

JERSEY / JUDGMENT

# Christian Berry v JB Groundworks Limited

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER BETWEEN  
CHRISTIAN BERRY CLAIMANT AND JB GROUNDWORKS LIMITED RESPONDENT TRIBUNAL  
JUDGMENT Reference: [2025] TRE 47A Before: Advocate C E Whelan MBE, deputy chair  
DECISION The Claimant's application for leave to appeal is rejected. SUMMARY

## Introduction

1. This is the Tribunal's response to the Applicant's application for leave to appeal to the Royal Court against the Tribunal's judgment dismissing all of his claims in the tribunal proceedings now under reference. The Tribunal refuses leave for the reasons which now follow.
2. In the application for leave, the Tribunal is said to have erred in law and procedure when determining breach of contract and constructive unfair dismissal issues, particularly in relation to training/certification, documentary disclosure, reliance on an alleged conversation with a former employer, welfare facilities, and the approach to contractual construction and affirmation. Background and decision below
3. The Applicant was employed by the Respondent as an HGV driver between 10 May 2024 and 16 January 2026. He advanced claims for unlawful deduction from wages, breach of contract and constructive unfair dismissal. All claims were dismissed.
4. The Tribunal found that: the Applicant ceased work on 17 December 2025 after refusing a particular job of work and telling the employer that he was "knocking off for Christmas"; he had exhausted his annual leave entitlement so that no holiday pay was due; public holiday payments had been properly made to him; the claim of unlawful deduction from wages failed because no wages were contractually payable for that period in question, the prior year's two-day Christmas 'bonus' payment having been discretionary and non-contractual.
5. The Tribunal further found that the Applicant undertook duties beyond pure HGV driving, but that the written contract permitted the Respondent to require duties appropriate to the Applicant's skills with appropriate training as necessary, and on the evidence, the Tribunal found that no breach of contract was established in relation to scope of duties, training or certification.

6. Complaints about disclosure, access to personal tools, and the condition of toilet facilities were found neither to amount to breach nor to affect the outcome of the proceedings below. The constructive unfair dismissal claim failed because no repudiatory breach was found, and in any event any such breach would have been affirmed by the Applicant's conduct. The proposed grounds of appeal
7. The Applicant seeks leave to appeal principally against the Tribunal's determination that the Respondent was not in breach of contract. He advances, in summary, seven grounds: (1) misapplication of the contractual training proviso and failure properly to apply statutory competence/certification requirements for plant operation; (2) procedural unfairness arising from non-disclosure of training records and timesheets; (3) improper reliance on an alleged conversation with a former employer; (4) failure to determine an alleged contractual breach concerning welfare facilities; (5) inconsistent application of contractual terms; (6) conflation of absence of contemporaneous complaint with absence of breach; and (7) procedural context, including supposed remarks by the Tribunal said to reflect assumptions about industry practice and perceived pressure on hearing time. Test for leave to appeal
8. Article 94 (1) of the Employment (Jersey) Law, 2003 is in these terms: '(1) A person aggrieved by a decision or order of the Tribunal may, on a question of law only, appeal to the Royal Court by applying to the Tribunal for leave to appeal.' (emphasis added). Point of Law
9. The latter phrase is considered in *Raducan v Pizza Express Limited* [2020] JRC 253) The *Raducan* case is a judgment of the Royal Court, and, following *Sumera v Atlantique Seafood* [2019] JRC 164]), indicates that the following things may amount to questions of law: · the Tribunal got the law wrong or misapplied the law; · the Tribunal had no evidence to support a conclusion or finding of fact; · the Tribunal made a decision that no reasonable Tribunal could have made or reached a decision that was obviously wrong; or, · the Tribunal did not follow the correct procedures, and this affected the judgment.
10. The question on a leave application, therefore, is not whether the Applicant disagrees with the factual findings, but whether there is a properly arguable point of law with a real prospect of success or other compelling reason for the appeal to be heard, applying the categories just described. Application of the test to the grounds in this case Ground 1: Training, Competence and Certification
11. In the matter of work performed by him beyond the remit of an HGV driver over the 20 or so months of his employment - sometimes voluntarily and always without the Applicant raising any issue - the Applicant contends that the Tribunal misapplied the contractual proviso permitting the Respondent to allocate work to him and failed properly to take account of statutory requirements relating to competence and certification.
12. The Tribunal's written decision, however, addresses that issue directly. It identifies the contractual provision permitting the allocation of duties that were appropriate to the employee's skills, and subject to any necessary training. It then asks itself whether the Respondent had required the Applicant to undertake work that fell outside his skills and

experience, or for which he had not received such training as was reasonably required. Having reviewed the evidence, the Tribunal concludes that the Respondent was entitled to regard the Applicant as competent and experienced to carry out the work in question. It notes that some relevant certification existed but more generally that the Respondent had taken reasonable steps to satisfy itself about the Applicant's competence to perform the works of which he now makes complaint despite not having demurred at the time.

13. Notably, the Tribunal heard that the Respondent drew a line of competence and did not permit the Applicant to do more testing work involving the operation of plant and machinery such as certain aspects of foundation and drainage work. Patently, this indicates that the Respondent considered the question of the Applicant's competence job by job and drew a line beyond which it treated the Applicant as not competent, depending on the nature of the work, thereby acting in accordance with the contractual exceptions clause now under consideration.
14. In reality, this ground challenges the Tribunal's assessment of the evidence and the conclusions it drew from it. The Tribunal identified the correct contractual test and applied it to the facts as it found them. The Applicant's reliance, long after the event, on statutory provisions relating to certification and competence does not, without more, demonstrate an error of law. To succeed, it would be necessary to show that the Tribunal misdirected itself as to the applicable legal principles, rather than simply reaching a conclusion with which the Applicant disagrees.
15. No such misdirection has been identified. The ground amounts, in substance, to a disagreement with the Tribunal's evaluative findings rather than the identification of an arguable legal error. It therefore discloses no realistic prospect of success on appeal.
16. Moreover, in so far as any breach of contract might have arisen, the Applicant did not treat it as repudiatory and in fact continued to affirm the contract by his voluntary acquiescence, treating as unexceptionable the various tasks of which complaint is now made, this long time later. As is apparent from the evidence of a misunderstanding about a lifting job referred to in the judgment, and at paragraph 4 hereof, the Applicant was a man not slow to assert himself when he felt that he was being 'put upon'. He made no such contemporaneous assertions in the case of the various tasks of which he now makes complaint. Ground 2: Disclosure and procedural unfairness
17. The Applicant complains that non-disclosure of training records and timesheets led to procedural unfairness. However, the Applicant's claims as pleaded gave no indication that he intended to rely on the greatly detailed specifics now under discussion. The tribunal was not minded to endorse complaints of non-disclosure regarding matters that had not been adequately pleaded. In pursuit of the statutory overriding objection which binds it, (Article 2 of the Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016 refers) the tribunal judged that the matters of detail now raised could be fairly dealt with by hearing the parties, and by taking the Respondent's points at their highest, for the purpose of analysis. It

is of note that given even short notice the Respondent was able to produce a relevant training certificate – for such relevance as it had – during a lunch adjournment once alerted to the fact that the Respondent was basing an emphatic complaint on this area.

18. More broadly, the judgment recorded the parties' disagreements about disclosure, but went on to find that the principal factual matters which 'missing' documents were said to illuminate were not, in reality, substantially in dispute. In particular, the Respondent did not genuinely challenge the Applicant's assertion that he had undertaken duties extending beyond straightforward HGV driving. Against that background, the Tribunal concluded that the Respondent's complaints about non-disclosure did not materially advance his claim. The Tribunal made it expressly clear to the Applicant that what he said about the content of the 'missing' document – that they indicated the nature and frequency of the work undertaken by him - would be accepted at its highest and applied by the Tribunal in its deliberations. And that is what happened.
19. The leave application sets out a chronology of requests and reminders concerning disclosure. It is, however, common ground that during the hearing an asbestos-awareness certificate was produced and accepted by the Applicant. The Tribunal also recorded the existence of other previous training certification.
20. For present purposes, the question is not whether disclosure could have been fuller, but whether any procedural deficiency concerning non-disclosure was capable of affecting the outcome of the case. The Tribunal addressed that issue expressly and concluded that it did not. It found that the essential questions concerning the nature of the Applicant's duties and his competence to perform them had been resolved on the evidence before it.
21. That assessment represents an evaluative conclusion which the Tribunal was entitled to reach on the evidence it heard. No arguable procedural error affecting the outcome of the case has been identified. Accordingly, this ground does not meet the threshold for leave to appeal. Ground 3: Reliance on an alleged conversation with a former employer
22. The Applicant now disputes that any such conversation took place. He also argues that, even if it did, an informal discussion could not satisfy any statutory requirement for certification.
23. The Tribunal's written reasons record that the Respondent had taken a number of steps to satisfy itself as to the Applicant's competence, including discussions with the Applicant, upon whose word it was entitled to rely, its own knowledge of his previous jobs in the construction industry, contact with his previous employer, and its own observations of his work. The reference to a conversation with the previous employer was therefore only one part of a wider evidential picture on which the Tribunal relied.

24. Whether that conversation in fact occurred was a question of fact for the Tribunal to determine. As for the Applicant's wider argument, the Tribunal was not treating the conversation as a substitute for any statutory certificate. Rather, it was considering the evidence as a whole in order to decide the proper question, namely whether the Respondent had acted in breach of the relevant contractual term concerning skills and competence, as that term was correctly to be construed.
25. The Tribunal identified the issue it had to decide and reached a conclusion on the evidence before it. The Applicant's challenge is, in substance, to the Tribunal's factual findings and assessment of the evidence. It does not disclose any arguable error of law. Ground 4: Welfare facilities
26. The Applicant argues that the Tribunal failed to decide whether the condition of the toilet/washroom facilities at the builder's yard where he worked amounted to a breach of contract.
27. The judgment did not ignore the issue. On the contrary, it accepted that the facilities were "downright basic" and recognised that they might arguably have fallen short of the employer's contractual obligation to have regard to employees' health and welfare. The Tribunal nevertheless concluded that it was unnecessary to examine the matter in greater detail because supposing a breach, the Applicant had elected to continue with the employment, thus affirming the contract.
28. In these circumstances the Tribunal was entitled to take the view that the welfare-facilities issue, even if considered in the light most favourable to the Applicant, could not alter the outcome of the case.
29. The Tribunal therefore did not fail to address the issue. Rather, it decided that the issue was not material to its overall conclusions, given the affirmation patently apparent in the case. That was a case-management and evaluative judgment open to it on the facts. Expressed bluntly, the Tribunal was unwilling to hear further repetitious evidence from the Applicant about sinks and toilet seats when in so far as any breach of contract might be taken to have arisen, the Applicant had not treated it as repudiatory and in fact continued to affirm the contract by his voluntary acquiescence throughout his employment with the Respondent.
30. No arguable error of law or material procedural error is disclosed by this ground. Ground 5: Inconsistent application of contractual terms
31. The Applicant contends the Tribunal gave effect to the pay-for-hours-worked clause while failing to give equal effect to the "appropriate training" proviso. The judgment expressly identified and applied both the remuneration clause and the scope-of-work clause including the training proviso, and determined on the evidence that there was no breach in either respect. This is not an inconsistency of legal approach; it is a rejection on the facts of alleged breaches. No arguable misdirection is shown. Ground 6: Absence of complaint equated with absence of breach

32. The Applicant argues that the Tribunal wrongly treated the absence of complaints as meaning there had been no breach of contract.
33. The Tribunal's written reasons do not support that criticism. The Tribunal first considered whether there had been a breach of contract and determined that issue on its merits. It then went on to consider the separate question of affirmation in the context of the constructive dismissal claim.
34. In that part of its analysis, the Tribunal noted that the Applicant had not raised any contemporaneous objections and had given evidence that he was "perfectly happy" until the dispute about discretionary bonus which arose around Christmas 2025. Those matters were relied upon, not as proof that no breach had occurred, but as evidence relevant to whether the Applicant had affirmed the contract and whether there was a viable "last straw" argument available to him.
35. That was a proper approach. When considering affirmation, a tribunal is entitled, indeed bound, to take account of an employee's contemporaneous and subsequent conduct and reactions to events of which complaint is later made. The judgment therefore does not conflate the absence of complaint with the absence of breach. Rather, it addressed the two issues separately. No arguable error of law is disclosed by this ground. Ground 7: Procedural context and remarks
36. The Applicant relies on his declared recollection of remarks made during the hearing concerning the Respondent's reputation and the Tribunal's familiarity with the building trade, together with concerns about time pressure. He invites the Royal Court to review the recording.
37. At this stage, however, the question is whether those matters disclose an arguable procedural irregularity which may have affected the outcome of the case. The Applicant does not link these supposed matters to any specific finding of fact or conclusion said to have been wrongly reached by the Tribunal as a result. In light of the Tribunal's detailed published reasons, no arguable connection has been shown between the matters complained of and the decision itself.
38. In so far as it is necessary to say so, the Tribunal told the Applicant more than once, in effect, not to feel constrained about time, but that it was unnecessary for him to make the same points repeatedly.
39. Accordingly, this ground does not disclose an arguable basis for appeal and does not meet the threshold for leave. No evidence / perverse findings
40. The application also invokes "no evidence"/ "obviously wrong" formulations. The written reasons set out the evidential basis for each principal finding, including the Christmas bonus non-payment facts, the nature and frequency of additional duties on the assumed basis most favourable to the Applicant, the existence of some training certification, the evidence of his competence to perform particular tasks undertaken by him in the course of

his employment, and the approach to disclosure which the Tribunal in the exercise of its own procedure, in line with that statutory liberty, judged sufficient and reliable in relation to these facts. The grounds do not identify a concluded finding wholly unsupported by evidence or a conclusion no reasonable tribunal could reach. Conclusion and order

41. Taking the grounds individually and cumulatively, no properly arguable question of law with a real prospect of success is disclosed, nor any other compelling reason for the appeal to be heard. Leave to appeal is therefore refused. Order accordingly. Advocate C E Whelan MBE, Deputy Chair Date: 20 August 2026

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