

## **STATEMENT BY THE GSLP/LIBERAL OPPOSITION 80/2007**

**1 August 2007**

It is understood that the Government appeal seeking to exclude the dismissal of Ms Joanna Hernandez as Manager of the Dr Giraldi Home from the jurisdiction of the industrial tribunal is likely to be heard by the visiting Court of Appeal Judges next month.

Ms Hernandez was employed as a civil servant in the Education Department for a number of years and applied for the vacancy of Dr Giraldi Home Manager in 2004. She was selected and took up employment on one year's probation in November 2004 and was told that she could not have continuity of service having terminated her employment with the Education Department and started work with the Agency on the Monday.

During the course of her employment, Ms Hernandez brought to the attention of the Minister responsible and others her concerns about allegations of abuse of persons with disability in the care of the Agency.

Subsequent to this, she was told in the 11<sup>th</sup> month that she had failed to meet the standard required to pass her probationary period and given one month's notice of termination of her contract, which became effective in November 2005, one year and two days after she started work with the Agency.

On tabling a complaint of unfair dismissal, the Attorney General defended the Social Services Agency, and has attempted to block the hearing of her complaint on the grounds that there was no jurisdiction for the tribunal as she had not worked 52 weeks. The argument put before the tribunal turned out eventually to be that because the wording of the law says that there have to be 52 weeks continuous employment, the first week of employment starting on Monday should not be counted allegedly because the working week, for the purposes of this law, should be deemed to commence on the Sunday. That is to say that a worker commencing work on a Monday with a contract of employment of one year is not covered by the law giving protection against unfair dismissal.

Clearly, the Government's interpretation of the law in this particular case raises a wider policy issue than the specific case of the affected individual since it would apply to all workers sacked after working 52 weeks if the first week of work started on Monday which is the norm.

When the legislation was introduced by Mr Adolfo Canepa as Minister for Labour in 1975, he told the House of Assembly that the protection would apply to anybody working one year. However, instead of using the words "one year" in the text of the law, the words "52 weeks" were put. The case of the Attorney General rests on this distinction.

It is clear that the intention of the Parliament in 1975 in making legislation was that the words one year and 52 weeks should be interpreted as synonymous

terms. There is no evidence that in Gibraltar in the intervening 32 years, the industrial tribunal has interpreted this any other way.

The Tribunal ruled in favour of the claimant Ms Hernandez and the Government appealed against the decision of the tribunal to the Supreme Court and lost. Before the Supreme Court they could produce no evidence of any previous ruling either in Gibraltar or in the UK in support of their contention that the first week of work starting on a Monday had to be ignored.

Indeed, the law requires that the 52 weeks of continuous employment should be counted up to the last day worked irrespective of the day of the week that it is. On that basis, Ms Hernandez worked 52 weeks and 2 days.

The Government had to pay Ms Hernandez's legal costs in the Supreme Court and is now going to further expense in using taxpayers' money in litigation costs in front of the Court of Appeal. It is now nearly two years since Ms Hernandez employment has been terminated and her complaint has not been heard because of this pending appeal on jurisdiction.

If the Government were so confident of the legitimacy of the dismissal, there is no apparent reason why they should want to prevent the claim being heard given that by the case being heard there would be no precedent created since there is absolutely no evidence of any previous complaint being challenged by an employer on the grounds being used by the Government.

In the absence of any other logical explanation, the efforts by the Government to stop this case from proceeding in the tribunal can only be because they are not confident that they can demonstrate, in any shape or form, failure to meet the required standards and because they are well aware, having received written statements from a considerable number of witnesses of the allegations of abuse which would be made in public by these witnesses in the course of the examination of the grounds for the dismissal.

As well as its wide repercussions on the rights of other workers, the conduct of the Government and the lengths and expense of the efforts they are going to stop this case being heard, suggests that these details are something that they wish to prevent from coming out in public.

**ENDS**