

# Jersey Employment Tribunal

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Bath Street,  
St Helier,  
JE2 4ST

## Annual Report 2009

This fourth annual report covers the period from 1 July 2008 to 30 June 2009.

### Applications to the Jersey Employment Tribunal

The Jersey Employment Tribunal received 187 applications during the period 1 July 2008 to 30 June 2009; this is an increase of 23 applications over the previous year. In general, most applications are completed satisfactorily and have the essential content to enable me or Nicola Santos Costa, the Deputy Chairman to decide whether to accept the application. The spread of applications is not confined to one particular industry but reflects the diversity of Jersey's employment sector.

### Outcomes of Tribunal Applications

Unless a party indicates that they do not want conciliation, all applications and responses will be forwarded to the Jersey Advisory and Conciliation Service (JACS). The Employment Tribunal actively encourages both parties to meet an Official of JACS. Cases only come to the Tribunal if no conciliated settlement has been reached.

The 187 applications were dealt with in the following manner;-

Rejected		12
Dismissed		9
Continuing		78
Settled		52
Withdrawn		16
Stayed <sup>1</sup>		2
Found in favour	Applicant	9
	Respondent	9
	<b>Total</b>	<b>187</b>

<sup>1</sup> Two cases are stayed pending the outcome of a Royal Court Case

**The status of outstanding cases from previous years is as follows:**

**Year – 2005**

One case remains outstanding pending the outcome of a Royal Court Hearing.

**Year – 2006**

One case has been unable to proceed due to ill-health of the Applicant.

**Year - 2007**

Six cases remained outstanding from period 1 July 2007 to 30 June 2008 and all have now been resolved.

**Year 2008 (to 30 June 2008)**

The 37 cases that remained outstanding for 2008 were dealt with as follows:

Rejected*		1
Continuing		4
Settled		17
Withdrawn		2
Found in favour	Applicant	7
	Respondent	6
	<b>Total</b>	<b>37</b>

\* Claims outside the jurisdiction of the Tribunal

**Year 2009 (to 30 June 2009)**

78 cases remain outstanding and are at various stages of the Tribunal process. This does not include outstanding cases from previous years as shown above.

**Breakdown of Issues contained in Applications**

Most of the cases coming before the Tribunal continue to relate to unfair dismissal and payment of wages. The figures below however do not include additional issues identified during the course of the Hearing. In some cases more than one issue applied at the time of registration.

<b>Issues identified in Applications</b>	<b>Number</b>
Unfair Dismissal	130
Payment of wages	89
Holiday Pay / Rest Periods	34
Termination of Employment	33
No Contract	26
Breach of Contract	6
Minimum Wage	5
No Wage slips	4
Right to Representation	1
Total number of issues	<b>328</b>

### **Number of Cases Heard**

The Tribunal held 44 Hearings and 29 Interim Hearings during the period 1 July 2008 to 30 June 2009. Numerous case management meetings were also held in order to provide written directions to the parties involved, to ensure that the relevant information was presented to the Tribunal in advance of any hearing and that the issues were clearly defined

The Tribunal endeavours to bring matters to a full hearing within 26 weeks or earlier of the claim being accepted. In the majority of cases this is achieved. It is only in exceptional circumstances, or by mutual consent that hearings are delayed, i.e. where issues are the subject of proceedings in another Court; availability of witnesses; etc.

Preliminary Hearings in advance of the full hearing are becoming an increasingly useful tool in determining matters such as the jurisdiction of the Tribunal, the employer/employee status, disclosure issues or where there are case management issues. These are conducted at the wish of either of the parties or at the direction of the Tribunal Chairman.

### **Discrimination Law**

The Members of the Tribunal were looking forward to the introduction of the Discrimination Law which would prohibit discrimination in various areas, including race and gender. However, implementation of the new law has unfortunately been delayed.

At present, it is understood that the Employment Tribunal would hear discrimination claims relating to employment. It is generally recognised that discrimination claims should be heard in the same relatively informal manner in which employment claims are heard. In preparation, Tribunal members have already had discrimination law training.

Although it is impossible to gauge with any accuracy the additional workload that the discrimination legislation will bring to the Tribunal, it is considered that the Tribunal does have the capacity, in terms of time, manpower and premises to deal with any aspect of discrimination, and might reasonably be regarded as the most suitable forum for discrimination matters. Should the Home Affairs Minister, and ultimately the States, wish the Tribunal to hear all discrimination claims, rather than only claims relating to discrimination in employment, this is feasible.

### **Unfair Dismissal Awards**

The Employment Law currently provides a set formula (based on a scale relating to length of service and weekly pay) for the calculation of unfair dismissal awards and the Tribunal cannot reduce an award on the basis of an employee's actions or conduct leading up to the dismissal. The Social Security Minister proposed an amendment to the Law which was adopted by the States on 22 October 2008.

That amendment came into force on 1 October 2009 and the Tribunal now has the power to reduce the compensation that an employer is ordered to pay where the employee has contributed to his or her own dismissal. The amendment, which is not retrospective, will also give the Tribunal the power to order the re-employment of an unfairly dismissed employee, instead of a financial award.

### **Training**

All the members of the Tribunal undertake additional training from time to time. With the introduction of new employment legislation, it is imperative that the members stay abreast of developments in employment relations and discrimination in the workplace, all of which will impact on the scope of the issues coming before the Tribunal in the future.

### **Room Hire**

The Tribunal suite of rooms is available for hire on the occasions that the Tribunal is not in session. This enables the Tribunal to offset its costs by a small amount each year. The rooms have been used to hold Social Security Medical Appeal and Health and Safety Tribunals. The venue is also suitable for conducting Mediations and Training events and also has been used to conduct hearings for other organizations.

## **Tribunal Members**

I am grateful for the commitment of the Tribunal members. The members of the panel spend a lot of time, dependant on the nature of the cases, in preparation and deliberation as well as attending the Hearings. All too often, the Tribunal convenes to hear a case only to find that one of the parties does not appear, and of course by that stage it is too late to arrange for another case to be heard by that panel. This is hard on panel members who have taken holiday time or time off work to attend and who have spent their own time reading the papers.

This year there has been increased demand upon panel members' time due in part to the resignation of a Tribunal member who recently left the Island to take up employment abroad. In addition, two employee representatives have also been unavailable as they are also in the process of moving abroad. As a result, there are likely to be vacancies on the Tribunal for both employer and employee representatives. Open recruitment will be undertaken in 2010 to fill these positions.

**Employment Tribunal Chairman  
October 2009**

## **Appendix 1 – Employment Tribunal Side Members**

### Employer Representatives

Mrs Susan Armes

Mrs Mary Curtis

Mrs Kelly Flageul

Mr Stewart Mourant

Mrs Carol Harvey

Mr Peter Woodward

Mr Mark Therin

*(1 position vacant)*

### Employee Representatives

Mr Patrick Kirwan

Mr Samuel Le Breton

Mr James McCartan

Mr Alan Hall

Mr Timothy Langlois

Mr Michael Baudains

*(2 positions vacant)*

## Appendix 2 –Employment Tribunal Activity – 1 July 2008 to 30 June 2009



