

JERSEY / JUDGMENT

Mr J A Sequeira v Professional Fulfilment Services Limited

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Summary – Unfair dismissal 104/2012 Jersey Employment Tribunal 28 February 2013 Before : Chairman Mrs Nicola Santos-Costa Panel Members Mr Mark Therin and Mr Samuel Le Breton Between Mr J A Sequeira Applicant And Professional Fulfilment Services Limited Respondent For the Applicant: The Applicant represented himself with the assistance of an interpreter For the Respondent: Mr Marc Rudman, Director of Operations Employment (Jersey) Law 2003 Notification of the tribunal's decision 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 the Chairman: THE FACTS 1. Mr Sequeira was employed as a picker and a packer by the Respondent from the 12th September 2009 until the 14th June 2012. The Tribunal heard evidence that the Respondent operated a successful mail order fulfilment service for clients but following the change on the 1st April 2012 by HM Revenue & Customs to the regulations concerning the values at which Low Value Consignment Relief (LVCR) could be claimed it became obvious that the Respondent's business would be badly affected. The Tribunal heard evidence that the Respondent's business in Guernsey closed almost immediately following the abolition of this tax relief and all the staff, bar 3, were made redundant. The remaining 3 were redeployed within the Respondent's wider business. Three of the Guernsey's business' clients moved their accounts to Jersey but it soon became clear to the directors that the Jersey business was in trouble. The Respondent adduced documentary evidence showing the decline in its business at this time and as that information is commercially sensitive it has not been included here. However it is fair to represent the decrease as follows. In the month of April 2012 (the month the LVCR relief was abolished) the Respondent's orders fell by 77% on the previous month when LVCR could still be claimed. In May this figure grew to 83% of orders in March, in June 84% and by August 2102 the number of orders into the Respondent's business has fallen by 96% of the amount of orders handled in March 2012. Some staff resigned in April and May 2102 and were not replaced. In addition a decision was made by management in April 2012 not to hire any more temporary staff. Mr Rudman told the Tribunal that at this time he was looking at the sales figures and turnover every day with his managers. 2. Mr Rudman confirmed it quickly became obvious that the directors of the Respondent had to decide on an action to take in the circumstances and it was acknowledged by the directors that it may be necessary to make redundancies. Accordingly Mr Rudman convened a meeting of all the staff of the business in the warehouse and explained to them the difficult situation that the business found itself in and that it might be necessary to

make redundancies. Mr Rudman explained that his two managers each spoke Portuguese and Polish and that they translated his words to the relevant staff in their own language during the course of the meeting. He said that he also asked the staff for ideas that might help to avoid any redundancies and to save costs and concluded the meeting by stating that he would update the staff on progress about this matter by the 14th/15th May 2012. The Tribunal were shown a letter dated 30th April 2012 from the Respondent to Mr Sequeira which confirmed the matters that were discussed at the meeting. The letter was in English but Mr Sequeira confirmed that he had received it at the meeting and that its contents had been explained to him at the meeting. Mr Rudman said that over the next few days he received some ideas from the staff to reduce costs but none were suitable to meet the challenge being faced by the business as a result of the drop in orders. Mr Rudman confirmed that at this time he also contacted JACS for advice on how to conduct an appropriate redundancy process in the time frame available to the business which looked very short indeed in view of the falling orders. Mr Sequeira confirmed that he understood what a 'redundancy' meant and that this letter informed him that the company was in difficulties and there was a possibility of redundancies being made but he did not appreciate from the meeting or the letter that a decision would be made so quickly. The Tribunal notes that the letter is headed 'Warning of Redundancy' and contains these words: 'I regret to confirm that the Company is facing a potential redundancy situation within the Jersey warehouse...because of this, I am writing to confirm to you that the Company has now commenced consultations with all the employees in the Jersey warehouse with an aim to avoiding or minimising the need for redundancy...In the event that redundancies are necessary, the Company will initially seek volunteers to avoid compulsory redundancy. No decision has yet been made as to the outcome of this warning. This is a period of consultation with you to look at cost savings and any other ideas. Another meeting will be held in 10 days (14th or 15th May) to feedback any suggestions or queries that you may have asked'. 3. Mr Rudman produced a document of his notes taken at private 'one to one' meetings that he held with each member of staff, with one of his managers acting as translator, on the 15th May 2012 at which he explained the situation with each person and asked them if they would consider working less hours for the same hourly rate of pay and that he might have to ask for voluntary redundancies too. Mr Rudman told the Tribunal that there was not a lot of enthusiasm for this idea but Mr Rudman's notes state that Mr Sequeira agreed to a reduction in his hours 'if everyone else was doing it' and this was not disputed by Mr Sequeira. 4. On the 17th May 2012 the Respondent sent letters to its staff asking if anyone was interested in taking a voluntary redundancy. Mr Rudman's letter stated as follows: 'I regret the situation has not improved. Our attempt to reduce the level of redundancies by asking for a voluntary reduction in hours has only been partially successful. This has lead to a number of redundancies in The Jersey Warehouse becoming inevitable. Our final decision will be made after full consultation with you over the next few days, with an expected interim announcement on 25th May 2012. We hope to achieve the required reductions through voluntary redundancies'. 5. Mr Rudman informed the Tribunal that by this point 'client intentions' were becoming clearer and the Directors resolved 'that action had to be taken to reduce costs'. Therefore the directors took the decision to introduce a cut in hours from 40 hours a week to 30 hours for full time staff, and to 20 hours for part time staff, on a mandatory basis from the 21st May 2012. Mr Sequeira said that he agreed to

accept the change in his hours of work on the 21st May 2012 as 'had no choice'. The Tribunal heard that the change was implemented immediately and a new shift system was introduced. Mr Sequeira confirmed that the Respondent provided a letter for staff to take to Social Security to help with any claims that they needed to make for income support but that he did not use it himself. 6. Mr Rudman explained that with the continuing drop in orders it was apparent to the directors of the Respondent that it would be necessary to make some of the staff redundant in order to save costs. Therefore in accordance with JACS advice and the model on its website, he and the management team prepared a redundancy Selection Criteria format. Mr Rudman confirmed that the JACS model was amended for the Respondent's business in particular to reflect the fact that they were a young business and therefore the years of service criteria would have to reflect that. In addition the skills required to measure performance were identified for the purpose of the Respondent's business. The criteria also measured length of service, disciplinary record, attendance record (with reference to occasions of absence and days actually taken) and performance at work. Mr Rudman said that he and the management team then assessed the 2 managers, 8 full time employees (including Mr Sequeira) and the 2 part time employees against these criteria. The scores were then passed to Mr Liam McDermott (the Respondent's Chief Financial Officer) for verification. Mr McDermott gave evidence that he agreed with all the scores and that in addition, unknown to Mr Rudman, he knew how many employees would need to be laid off at that time in order to reach the financial targets required by the directors. Mr McDermott was quite clear in his evidence that whilst Mr Rudman had access to the daily figures of the business, only he was aware of the bigger picture of expenditure and the savings that needed to be made. This was confirmed by Mr Rudman. 7. Mr Sequeira scored 19 out of the possible maximum score of 30. He scored 3/5 for his length of service, 2/5 for his disciplinary record, 4/5 in respect of the number of occasions that he had been absent from work [one occasion only] and 4/5 for the number of days taken during this absence [1 day only] and finally 6/10 for his performance [marked as 'meeting the requirements of the job']. Out of the 11 employees included in the Selection process Mr Sequeira came 3rd from the bottom, with the lowest score being 14/30 and the highest being 30/30. Mr Sequeira informed the Tribunal that he had not seen the criteria until he received the Respondent's bundle. Mr Sequeira expressed an opinion that he had been discriminated against by the Respondent in the selection process and it was unfairly conducted. In particular Mr Sequeira objected strongly to only being marked as 'meeting' the requirements of the job as he felt that he regularly exceeded them and should have been put into the next category and earned an extra point. Mr Sequeira said that he rarely made a mistake in his work and undertook any task given to him including jobs which were not connected to 'picking and packing' the goods such as cleaning up or outside work. In addition evidence was heard that Mr Sequeira had learned to operate the 'Goods In' system and regularly helped with that aspect of the work too. The Respondent disputed this evidence and said the ratings had been made objectively and fairly by Mr Rudman and the managers and whilst the Respondent did not conduct formal assessments of its employees' performance, they knew the staff well. Mr Rudman also informed the Tribunal that he and the managers had scored the members of staff who had additional skills such as computer skills or had shown a willingness to take on new tasks and roles in their work in the category above and Mr Sequeira had not shown

any of these attributes. 8. The Tribunal is aware that Mr Sequeira's wife and son also worked for the Respondent and that they were 2 of the other 3 employees selected for redundancy. Mr Rudman gave evidence that he did pause when he realised that the whole family were losing their livelihood through these redundancies but he considered that if he changed the scoring to allow Mr Sequeira's son to stay in work that decision would have an adverse and false effect upon the scoring of another employee and he owed a responsibility to all the employees to conduct the process fairly. Mr Rudman also considered that the use of objective scoring criteria took all the 'emotion' out of the selection decision and this seemed a fair way to proceed. This evidence was confirmed by Mr Boarer, the Chief Operations Officer of the Respondent and a founder of the business, who said the directors used a 'rigorous and objective process' to select the candidates for redundancy, relying on JACS guidelines and he was 'upset to lay off a family' but to move away from the guidelines would have meant that another employee would have been unfairly selected for redundancy. Mr Boarer said that he discussed the situation with the Chief Executive Officer and they both felt 'very bad about the situation'. Mr Sequeira told the Tribunal of the hardship and stress that the decision had caused his family. 9. The Tribunal heard evidence that following the conclusion of the Selection process the 4 employees who had been identified for redundancy were asked to attend Mr Rudman's office individually on the 31st May 2012 for a meeting with the directors of the business. In Mr Sequeira's case one of the managers was present in order to translate at the meeting. Mr Rudman said that he informed Mr Sequeira that his role was being made redundant from the 14th June 2012 and that his last day of work was the 31st May 2012 and he would be paid until the 14th June and receive 2 weeks redundancy pay. Mr Sequeira was handed a letter which confirmed these arrangements and also referred him to a website operated by the Respondent concerning the possibility of working for the Respondent's business in different locations and also confirmed his right to appeal the decision made regarding his redundancy. Mr Sequeira was then escorted from the premises and his belongings returned to him. Mr Sequeira confirmed receiving the letter, which was in English, and being informed of the payments being made to him and that he knew of his right of appeal.

10. On questioning from the Tribunal it appeared that Mr Sequeira had not even considered appealing against the directors' decision to make him redundant as he knew that there was no more work for him in the Respondent's Jersey business. With regard to the availability of other work, Mr Rudman confirmed that the Respondent had no other operation in Jersey that Mr Sequeira could work for. Mr Rudman confirmed that one of the Guernsey employees was engaged in setting up a new business outside the Island but he had good IT skills, which Mr Sequeira did not possess. Mr Rudman agreed that the 2 other Guernsey employees had gone to work for the Respondent's interest in the UK but that was immediately after the Guernsey business had closed. Mr Sequeira was particularly concerned by the short time frame in which this redundancy process was implemented. Mr Sequeira pointed out to the Tribunal that if he had had more warning of the compulsory redundancies he would have used the time to look for another job but the speed of the process meant that he was unable to do this. Mr Sequeira also gave evidence that his employment had been terminated he had noticed 'vans' of farm workers going into the warehouse where he worked and he had

assumed that these people were being brought in by the Respondent to do his work. In addition Mr Sequeira said that he believed that the new shifts introduced after his hours were cut were organised in order to ensure that there was not enough work for him and his family to do and that other workers were benefitting by the cut in his hours and pay. Mr Sequeira admitted that he did not complain to the management about these concerns whilst he was at work. Mr Rudman and Mr McDermott gave evidence that this was not the case and the new shift system was short lived and involved a cross over with his shift and he was getting confused. Mr Rudman was quite clear in his evidence that the Respondent had not hired any casual or temporary labour since the loss of LVCR except that as part of the winding down of the business the Respondent had engaged one temporary worker for 35 hours to assist in returning the warehouse to a potato shed and that in due course the shed had been used more by the farmer than by the Respondent's business and maybe that was what Mr Sequeira had seen. Mr Sequeira remained unconvinced by this evidence. Mr Sequeira also submitted that in his opinion the employees who had been there for less time than him should have been dismissed before him and care should have been taken by the Respondent to choose employees who had other earners in the family to make redundant before selecting him and his family for redundancy. Mr Sequeira concluded that he simply did not understand why he had been chosen for redundancy over the other employees.

11. On the 6th August 2012 Mr Sequeira lodged a Form JET 1 complaining that he had been unfairly dismissed. THE LAW 12. Article 61 of the Law provides that every employee shall have the right not to be unfairly dismissed. Article 64 of the Law concerns the fairness of a dismissal. Articles 64(1) and 64(2) states as follows: 64 General
 - (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it shall be for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal; and
 - (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
 - (2) A reason shall fall within this paragraph if it –
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which the employee was employed by the employer to do;
 - (b) relates to the conduct of the employee;
 - (c) is that the employee was redundant; or
 - (d) is that the employee could not continue to work in the position which the employee held without contravention, (either on the employee's part or on that of his or her employer) of a duty or restriction imposed by or under an enactment. Article 64(3) does not apply in this case. 13. Article 2(1) of the Law defines “redundancy” as follows: 2 Redundancy

- (1) For the purposes of this Law an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –
 - (a) The fact that his or her employer has ceased or intends to cease –
 - (i) To carry on the business for the purposes of which the employee was so employed; or (ii) To carry on that business in the place where the employee was so employed; or
 - (b) The fact that the requirements of that business –

(i) For employees to carry out work of a particular kind, or (ii) For employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish. 14. From the facts of this case it is clear that the Respondent's requirement for pickers and packers had diminished. Accordingly, Mr Sequeira was made redundant under the Law. At the Case Management Hearing held on the 4th January 2013 Mr Sequeira did not agree that redundancy was the reason for his dismissal and the Tribunal makes a formal finding of fact that for the purposes of Article 64(1) of the Law, the reason for Mr Sequeira's dismissal was redundancy. 15. The question of whether Mr Sequeira's dismissal was fair or not is governed by Article 64(4) of the Law which states that the Tribunal shall decide this by looking at all the circumstances of the case (including the size and administrative resources of the employer's business) and whether the Respondent acted reasonably or not in making Mr Sequeira redundant. The Tribunal are also required, when making this decision, to determine the issue by having regard to equity [the principles of fairness] and the substantial merits of the case. 16. It has established in the Jersey Employment Tribunal since *Goguelin v Stuart Banks (Carpenters & Builders) Ltd* (2006) that there are four principles of fairness which should always be considered in situations of redundancy: (i) The employer's duty to consult with the employee regarding the proposed redundancy; (ii) The employer's duty to warn an employee of the possibility of redundancy; (iii) The employer's duty to establish fair criteria for the selection of employee for redundancy; (iv) The employer's duty to explore alternatives to redundancy with the employee. 17. To this test must be added a further level of consideration of the situation: whether the employer acted reasonably in his actions, in other words, were his actions or decisions within the band of reasonable decisions by a reasonable employer (*Voisin v Brown*, Feb 2007, Royal Court). This is particularly relevant when considering whether an employer has followed all the procedural steps set out in *Goguelin* above. As Sir Michael Birt, sitting as Deputy Bailiff, said in *Voisin v Brown*, "The Tribunal must....concentrate not on whether the employer's decision or the procedure adopted by him was wrong but on whether it was so wrong as to fall outside the band of reasonable actions on the part of a reasonable employer". THE TRIBUNAL'S DECISION

18. It has long been established in the Jersey Employment Tribunal that a fair redundancy procedure contains the 4 basic elements of process described in paragraph 16 above. In the background to these criteria run the natural law principles that those in a position of power over the continued employment of others will keep an open mind in their decision making and operate a fair process.
19. The Tribunal is satisfied that the Respondent discharged its duty to warn its employees of the possibility of their post being made redundant. The meeting and letter of the 30th April 2012 was quite clear in its intent and content. Furthermore the Respondent took the extra, and in this case necessary, step to ensure that the proceedings at the staff meeting and the contents of the letter were explained to Mr Sequeira in Portuguese.
20. The Tribunal is also satisfied that the Respondent took every necessary step to consult with its employees in order to keep them informed of the trading difficulties of the business and the eventual decision of the management to implement compulsory redundancies. The Tribunal is pleased that a translator was available for Mr Sequeira's assistance at the one to one meetings held on the 16th May 2012.
21. The Tribunal has paused over the Respondent's duty to consider alternatives to redundancy. Although Mr Sequeira did not make a point of it in his evidence, the Respondent could have explained to its employees that it had considered and dismissed for business reasons the idea of all its employees working part time hours. Mr Sequeira was quite realistic about the effect of the loss of the LVCR relief on the Respondent's business and the likelihood of future re-employment for him by the Respondent. The Tribunal notes the reference to the Respondent's website in the letter of redundancy concerning the availability of future roles in the organisation but considers that to be lip service only especially as these roles were all likely to be off the island and not suitable for Mr Sequeira.
22. With regard to the duty to establish and maintain a fair selection process the Tribunal notes that the Respondent accessed the services of JACS throughout this process and from the evidence, appeared to take time to establish its own criteria and attempt to create a level playing field as a basis of comparison of its employees. Mr Sequeira scored 19/30 in the Selection Criteria, putting him 3rd from the bottom of the 11 employees. The Tribunal could see from the evidence that Mr Sequeira lost points on the Selection Criteria process with regard to his disciplinary record and attendance at work, and these scores were not disputed by Mr Sequeira. The Tribunal notes Mr Sequeira's concerns regarding the scoring of his performance but it has to state that in the absence of a manifestly unfair performance rating it cannot interfere with the Respondent's decision here. It would add that the concept of enhanced skills to put employees into the higher category seems a fair and satisfactory basis of selection.
23. The Respondent was quite resolute that Mr Sequeira did not have sufficiently enhanced skills to put him into the next performance category of 'exceeding the demands of the job' and he certainly could not be compared to the employees that were put into that category.

The Tribunal notes that even if Mr Sequeira had earned an extra point regarding his performance at work his score would still not have been sufficiently enhanced to take him out of the 'danger zone' of the bottom 4 employees, and, as stated above, Mr Sequeira had no complaint about the scores he was given by the Respondent in the other categories of the selection process.

24. The Tribunal notes that the letter of the 31st May 2012 gave Mr Sequeira's the right to appeal against the decision made by the Respondent and that Mr Sequeira chose not to exercise that right although at the meeting with the directors he did ask for them to review their decision regarding the redundancy of his son.
25. The Tribunal also notes Mr Sequeira's concerns regarding the hiring of further employees on a casual basis after his hours had been cut and after his employment was terminated. The Tribunal is respectful that Mr Sequeira was very upset about this issue and believed completely in his perception of it. However from the evidence heard at the hearing from Mr Sequeira it is impossible to verify that account with the documentary evidence provided by the Respondent concerning the drop in orders to the business and the employee hours required to fulfil those orders. Accordingly the Tribunal has disregarded Mr Sequeira's evidence on this point.
26. Mr Sequeira stated that he believed that the Respondent should have operated a 'last one in, first one out' system in its selection process. The Tribunal finds that to be an old fashioned and frankly unfair method of selecting employees for redundancy. The world has turned since that approach was used and now all employees must be able to justify their positions and demonstrate the benefit and skills that they bring to their employer's business. Further, such an approach would go against the advice and selection process suggested by JACS in its redundancy model which the Tribunal endorses as a fair, practical and transparent way of proceeding in this area. Mr Sequeira also felt strongly that the Respondent should have taken more notice of the effect of the selection process on his family. This is a completely valid concern and no one hearing the evidence in this case could have failed to have been moved by the hardship that this decision brought to Mr Sequeira's family. However if the Respondent had failed to follow the selection process and criteria that it adopted in this case for all its employees, it would have faced a potential claim from another employee because a member of Mr Sequeira's family had been preferred for continued employment over him or her on unsustainable grounds. The Tribunal finds that the Respondent's decision here was harsh but warranted in the circumstances. With regard to Mr Sequeira's complaint that the time frame of the redundancy process was too short, and did not give him enough time to look for another job, the Tribunal finds that the Respondent's time frame of, in effect, 5 weeks from warning of redundancy to actually laying off Mr Sequeira was indeed short but it is satisfied from the evidence that the Respondent found itself in exceptional circumstances following the abolition of the LVCR relief and the subsequent dire effect on its business in the Channel Islands and that the Respondent took all reasonable steps to keep Mr Sequeira informed of the progress of the management's decisions leading to the compulsory

redundancies from its workforce. The Tribunal also notes that the redundancies did not stop with Mr Sequeira but continued in August, September and December of that year until the workforce comprised just 1 part time manager and 2 part time employees.

CONCLUSION

27. Accordingly, taking into account all the circumstances of this case as well as the principles of equity [fairness] and its substantial merits, the Tribunal finds that Mr Sequeira was not unfairly dismissed.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/tribunal/Pages/2013-02-28-Sequeira-104-2012.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/mr-j-a-sequeira-v-professional-fulfilment-services-limited-2013>

Prepared on 26 October 2026 · Esheria