

JERSEY / JUDGMENT

McKENZIE, A.D., Mrs v Wholesale Electrics (Jersey) Limited

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Jersey Employment Tribunal Case Number: 3107-098/10 Applicant: Mrs Ann Dorothy McKenzie Respondent: Wholesale Electrics (Jersey) Limited Representation: For Applicant: The Applicant represented herself For Respondent: Mr John Miller, Director Hearing on 18th April 2011 Before: Mr David Le Quesne, Chairman; Messrs Timothy Langlois & Mark Therin, Panel Members

1. This is a claim by the Applicant for unfair dismissal, and the relevant facts are as follows. On 13th July 2010, Mrs McKenzie, whilst at work, learned that her husband had been arrested in Jersey. She went home, where she found the police, who searched her house and then arrested her; she was detained and questioned until 15th July, when she was charged in the Magistrates' Court and granted bail. After Mrs McKenzie had been arrested, her sister, Mrs Oliver, who gave evidence, rang the Respondent to say what had happened. Mrs Oliver took her sister home after the court hearing on 15th July. On the way, when Mrs McKenzie said that she intended to return to work the next day, her sister told her that Mr Miller had said that she had been dismissed. Mrs McKenzie then called Mr Miller at home. Prior to the call, the police went to the Respondent's premises, where Mr Miller found them; they wanted to remove for examination the computer on which Mrs McKenzie had sent an email, but he persuaded them not to do so. They told him that Mrs McKenzie had taken money to the UK in connection with the supply of drugs. Mr Miller said that he decided to take no action until he had heard Mrs McKenzie's version of events, but clearly he had been told, in effect, that Mrs McKenzie had been arrested in connection with a serious drugs offence. There was disagreement between what Mr Miller and Mrs McKenzie told us was said when she called Mr Miller. However, the essential point in our view is that, according to Mrs McKenzie, she told Mr Miller that she had taken money to the UK; indeed, what Mrs McKenzie told us was that she told Mr Miller that she "was guilty of taking the money over". Mr Miller told Mrs McKenzie that she was dismissed and that he was writing to confirm this. Eventually, Mrs McKenzie appeared before the Royal Court, with other defendants including her husband and son, and the charge against her was withdrawn. Her husband and son were sentenced to prison. 2 Mrs McKenzie was not able to explain to us the charge which she faced, save to say that it was a charge of "taking money to the mainland", and that is the charge of which she said that she was guilty, for she had taken money to the UK. Clearly there must have been more to the charge than that, for taking money to the UK is not a criminal offence. However, the vital point is that she regarded herself as being guilty of that charge, and so she told Mr Miller that she was guilty. 3 Mr Miller had been told much by the police, including that the

email which she sent her son from the office computer was to warn him that the police were on to him, and that he should dispose of his mobile telephone. They also told him that the money Mrs McKenzie had taken to the UK was for drugs. With that information in his mind, Mr Miller then was told by Mrs McKenzie that she was guilty. It is not surprising that he understood from both a combination of what the police and Mrs McKenzie told him that she had committed a serious drugs related crime, for which she expected to be sent to prison. 4 We asked Mr Miller if he had considered suspension, and he said that he had not, and that he felt that he had no alternative to instant dismissal. Mr Miller also told us that Mrs McKenzie had worked for the Respondent for 28 years, she knew the whole office system and the last thing he wanted to do was fire her, particularly when Mr Quenault, the person who really runs the business, was on holiday; he felt very sorry for her. It appears to us that there was a most unfortunate misunderstanding here. Mr Miller understood that Mrs McKenzie admitted to him having committed a serious drugs related offence, for which she had been released, and in respect of which his offices had been searched by the police. Mrs McKenzie admitted to Mr Miller that she was guilty, but she clearly did not understand the charge against her; in her own mind, she was not saying that she was guilty of the alleged offence, but only of taking money to the UK. 5 We have to decide whether, in the circumstances, it was reasonable for Mr Miller to summarily dismiss Mrs McKenzie. Our decision is that it was reasonable. The sad fact is that Mrs McKenzie did nothing to correct Mr Miller's understanding from the police that she was involved in a serious drugs offence, and indeed she actually told him that she was guilty (of something). It was reasonable for Mr Miller to reach the conclusion which he did, and having reached that conclusion, it was reasonable for him to dismiss Mrs McKenzie for gross misconduct. In the event, the charge against Mrs McKenzie was dropped, so there appears not to have been the gross misconduct for which she was dismissed, but that makes no difference to our decision, which has to be based upon what Mr Miller reasonably believed at the time. Mrs McKenzie's claim therefore is dismissed, but we think it right to say that we have sympathy for her. Signed: Mr D Le Quesne, Chairman Dated:

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