

STATES OF JERSEY



JERSEY EMPLOYMENT TRIBUNAL: ANNUAL REPORT FOR THE PERIOD 1ST JULY 2007 TO 30TH JUNE 2008

**Presented to the States on 30th October 2008
by the Minister for Social Security**

STATES GREFFE

REPORT

This third annual report covers the period from 1st July 2007 until 30th June 2008.

Applications to the Jersey Employment Tribunal

The Jersey Employment Tribunal received 164 applications during the period 1st July 2007 to 30th June 2008 this is 66 fewer applications than in the previous year. The spread of applications is not confined to one particular industry but reflects the diversity of Jersey's employment sector. In general, most applications are completed satisfactorily and have the essential content upon which the Chairman will seek to accept the application.

Outcomes of Tribunal Applications

The Employment Tribunal actively encourages both parties to meet with an Officer of the Jersey Advisory and Conciliation Service (JACS) to conciliate a settlement. In all instances, the Application forms and the Employer's 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.

The 164 applications were dealt with in the following manner –

Rejected		7
Dismissed		5
On-going		43
Settled		76
Withdrawn		14
Struck out		2

Found in favour	Applicant	11
	Respondent	6
	Total	164

The status of outstanding cases from previous years is as follows –

2005

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

2006

One case remains outstanding due to ill-health of the Applicant.

2007

Six cases remain outstanding from the period 1st July 2007 to 30th June 2008. Three are scheduled for hearing during 2008. One case remains outstanding due to ill-health of the Applicant. One case is subject to a police investigation and cannot proceed until the investigation is completed, and the remaining case is on hold as the Respondent's registered offices cannot be traced.

2008 (to 30th June 2008)

Thirty-seven cases remain outstanding for the current year and are at various stages of the Tribunal process. This does not include outstanding cases from 2005 to 2007.

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.

Issues identified in Applications	Number
Unfair dismissal	115
Payment of wages	84
Holiday pay	37
No contract	19
Termination of employment	39
Minimum wage	5
Breach of contract	3
Total number of issues	302

Number of Cases heard

The Tribunal held 71 Hearings and 14 Interim Hearings during the period of this report. Numerous case management meetings were also held in order to provide written directions to the parties involved in an effort to ensure that the relevant information was presented to the Tribunal in advance of any hearing.

Full Cases	71
Interim Hearings	14

Total Awards and Penalties

<i>Awards to Employees</i>	<i>Fines imposed on Employers</i>
£142,339.36	£9,350.00

The Employment Law currently provides a set formula 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 Minister for Social Security proposed an amendment to the Law, which was adopted by the States on 22nd October 2008.

When that amendment comes into force next year (subject to Privy Council approval), the Tribunal will have the power to reduce the compensation that an employer is ordered to pay where the employee has contributed to his or her own dismissal. That amendment will also give the Tribunal the power to order the re-employment of an unfairly dismissed employee, instead of a financial award.

On 25th September 2008 (Case No. 2008/82), the Royal Court found that the Jersey Employment Tribunal has no power under the Employment (Jersey) Law 2003 to impose a fine in respect of matters described in the Law as 'offences', for offences are matters for the criminal law and must be heard before the Magistrate's or Royal Court. It was decided that all sums received by way of fines since the Tribunal's inception would be repaid to employers as soon as possible. Fines totaling £7,750 will be returned and the Tribunal will not continue to seek payment of any unpaid fines. The following are described in the Law as 'offences' –

- Failure to provide employment particulars (i.e. contract of employment);
- Failure to pay the minimum wage;
- Failure to keep employment records;
- Failure to provide a pay statement (i.e. wage-slip).

The problem which arises is that there appears to be no mechanism to engage the criminal law in these matters, and the criminal law may be an unduly cumbersome and expensive way to deal with them. On the other hand, these are very important rights for employees, and there should be immediate and effective sanctions available to enforce them. It may be that the Law should be amended to allow the Tribunal to deal with these matters.

Discrimination Law

We look forward to the introduction of the Discrimination Law. Implementation of the new Law to prohibit discrimination in various areas – race, gender, and so on, is intended to be incremental. At present, the intention of the States is that the Tribunal will 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.

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 States wish the Tribunal to hear discrimination claims generally, rather than only claims relating to discrimination at work, this could be done.

It is impossible to gauge with any accuracy how much discrimination work will come to the Tribunal. In preparation, Tribunal members have already received discrimination law training.

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 Website

The judgment section of the website – www.jerseyemploymenttribunal.org – has been updated following feedback from users and now provides a searchable database of all Tribunal judgments, by year, since 2005. The Tribunal is aware 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.

Employment Tribunal Chairman
23rd October 2008

Employment Tribunal Members

Chairman

Advocate David Le Quesne

Deputy Chairman

Mrs. Nicola Santos-Costa

Employer Representative Side Members

Mrs. Susan Arnes

Mrs. Mary Curtis

Mrs. Kelly Flageul

Mr. Stewart Mourant

Mrs. Carol Harvey

Mr. Peter Woodward

Mr. Mark Therin

Employee Representative Side Members

Mr. Patrick Kirwan

Mr. Samuel Le Breton

Mr. William McPhee

Mr. James McCartan

Mr. Alan Hall

Mr. Timothy Langlois

Mr. Michael Baudains

Mrs. Anne McPhee

Employment Tribunal Activity – July 2005 to June 2006



