

JERSEY / JUDGMENT

McBride, M.E., Mrs v Randalls Vautier Limited

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Jersey Employment Tribunal This award, (subject to the right of appeal to the Royal Court, as set out in the Law) is legally binding and is the final decision of the Tribunal. Each party, if applicable, is responsible for establishing their liabilities with regard to Social Security and Income Tax payments. Case Number: 2901-025/07 Applicant: Margaret Elizabeth McBride Respondent: Randalls Vautier Limited Case Summary: Constructive Unfair Dismissal Hearing on 31 October 2007 Before: Mr David le Quesne, Chairman Mr Stewart Maurant and Mr Paddy Kirwan, Panel members Representation: For Applicant: Mrs McBride represented herself For Respondent: Randalls Vautier was represented by Mr Ian Randall 1 The Applicant started her employment with the Respondent as a manager of a public house in June 2003; she became manager of the Temple Bars in St Helier, and she lived on the premises with her husband and two young children. In September 2006, Mrs McBride and her family moved to Le Relais des Mielles ('Le Relais'), where she became the Respondent's manager. This was a very different sort of establishment, being out of town in the far west of the island. The circumstances of Mrs McBride's move to Le Relais were unfortunate, in that the Respondent declared her job at Temple Bars redundant because it was going to become a tenanted public house, but, we were told, and there appears to be some truth in it, proper and fair redundancy procedures were not followed. When this was pointed out to the Respondent, it offered other jobs to Mrs McBride, and she took the job at Le Relais. 2 On 31st January 2007, Mr McBride resigned. She says that she was constructively dismissed, and that is the complaint which was before us. The Respondent ('Randalls') denies constructive dismissal. 3 Mrs McBride relied upon two matters which she said were contrary to the terms of her employment and/or otherwise were such as to destroy the relationship between her and Randalls. The first was the excessive hours which she had to work at Le Relais; the second was an accusation by Randalls that she had been dishonest. Excessive hours 4 The contracts of employment which were produced to us did not state the working hours, but stated "....managers are expected to work as and when required..... No overtime rates apply." Mrs McBride told us that the normal working hours should have been around 45 hours per week, but that at Le Relais she had to work around 69 hours per week. Randalls accepted that the working week would have been more than 45 hours, but did not accept that Mrs McBride should have had to work, or indeed did work, for as much as 69 hours per week. We accept that Mrs McBride did find it necessary to work for more than 45 hours per week, but we make no finding as to how many hours she worked. 5 As Mrs McBride explained it to us, the problem was that Le Relais was as remote as one can be in Jersey, with a limited number of clients. That we accept.

She also said that it was not in practice possible to increase the clientele, due to the drink driving law, the reluctance of the police to allow entertainment on the premises and the wish of the clientele, such as it was, that there should not be entertainment on the premises. Randalls required Le Relais to produce a certain profit. Mrs McBride said that she could not produce the required figure if she employed staff, because she could not attract more custom to offset the additional cost; she therefore had to run the business on her own, which is why she spent so much time working. 6 Randalls said that the previous manager had employed staff, and had increased turnover by encouraging parties and by other measures, thus it should not have been necessary for Le Relais to have been run by the manager alone. It also said that there were discussions with Mrs McBride before she took on the job at Le Relais, when these matters were ironed out, and thus Mrs McBride knew what she was undertaking when she took on Le Relais. 7 Mr Randall referred us to a letter from Mr Reid, the Randall's area manager, to Mrs McBride dated 24th August 2006, and which refers to a meeting between them the previous day. This letter states that Mrs McBride was not expected to operate Le Relais without any staff; it was for her to manage her staffing within the set budget. It also stated that Le Relais would be closed on Mondays, which had not been the case. By letter a few days later, Mrs McBride accepted to offer of a job as manager at Le Relais, and referred to some work that needed to be done to the flat. 8 We believe that the hours that Mrs McBride had to work were indeed long, and we have given careful thought to the question of whether it was in fact impossible for her to satisfy the income requirement of her employer without working excessive hours. Our decision is that we cannot draw such a conclusion, for two reasons. First, from the letter referred to in paragraph 7 above, we take it that there was discussion between Mrs McBride and her employer, before she took the job, about the working hours; it appears that this was a matter which concerned her. It also appears that, as an experienced manager, she was satisfied with what was proposed, for she accepted the offer of the job. We conclude that the working conditions, that is to say the working hours, were or should have been expected by Mrs McBride. Second, and less important, we note that Mrs McBride did not avail herself of the grievance procedures described in her contract of employment. When matters come near to being intolerable (and we accept that they did eventually become intolerable), Mrs McBride should have taken the formal steps described in the contract, or even put pen to paper to record her despair at having to work for such long hours. Therefore, we conclude that Mrs McBride's complaint that she was constructively dismissed because of the hours she was expected to work, fails. Dishonesty 9 Mrs McBride told us that the other reason why she resigned was because she had, in effect, been accused of dishonesty by Randalls, and she could not continue to work for Randalls in such circumstances. 10 The Randalls stock take at Le Relais for the period 12/10/06 to 20/11/06 showed a deficit of £889.85. There was a meeting between Mrs McBride and Mr Reid on 7th December 2006 to discuss this and other matters, and we were shown Mr Reid's file note of the meeting. They also discussed the fact that the profit was too low and the wage percentage was too high. Mrs McBride refused to sign this note. 11 On 11th December 2006, there was a disciplinary meeting to consider this deficit, following which Mr Reid prepared for Mrs McBride a written warning, which he was not able to give her at the time, for she was signed off work due to sickness. She received it on 13th December. On 22nd December 2006, Mrs McBride wrote to Mr Reid that she wished to appeal

against the written warning and stating that she had been accused of dishonesty. She also stated that she was off work due to stress related illness and that she was giving one month's notice of termination of employment and she would seek advice on the matter of constructive dismissal. There followed an exchange of correspondence between the parties. 12 We believe that Mrs McBride did believe that her employer suspected her of dishonesty, and that Randalls may have held that suspicion, but we do not regard that suspicion as unreasonable, given the deficit and Mrs McBride's inability to explain it. This is most certainly not to say that we think that Mrs McBride was or had been dishonest; we have insufficient evidence on which to form a firm view, and the little evidence we have leads us to think it unlikely. That is not the question. The question is whether it was reasonable, in all the circumstances, for Randalls to hold that suspicion, as one of the possibilities (no more), and we think that, in the absence of any other explanation at that time, it was reasonable. There was no need at that point for Mrs McBride to resign; if her employer was confident that she had been dishonest, doubtless, as Mr Reid told us, it would have summarily dismissed her. Her dishonesty was merely one of the suspicions held by Randalls. We are struck by the fact that Mrs McBride resigned before her appeal had been heard, and we regard this as unjustified. This is particularly so because on a previous occasion when there had been a discrepancy and a warning, that warning had been lifted when Randalls accepted that the reason for the discrepancy was due to the behaviour of an employee working for Mrs McBride in the Temple Bars. She therefore should have had confidence in the appeal system. Our conclusion on this point therefore is that Mrs McBride's understanding that Randalls suspected her of dishonesty was not a sufficient ground for her to resign, and certainly not to resign before her appeal had been heard. 13 We therefore find that Mrs McBride was not constructively dismissed. We have sympathy for her, for it seems to us that she took on the job at Le Relais knowing that it would be a difficult job involving long hours, but the impact of it was worse than she expected. David Le Quesne, Chairman.

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