

Jersey Employment Tribunal

1st Floor, Trinity House,
Bath Street,
St Helier,
JE2 4ST

First Annual Review

November 15th, 2006

A The New Law

The Employment (Jersey) Law came into force on 1st July 2005. It is an important piece of social legislation, the core of which provides protection to employees against unfair dismissal. By providing this protection, the States recognized the importance to most people of their jobs and the unfairness resulting from the ability of employers to dismiss at will.

The Law has other important features, such as;

- The requirement for there to be written particulars of employment
- Minimum rest and leave periods
- Provision for a minimum wage.

B The Tribunal

Enforcement of the Law is entrusted to a new body created by the Law, known as the Employment Tribunal. I was appointed Chairman of the Tribunal, and Nicola Santos Costa was appointed Deputy Chairman. We are qualified lawyers.

The Tribunal generally consists of three members, being the Chairman or Deputy Chairman and two 'lay' members, one from the employee side and one from the employer side. The members of the Tribunal are listed in Appendix 1. The Chairman or Deputy Chairman can sit alone; this tends to occur when there are subsidiary matters to be dealt with before the main hearing, but sometimes we hear actual claims without the side members of the Tribunal.

We are greatly assisted by our part time secretary, John Mallet; without his drive and diligence, we would not have been up and running as soon as we were. It remains to be seen whether we can continue with only one part time secretary, but at present the system works well.

C Premises, procedures and training

The Tribunal did not start to hear cases immediately the law came into force, because we had no premises. However, it did not take long to complete our present premises, which are on the first floor of Trinity House, Bath Street. The refurbishment was completed under budget, and the premises are well-suited to our needs.

Given that we do not use the premises every day, we hope to be able to make them available for other purposes, such as mediations and meetings, which would bring in some income to the States.

The delay gave us the chance to draft rules and procedures, and to learn our jobs. The drafting was done in something of a hurry, for we had to be ready for business when the premises were open. The current rules have proved satisfactory, but I have no doubt that, with the assistance of those who practise before the Tribunal, we shall be able to improve them as time passes (see appendices for these rules).

Training has consisted of a seminar under the guidance of Mr Peter Syson, who is an experienced tribunal member from London, and a visit to the UK to see a Tribunal in action. In addition, Nicola Santos Costa and I have attended a course for tribunal chairmen run by the Judicial Studies Centre. For the side members, the training comes through experience and through guidance from the Chairman or Deputy Chairman.

Throughout the early days we were given much assistance and encouragement from the President (now Minister), Paul Routier, and from Ann Esterson and Kate Morel at Social Security.

D Jersey Advisory and Conciliation Service

We share the same building as the Jersey Advisory and Conciliation Service (JACS), which is very convenient, for the law provides for cases to be referred to JACS before they are heard by the Tribunal. The parties do not have to use JACS, but most do.

I applaud the service provided by JACS, for very few of the complaints we receive actually come to a hearing before the Tribunal, and clearly this is because of the good job done by JACS.

E How the Tribunal works

In addition to rules of procedure before the Tribunal, we have drafted a set of standard documents; the most important of which are JET 1, the application form, and JET 2, the response form (which are available on the

website¹). Some requirements, such as the time within which a claim for unfair dismissal must be made, are stated in the law, but in many other cases, we have had to frame our own requirements so that the machinery of the Tribunal runs smoothly.

The nature of hearings before the Tribunal is similar to that of courts of law, but less formal and less circumscribed by procedural rules (as is the case in the UK). Given that the majority of cases are argued by the parties themselves, without lawyers, it would be pointless to have the same requirements as courts of law in respect of such matters as hearsay evidence, leading questions, the rights of examination in chief, cross examination and re examination. Further, a significant number of those who appear before the Tribunal do not have English as a first language, or are not educated to be familiar or relaxed in the environment of a tribunal, so we go to considerable lengths to ensure that all parties fully understand what is happening. This prolongs proceedings, but the requirement for fairness is paramount.

We do at times regret that there is no provision of legal advice for parties, particularly where there is a difficult question of law, when it would be helpful to hear properly reasoned and researched arguments rather than having to rely solely upon our own researches.

The Deputy Chairman and I try to split the cases more or less equally between us, and the secretary tries to allocate members to sit with us on a rota, so that the load is borne equally; sometimes he has great difficulty in putting together a tribunal, but he always seems to manage, because members have proved very willing to step in to help. It is noteworthy that discussions amongst Tribunal members, and Tribunal decisions, are never split on the lines of the employer side representative favouring the employer's case, and the employee side representative favouring the employee's case. My own experience is that the discussions are analytical and vigorous, but decisions always have been unanimous.

Nicola Santos Costa and I have been very fortunate in having such a keen and conscientious board of side members; their contribution to the Tribunal is great. Their work goes far beyond simply sitting in the Tribunal hearing cases. Typically, before a hearing they receive and read the papers, during intervals in hearing we all discuss the evidence, and after the hearing we spend time considering the evidence and reaching a decision. Finally, the side members receive from the Chairman or Deputy Chairman a draft judgment reflecting what has been agreed; sometimes that draft is revised several times.

It is right also to thank those who employ side members and allow them time off work to perform this important job.

¹ www.jerseyemploymenttribunal.org

F How the Law has worked

The Law brought a radical change to the relationship between employers and employees; the old concept of 'master and servant' has gone. We recognised that such a fundamental change would take time to be understood, and for the first few months, we tempered our application of penalties to allow for this, but the law now has been in force for long enough, and there has been enough publicity about Tribunal cases, for all employers and employees to know about the law. For those who do not understand the law, there are easily available avenues for obtaining information, such as JACS and the Citizens Advice Bureau, and law firms.

Whilst there seems to be a general understanding of what may constitute fair grounds for dismissal, there is less understanding that there is another side to a fair dismissal. The procedure leading up to dismissal must be fair, which essentially means that the employee must know what he has done wrong and must have an opportunity to improve so as to comply with the employer's reasonable requirements.

The law does work and has had a significant impact in preserving those rights of employees to which it refers. My Deputy Chairman and I have become aware of parts of the law which do not work as well as they could, and it is likely that, in due course, we will propose to meet a representative of the Minister to discuss possible amendments.

G Conclusion

I think that in the past year the Tribunal has to a large extent fulfilled the political will of the States of Jersey by applying the Employment Law. As a result of public and private initiatives such as conferences and seminars and reporting of cases, the Employment Law and the Tribunal must by now be known to the vast majority of employers and employees. This does not mean that the work for the Tribunal is likely to reduce; on the contrary, it is likely that, whilst the simpler cases will diminish as familiarity with the law grows, there will be more complicated cases, and these will take up more of the Tribunal's time.

David Le Quesne, Chairman.

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

Employee Representatives

Mr Patrick Kirwan

Mr Samuel Le Breton

Mr William McPhee

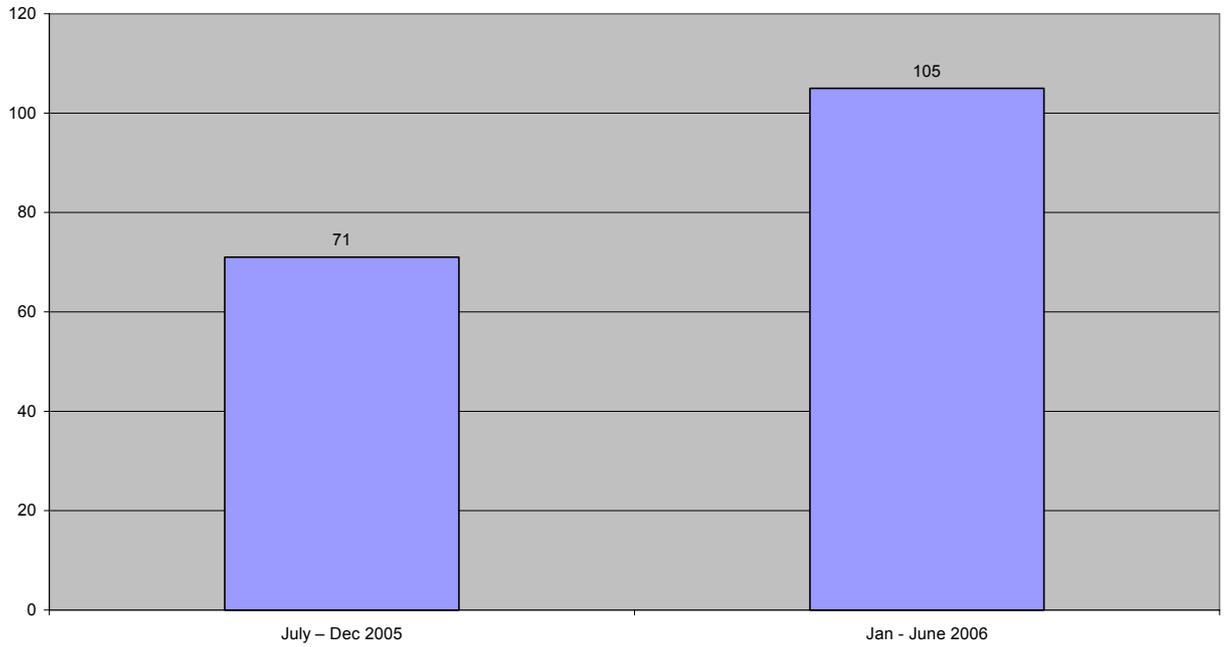
Mr James McCartan

Mr Alan Hall

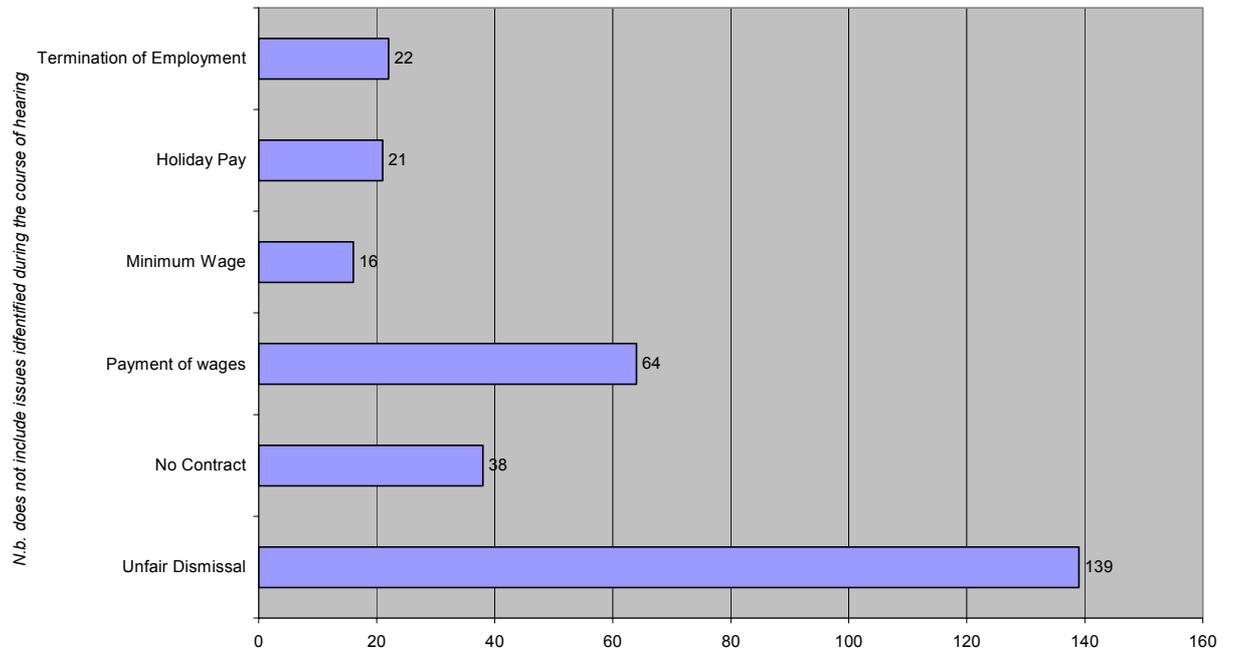
Mr Timothy Langlois

Appendix 2 –Employment Tribunal Activity - July 2005 to June 2006

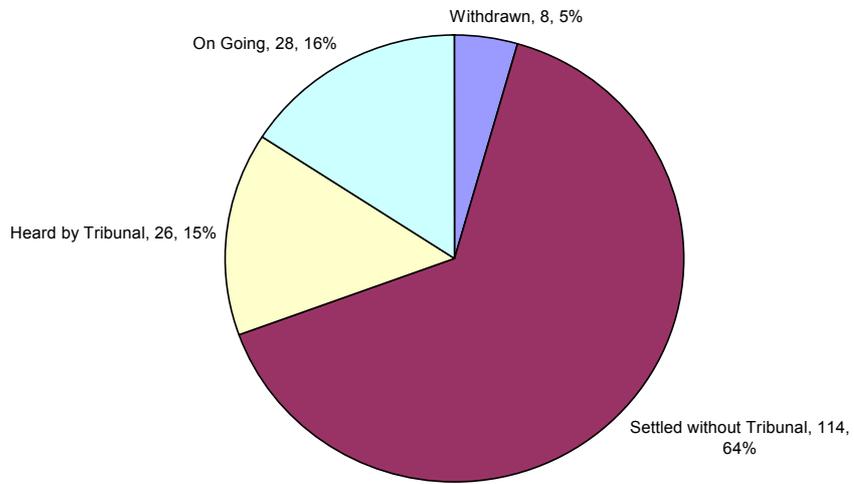
Total Number of Tribunal Applications



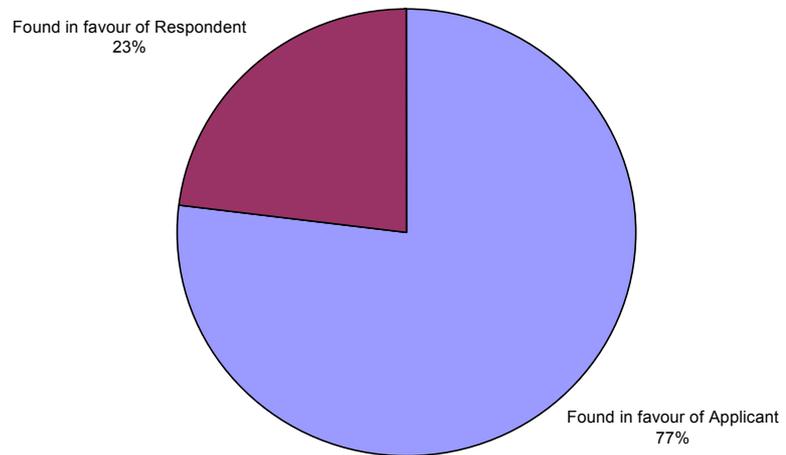
Issues contained in Tribunal Applications



Outcomes of Tribunal Applications



Outcomes of Tribunal Hearings



Award and Fines

