

# *In the Royal Court of Jersey*

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Samedi Division

2008/82

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In the year two thousand and eight, the twenty-fifth day of September.

Before Julian Anthony Clyde-Smith, Commissioner.

BETWEEN	C.I. Fire & Safety Limited	REPRESENTOR
AND	Mark Browning	RESPONDENT

Whereas on the 14<sup>th</sup> March, 2008, as appears by Act of Court of that day, CI Fire & Security Limited (hereinafter "the Representor") presented a Representation to the Court in the following terms:-

1. The Respondent's employment with the Representor, as an Alarm Engineer, commenced on 10<sup>th</sup> February, 2003, and was terminated by the Representor by letter dated 29<sup>th</sup> November, 2006, with one month's pay in lieu of notice.
2. The Respondent brought a claim in the Jersey Employment Tribunal (the "Tribunal") in which it was alleged that the Respondent had been unfairly dismissed. The case was heard by the Tribunal on 12<sup>th</sup> November, 2007. The case for the Representor was put by Mr Paul King, Engineering Manager of the Representor. Both the Representor and the Respondent were litigants in person at the hearing, being without legal representation.
3. In a decision dated 29<sup>th</sup> November, 2007, a copy of which is lodged au greffe, the Tribunal held:
  - (a) That the Respondent had been unfairly dismissed, and awarded the Respondent £8,460.00; and
  - (b) That the Representor had failed to comply with Article 3 of the Employment (Jersey) Law 2003 (the "Law") and, under Article 9 of the Law, fined him £250.00 in relation to the alleged offence.
4. The Representor appeals against both decisions of the Tribunal set out in 3. above. Appeals are brought under Article 94 of the Employment (Jersey) Law 2003 (the

- "Law"). There is no procedure or timetable set down in the Law or any subordinate legislation as to the procedure for appeals from the Tribunal to the Royal Court.
5. Leave to appeal the Tribunal's decision to the Royal Court was granted by the Chairman of the Tribunal by letter dated 11<sup>th</sup> February, 2008, a copy of which is lodged 'au Greffe', received by the Representor on 14<sup>th</sup> February, 2008. The Chairman of the Tribunal confirmed in that letter that the grounds on which the Appeal could be brought were not limited by the terms of that letter.
  6. The Representor relies on the affidavit of Mr Paul King in relation to the Appeal, a copy of which is lodged 'au Greffe'. There is no transcript of the hearing. The Representor asks the Royal Court to order that the notes of the Tribunal panel in relation to the hearing, if any are retained by the Tribunal, be disclosed with twenty-eight days of the date on which this Representation is heard.
  7. The grounds of the Appeal are that:
    - (1) The Tribunal hearing was not conducted in a fair way, given that:
      - (a) The Representor was not allowed a specific opportunity to put questions to the Respondent about his case;
      - (b) The Representor was not given a proper opportunity to put its case;
      - (c) Mr King, for the Representor, was continually interrupted by the Respondent when speaking;
      - (d) The Tribunal failed to prevent the Respondent from shouting out rude and inflammatory comments when Mr King was speaking, the effect of which was unfairly to prejudice the Representor in the presentation of its case;
    - (2) As detailed under 7(1) above, the hearing was conducted in a way which breached the Representor's rights under Article 6 (1), "right to a fair trial", of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (the "Convention"), as applied to Jersey by the Human Rights (Jersey) Law 2000;
    - (3) Conclusions were reached for which there was no supporting evidence. The Representor will refer to the following issues, the conclusions drawn by the Tribunal in relation to them and the effect of their conclusions at the hearing of this Representation:
      - (a) the actual reason for putting the Respondent in a particular post;
      - (b) whether there were one or two meetings and/or hearings, in relation to what the Tribunal refers to as the "disciplinary hearing";

- (c) whether or not time off work was given;
  - (d) the timing and extent of contact with JACS;
  - (4) The Tribunal misapplied the law and its decision that the dismissal was unfair was one which was obviously wrong, given factors including the conduct of the Respondent, steps taken by the Representor and the size and administrative resources of the Representor's business;
  - (5) The Tribunal acted *ultra vires* by fining the Representor when it had no legal power to do so;
  - (6) In the alternative, if it did have such a power:
    - (a) The Tribunal misapplied the law regarding the statutory requirements relating to written statements of employment terms, by finding that the Representor had not notified the Respondent of a change to his employment terms in accordance with the Law, even though it found that that change had taken place on the date when the Representor provided the Respondent with a written copy of the disciplinary procedure being introduced, the introduction of which was the change in question; and
    - (b) There was no compliance with due process in that the Representor was convicted of an offence without having first been charged with that offence, in breach of the Representor's human rights, under Article 6(3)(a) of the Convention.
8. In relation to the allegations of breach of the Representor's human rights, the Representor confirms that:
- (a) The Representor avers that the unfair conduct of the hearing was in breach of Article 6(1) of the Convention, in relation to the issue of the fairness of the dismissal, a civil law issue, and also in relation to the allegations regarding the written statement of terms, a criminal law issue:
    - "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
  - (b) The Representor avers that the lack of due process in relation to the allegations regarding the written statement of terms, a criminal law issue, was in breach of Article 6(3)(a) of the Convention:
    - "3. Everyone charged with a criminal offence has the following minimum

rights –

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;"
  - (c) The relief sought by the Representor is that:
    - (i) the Royal Court overturn the decision of the Tribunal and find that the decision was fair; and
    - (ii) the Royal Court find that the Tribunal had no power to fine the Representor; and
    - (iii) the Royal Court find that, in any event, by providing the Respondent with a written copy of the disciplinary procedure on the same day that the procedure was introduced the Respondent had complied with the Law.
  - (d) The relief sought does not include a declaration of incompatibility or damages.
  - (e) Details of the judicial acts complained of are set out above in this Representation.
9. In the event that the Representor is successful in this Appeal the Representor may seek an award of costs in its favour including an award of costs to be paid from the public purse.

WHEREFORE the Representor prays for the following relief:

- (i) that a copy of this Representation be served on the Respondent;
- (ii) that the hearing of this Representation be adjourned to a date to be fixed by the Judicial Greffier for the purpose of issuing directions for the hearing of the Appeal;
- (iii) that the notes of the hearing of the Tribunal panel be disclosed for the purposes of this Appeal;
- (iv) that the orders of the Tribunal in relation to payment of compensation and payment of a fine be stayed pending the determination of this Appeal;
- (v) that the Court shall make such award of costs as may be just;
- (vi) that the Court shall grant such further or other relief as may be just.

And whereas upon reading the said Representation of the Representor and upon hearing the Representor's advocate, the Court, inter alia, adjourned the further consideration thereof to a date to be fixed and ordered that the said Respondent be served with a copy of the said Representation by ordinary service.

And whereas on the 10<sup>th</sup> June, 2008, as appears by Act of Court of that day, the Court, by consent, inter alia, ordered that the Representor shall pay within fourteen days of the date

of that order a sum equivalent to the award made to the Respondent in the Tribunal Hearing (£8,640.00) to Bedell Cristin's client account pending the determination of the Appeal.

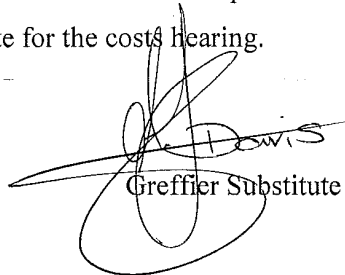
And whereas on the 27<sup>th</sup> August, 2008, the Court sat to further consider the said Representation limited to the following issues: (a) that the Tribunal acted ultra vires by fining the Representor when it had no power to do so; or in the alternative; (b) that, if the Tribunal did have the power, it misapplied the law regarding statutory requirements relating to written statements of employment terms; and (c) that the Tribunal acted in breach of the Representor's rights under Article 6(3)(a) of the European Convention on Human Rights.

And whereas upon hearing the advocate for the Representor and the Respondent having not appeared by consent, the Court reserved judgment.

Now this day, the Court, for the reasons set out in a judgment delivered by the Commissioner, declared that the Tribunal had no power to prosecute, convict and fine offenders for offences created under the said Law and therefore had no power by its decision of the 29<sup>th</sup> November, 2007, to fine the Representor the sum of two hundred and fifty pounds (£250.00).

Whereupon the advocate for the Representor applied for the costs of and incidental to the said Representation, the Court:-

1. adjourned the matter of costs for a date to be fixed (hereinafter "the costs hearing");
2. ordered that Her Majesty's Attorney General shall be convened to the said costs hearing, and that copies of this Act of Court; the Representor's Representation, today's judgment, authorities, the skeleton argument and the Tribunal's decision shall be served on him forthwith; and
3. directed that the parties shall attend upon the Bailiff's Judicial Secretary as soon as possible to fix a date for the costs hearing.

  
Greffier Substitute

BC (VSM)  
HMAG ✓