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UPDATE

The Guernsey Tribunal highlights the importance of effective and unambiguous communication in effecting fair dismissals

Update prepared by Rachel Guthrie (Counsel, Guernsey)

Two recent decisions by Guernsey's Employment Tribunal (the Tribunal) illustrate the importance of clear communication when handling employee dismissals. In the first case the respondent successfully defended an unfair dismissal claim by a trainee plumber who was dismissed after he received a second driving ban for speeding just three months after his first ban and after being specifically warned that any repeat offence would result in the termination of his employment. The applicant, a trainee plumber, argued that the dismissal had been unfair because, amongst other things, he had not been given a chance to appeal either the disciplinary warnings previously given to him or the decision to dismiss him.

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The Tribunal's response was pragmatic. It took account of the 'clear and unequivocal warnings' had been given to the applicant that any repeat offence would result in dismissal, and that the respondent had, at all times, acted reasonably in its dealings with the applicant, and whilst it noted that it would usually expect an employer to provide a right of appeal, the dismissal of the individual was within the range of reasonable responses and therefore was not unfair. The Tribunal also had specific regard to the very small size of the respondent when making its decision – suggesting that a large company would have been expected to tick all the boxes for carrying out a fair dismissal – including, arguably, offering the right to appeal.

In the second case, the employer did not fare as well. The decision involved a preliminary hearing to determine whether the employee had been employed for the relevant 12 month qualifying period to entitle her to bring a claim of unfair dismissal.

The applicant had worked as a roulette spinner for the respondent since 2009. On 3 September 2015 she was signed off work for four weeks on account of stress related to a grievance she had lodged against a colleague for victimisation and bullying. That same day she told the managing director by email that she had been forced to 'constructively dismiss' herself because of the company's failure to respond adequately to her grievance. She did not provide any indication of whether that was to take immediate effect but had reiterated on a number of occasions subsequently that she considered herself 'constructively dismissed'. There was some confusion, however, as to what this actually meant because she had a valid medical certificate authorising her absence from work on medical grounds. Subsequently, and following a meeting with the managing director, she agreed to 'cancel her sick note' and return to work on 18 September 2015.

The question for the Tribunal was: Did the two week 'break' in service constitute a break in the qualifying period? If so, this would result in her not having the relevant qualifying service to bring a claim of unfair dismissal. The Tribunal found as relevant that the respondent had not explicitly accepted the applicant's

'constructive dismissal' nor had it issued a fresh contract when she returned to work. It thus formed the view that the applicant was in fact on authorised sick leave consistent with her medical certificate. This was an interesting and perhaps controversial position adopted by the Tribunal. Previous authority has found that whilst it is necessary for an employee to unequivocally and unambiguously accept an employer's repudiatory breach of contract (in order to bring an employment contract to an end), once that breach has been accepted by the employee, as in this case with the applicant asserting that she had been 'constructively dismissed', it is not necessary for the employer to have to accept the applicant's dismissal in order for the dismissal to be effective.

In any event, the moral of the two stories is, make sure your communication is clear, whether you are the party issuing the dismissal or the party accepting or acknowledging it.

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