr Guille had not read the Code of Practice on Handling Redundancy before the dismissal, he had complied with it.
- 10.10 It is very unfortunate when an employer has no alternative but to dismiss on the grounds of redundancy as the situation is often highly emotionally charged. Mrs White should, however, take some comfort in knowing that she continues to be highly regarded by Mr Guille.

11. Decision

- 11.1 Having considered all the evidence presented and the representations of both parties and, having due regard to all the circumstances, we consider that a dismissal occurred by reason of redundancy and that, given the size of Mr Guille's business, a fair procedure was applied by him in the selection of Mrs White for redundancy.
- 11.2 The Tribunal, therefore, finds the dismissal to be fair and makes no award.

Signature of Tribunal Chair

Date: