

STATES OF JERSEY



JERSEY EMPLOYMENT TRIBUNAL: ANNUAL REPORT FOR THE PERIOD 1ST JULY 2006 TO 30TH JUNE 2007

**Presented to the States on 28th December 2007
by the Minister for Social Security**

STATES GREFFE

REPORT

Chairman's Foreword

Introduction

The Jersey Employment Tribunal (the 'Tribunal') is now well-established; the administration is working well, the members are familiar with the Law, and there can be few employers or employees who are not aware of the Law and the broad scope of the duties and rights it brings.

Tribunal Administration

John Mallet, the Tribunal Secretary, keeps tight control of the case listings and generally manages to use the members' time efficiently by slotting in cases whenever there is a gap. His burden however has increased, as has the requirement for the Tribunal office to open for an additional morning, so a part-time assistant has been recruited.

It is a matter of concern that some members are more available than others, particularly for cases which are due to last for more than one day. This is not a criticism of those who are less available, for they are generally constrained by the demands of their full-time employment, but the result is that the burden tends to fall disproportionately on those who are retired. If, as I suspect we will find, there will be more long cases, this problem may become quite significant, but for the time being it is a matter to be watched.

There have been a couple of complaints about the lapse of time between a complaint being submitted and the estimated date for hearing, and this is a problem which we are considering. It arises from the fact that many complaints are submitted, but few reach the stage of being heard by the Tribunal. The Tribunal Secretary normally has a full list of cases, which should keep the Tribunal sitting for most days of each week, but as time passes and cases are settled, gaps appear in the list. Those gaps are not easy to fill, because it can be unfair to the parties to a case, who have been given a date, to be told suddenly that an earlier date has become available; they will have made arrangements for them and their witnesses to be present on the date originally given, and it may be difficult, and unfair to them, to change their arrangements. I know that this is a problem which has vexed courts over the years.

The premises are well-suited to the purpose, and indeed are well-suited to other purposes, such as training and mediation. At present, there is no sound amplification system, and it may be that we will have to make some provision in the next year. As far as a recording system is concerned, it has great benefits for appeals, but at present I do not think that there are enough appeals against Tribunal decisions to justify the expense to the public of such a system.

Cases

As the Law has become embedded in the consciousness of employers and employees, so the type of case coming before the Tribunal has changed; the cases are becoming more complicated. This has two impacts.

First, as already mentioned, it is not easy for all members to sit on the longer cases.

Second, the more complicated cases tend to involve more paperwork, which means more preparatory reading, and I know that panel members are assiduous in reading the papers before hearings. It well may be that, particularly if the burden of the longer cases tends to fall on a small number of members, there should be some form of payment for the preparatory work, and the post-hearing work.

Members of the Tribunal

During the year, the Deputy Chairman, Nicola Santos-Costa, willingly bore more than her fair share of the work because I was heavily engaged in a legal aid criminal trial, and I am very grateful to her.

The panel members have quickly and easily settled down into their judicial roles, and Nicola and I find that the discussions before and after hearings are objective and analytical and lead to efficient decision-making. We have the impression that the panel members really do enjoy the work and we are very grateful to them.

Interviews have been carried out to find 4 new panel members; 2 “employee” Side Members and 2 “employer” Side Members. Four individuals have been selected to be recommended for appointment by the States of Jersey.

The year ahead

We await with interest the introduction of a Discrimination Law. We have received a day’s training on discrimination, and it remains to be seen how much extra work the Law, and the Regulations by which different types of discrimination will be brought under the Law, will bring to the Tribunal.

**David Le Quesne, Chairman of Jersey Employment Tribunal
November 2007.**

ANNUAL REPORT 2007

This second annual report covers the period from 1st July 2006 until 30th June 2007.

Applications to the Jersey Employment Tribunal

In all, the Tribunal received 230 applications during the period of this report. It is fair to say that the range of applications is not confined to one particular industry but is a reflection of the diversity of Jersey's employment sector.

In general, most applications are completed satisfactorily and have the essential content upon which the Chairman will consider whether to accept the application. Applications have been rejected on only 3 occasions. The reasons for rejection are varied, but include applications submitted outside of the 8 week time limit in respect of unfair dismissal, or the application is not within the Tribunal's jurisdiction. This might be because the employee has never worked in Jersey, even though they are seemingly employed by a Jersey registered company, or that no employer-employee relationship exists between the parties.

	July – Dec. 2006	Jan. – June 2007	Total
Applications received	120	110	230

Outcomes of Tribunal Applications (230)

The Employment Tribunal actively encourages both parties to meet with JACS and conciliate a settlement. In all instances, the Application forms and the Employers Response forms are forwarded to JACS (unless one or both parties request that conciliation is not an option). Cases only come to the Tribunal where no agreement has been reached. It was pleasing to note that of the 230 applications received, 93 were settled and a further 25 were withdrawn, equating to 51% of cases not coming before the Tribunal.

The 230 applications were dealt with in the following manner

	July – Dec. 2006	Jan. – June 2007	Total
Settled	61	32	93
Withdrawn	12	13	25
Rejected	2	1	3
Struck out	1	1	2
Adjourned	1	0	1
On Going	14	63	77
Found in favour of applicant	22	–	22
Found in favour of Respondent	7	–	7
Totals	120	110	230

Breakdown of Issues contained in Applications

The bulk of the cases coming before the Tribunal continue to be issues relating to unfair dismissal and payment of wages. The figures below however do not include additional issues identified during the course of a hearing. In some cases, more than one issue applied at the time when the application was registered.

Issues identified in Applications	Number
Unfair Dismissal	156
Payment of wages	100

Holiday Pay	61
No Contract	24
Termination of Employment	13
Minimum Wage	12
Breach of Contract	16
Total number of issues	382

Number of Cases Heard

The Tribunal held 41 hearings and 29 Directions or Case Management Hearings during the period 1st July 2006 to 30th June 2007. Virtually all the cases heard were ongoing from the previous year.

Some hearings were over several days and these additional days are not included in the figures below; they also do not include cases which were settled during the hearing where no Tribunal judgment was issued. In addition, Tribunal members were often required to meet in the days following a hearing to deliberate on the evidence put before them during the hearing to enable them to reach a conclusion, which is not reflected in the figures below.

Full Cases	29
Interim Hearings	12
Directions/Case Management Hearings	29

The bundles of evidence submitted by the parties are often considerable, running into several hundred pages. These bundles are distributed to the panel members in advance of the hearing in order that they may read the content in preparation for the hearing.

Major factors for employers to note

The Employment (Jersey) Law 2003 has been in force for more than 2 years, yet it is evident that some employers still do not issue contracts of employment (24 during the period under review, compared to 38 cases the previous year).

An employer's failure to issue a contract of employment is regarded as a serious breach of the Law and is reflected in the financial sanction the Tribunal can impose; a fine of up to £5,000. Some contracts presented to the Tribunal have been carefully drafted and provide a full and detailed document. However, it is clear that some employers provide contracts only to comply with the requirements of Part 2 of the Employment Law, with no intention of applying its terms.

Employers in dispute with employees often refer to complaints made about the work of the applicant, yet disciplinary procedures described in either a contract of employment or a staff handbook have not been applied. Some employers seem to have known as little of the contents of the agreements as the employees. The purpose of the requirement for a written statement of employment particulars is to describe as precisely as is necessary the terms which govern the employer-employee relationship.

A general observation of the Tribunal is that if an employer has a disciplinary process, it should be followed in its entirety. For example, if an employer has a 4-stage disciplinary process, the interim stages of that process must not be missed out.

Directions Hearings

The Tribunal encourages the use of Directions or Case Management Hearings as a means of determining issues

before a full hearing takes place. These relatively short hearings focus on the issues which are sometimes outside the scope of the full hearing, such as the preparation of bundles and the exchange of documents between parties. These hearings are also used to determine the Tribunal's jurisdiction in examining whether an employer-employee relationship exists between the parties. Either party to a dispute may apply for a directions hearing, which is intended to ease the Tribunal process.

Direction Hearings were held on **29** separate occasions, sometimes on the application of one of the parties, and other times at the request of the Tribunal by way of case management. In some cases, more than one hearing was required to determine the way forward.

Overall, the conduct of the parties attending the hearings was impeccable and a responsible, mature attitude was displayed by them when dealing with some quite complex and emotive issues arising out of employment disputes.

Performance of the Tribunal

In his forward, the Chairman touched upon the availability of Tribunal Side Members in hearings where several days are set aside, usually in the more complex cases. Other factors which have reflected on the Tribunal's performance in this review year have been the absence of the Chairman who was engaged in a lengthy Royal Court trial. This meant that the bulk of the Tribunal workload was undertaken by the Deputy Chairman. Some of the cases before her were complex and the drafting of the judgments also impacted on her ability to hear other cases. This has resulted in a backlog of cases still to be heard.

In addition, when cases are settled within 2 weeks immediately preceding a hearing, the Secretary is unable to schedule in another case at such short notice. This means that the entire day or days are wasted. It may be that the Tribunal procedures will need to be revised to mark a cut-off point, whereby settlements between parties are not possible within 3 weeks of a hearing date to enable rescheduling of cases by the Tribunal. This is an issue that will have to be reviewed if this continues to be a problem.

Total Awards and Penalties

Awards to Employees	Fines Imposed on Employers
£104,806.00	£2,150.00

The Tribunal is mindful of the impact that a large award or fine can have on a small employer and the Tribunal has therefore tended to impose relatively small fines to date. However, the Employment Law has been in existence for over 2 years and the Tribunal has indicated in recent judgments that employers who do not issue contracts of employment or itemised pay statements to their employees can expect to be dealt with more harshly in future.

In relation to awards, the Tribunal is conscious that the Law provides a set formula for the calculation of awards and cannot reduce an award on the basis of an employee's actions or conduct leading up to their dismissal. The Tribunal understands that the Minister for Social Security will propose an amendment to the Law in January next year which would enable the Tribunal to mitigate the award that is granted against an employer where the employee's conduct has contributed to their own dismissal.

Judgments

The Tribunal endeavours to issue its judgments to the parties within 28 days of the hearing. The Tribunal has achieved that target except in 2 cases where further information was required from the parties and the panel adjourned to await that information. On average, judgments are issued to parties within 14 days of the hearing.

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.

Members have also received training in respect of the new Employment Relations (Jersey) Law 2007; due to be introduced on 21st January 2008, which may result in additional hearings relating to issues arising out of its enforcement. In addition, the new right to representation in formal disciplinary and grievance hearings may similarly impact on applications to the Tribunal.

As part of the ongoing process of developing the employment legislation, the Tribunal is aware that the Minister for Social Security intends to amend the Law to give the Tribunal the power to award that an employee is reinstated (or re-engaged) in unfair dismissal cases, which will be debated by the States in January 2008.

Tribunal Website

The Tribunal now has its own website, www.jerseyemploymenttribunal.org and has received favourable comments concerning the content. Currently the website contains Application (JET1) and Response (JET2) Forms together with advisory leaflets on how to complete the forms, a User Guide detailing the entire Tribunal process and the Tribunal Regulations and Procedures.

The judgment section is being updated following feedback from users and will provide a searchable database of all Tribunal judgments since 2005. The Tribunal realises that judgments are useful to a large section of the public as a valuable source of background and research information, and as an indicator of case precedent and Tribunal process.