

• ARE YOU ACTING WITHIN THE 'BAND OF REASONABLE RESPONSES'?

In a recent decision Guernsey's Employment and Discrimination Tribunal dismissed an applicant's claim for unfair dismissal and held that the respondent employer had acted reasonably in treating the applicant's misconduct as a sufficient reason for his dismissal.

In this case the applicant, a former head gardener of the respondent's premises, brought an action against the respondent claiming that he had been unfairly dismissed when he suffered an injury at work and was expected to work whilst being 'signed off' as medically unfit.

The respondent successfully defended the claim arguing that the applicant was dismissed not because of any alleged injury but because of his persistent breaches of the express and implied terms of his contract of employment. The Tribunal accepted the respondent's evidence that over the 18 months of his employment, the applicant continually took extended lunch breaks, arrived late at work and regularly left early, failed to properly inform his line manager of his absences at work, failed to provide any adequate reason for such absences (although evidence before the Tribunal indicated that the applicant was working at a fast food outlet) and failed to engage in any form of work including lighter duties which may hinder or aggravate the applicant's injuries.

The Tribunal accepted the respondent's evidence that it had acted in good faith at seeking to engage the applicant in alternative lighter duties to enable the applicant to

continue to be paid, and the applicant's refusal to undertake any such work was unreasonable. The Tribunal also accepted that the applicant's continued misconduct (despite various previous warnings) was sufficient to enable the respondent to invoke its formal disciplinary procedure.

The Tribunal's view was that the actions of the respondent to invoke the disciplinary procedure which ultimately resulted in the applicant's dismissal fell into the 'band of reasonable responses' of a reasonable employer - what more was the employer supposed to do? Taking into account the size and administrative resources of the employer was a requirement when deciding what falls within the 'band'. In this instance, the applicant was only one of two members of staff and the size/administrative resources of the respondent was relatively small, it was entirely reasonable therefore for the respondent to decide that it could not in future trust the applicant and its decision to exercise the ultimate sanction of dismissal fell within that band of reasonable responses.

Word of warning - no matter how big or small your business is, always be mindful to adopt a fair disciplinary procedure whenever situations of misconduct arise, if you fail to act (or act appropriately), it could be your business that ends up paying the consequences.

If you are experiencing issues of misconduct within your organisation, talk to me or one of my Employment team, we will only be too happy to put you on the right track!

FOR MORE INFORMATION,
PLEASE CONTACT:



EMMA PARR
ASSOCIATE
t: +44 (0)1481 734229
e: emma.parr@collascrill.com

Collas Crill **Guernsey**

Gategny Court, PO Box 140,
Gategny Esplanade, St Peter Port,
Guernsey, GY1 4EW
t: +44 (0) 1481 723191
f: +44 (0) 1481 711880
e: guernsey@collascrill.com
w: www.collascrill.com