



EMPLOYMENT TRIBUNALS

Claimant: Mr B Craig

Respondent: P.W. and J.K. Killby Limited

Heard at: London Central

On: 25 May 2017

Before Judge: Mrs A Isaacson

Representation

Claimant: Mr J Braier

Respondent: Not present

JUDGMENT

The Judgment of the Tribunal is as follows:

- 1. The Claimant's claim for unfair dismissal succeeds. The Respondent is ordered to pay to the Claimant a total basic award of £605.78 and compensatory award of £9231.03. How these figures have been calculated, including notice pay and an Acas uplift of 25 % is set out in the reasons below.**
- 2. The Claimant's claim for failing to provide a written statement of employment particulars succeeds. The Respondent is ordered to pay to the Claimant 4 weeks gross pay £1615.40.**
- 3. The Claimant's claim for failing to provide written reasons for dismissal succeeds. The Respondent is ordered to pay to the Claimant 2 weeks gross pay £807.70.**
- 4. The Claimant's claim for holiday pay succeeds. The Respondent is ordered to pay to the Claimant the sum of £704.66. How this figure is calculated is set out below.**

5. The Respondent is ordered to pay to the Claimant the sum of £420 which is the amount the Claimant paid to the Tribunal in fees, having got partial remission.
6. In total the sum the Respondent is ordered to pay to the Claimant is £13,384.57.

REASONS

Background

1. The Claimant presented a claim form on the 8 August 2016. The claim form was unfortunately lost in the system but was sent to the Respondent in February 2017. The Respondent filed a response on the 13 March 2017. On the 27 April 2017 Mr Edwards, from the Respondent, wrote to the Claimant and Tribunal confirming that he did not wish to continue with his defence. The matter was then listed for a remedy hearing on the 25 May 2017. The Respondent did not attend the remedy hearing.
2. At the remedy hearing the Claimant presented a bundle of documents which included some pay slips from the Respondent and invoices from his new work. He also provided an updated schedule of loss and a statement from a friend who had sold tools to the Claimant and material regarding the steps he had taken to mitigate his loss. He provided a written statement and answered questions from the Tribunal.

Claims

3. The Claimant claimed unfair dismissal, notice pay, holiday pay, failure to provide written statement of employment particulars and a failure to provide written reasons for dismissal. The Claimant also sought an Acas uplift of 25%.

Law

4. The right not to be unfairly dismissed is set out in section 98 of the Employment Rights Act 1996 ("ERA"). A basic award and compensatory award are provided in sections 119 – 124A ERA.
5. Section 1 ERA provides the right to a written statement of employment particulars. Section 38 of the Employment Act 2002 ("EA") provides for an award of 2-4 weeks gross pay when an employer fails to provide a written statement of employment particulars.
6. Section 124A ERA and section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that if the Acas code of conduct applies to a case and a Tribunal finds that the Respondent has unreasonably failed to comply with the codes and it is just and equitable in all the circumstances to make an adjustment to the compensatory award then the Tribunal can adjust the award by up to 25%.

7. The right to a minimum notice period is provided in section 86 ERA.
8. Regulations 13 – 14 of the Working Time Regulations 1998 (“WTR”) provides the right to annual leave and to be paid in lieu of untaken leave accrued on termination of employment.

Findings of fact

9. The Claimant commenced employment at the Respondent on the 3 February 2014 and was dismissed on the 17 June 2016 without notice. The Claimant was not provided with a written statement of employment particulars.
10. In the response form the Respondent stated, under facts relied upon to defend the claim, that there were incorrect daily banking amounts, incorrect completion of paying in slips, losing money, not taking care, bad attitude etc. The Respondent never set out in writing to the Claimant the reason for his dismissal but from the response form and from evidence from the Claimant the Tribunal concludes that the alleged reason for the Claimant’s dismissal was misconduct.
11. The Claimant had reported petty cash missing on 10 June 2016. Mr Edwards, the Claimant’s manager, was not back until 17 June 2016 from holiday. On his return Mr Edwards told the Claimant he was on his last warning and that otherwise he would be dismissed although the Claimant had merely reported the petty cash missing. However on the Monday, when he reported for work, Mr Edwards asked the Claimant what he was doing there as he had been dismissed on the Friday. The Claimant replied that he thought he had been given a warning but Mr Edwards said he had been summarily dismissed.
12. The Claimant was not paid notice pay. The Respondent did not follow any fair procedure and breached the Acas code of conduct: they failed to carry out any investigation; to notify the Claimant that there was a disciplinary case to answer in writing; to arrange a disciplinary hearing with notice and to tell the Claimant he had a right to be accompanied; failed to give the Claimant an opportunity to put his case and question witnesses; failed to notify the Claimant in writing that he had been dismissed and the reasons for his dismissal and failed to allow him a right to appeal. The Tribunal finds that the Claimant was unfairly dismissed and the respondent conceded the claim.
13. On the 20 June 2016 the Claimant emailed the Respondent asking for an explanation for his dismissal. His email was acknowledged but no explanation was provided.
14. The Claimant’s pay slips show that the Claimant was paid £1750 gross pay per month and £1454 net pay per month. That amounts to a weekly gross salary of £403.85 and a week’s net pay of £335.54.
15. The Claimant was entitled to 29 days holiday, including bank holidays. The annual leave year started on 1 January. The Claimant would have accrued

- 13.5 days leave from 1 January to his dismissal. The Claimant could not remember exactly how many days holiday he had taken in 2016. He thought it was between 2-4 days. The Respondent had been asked to provide details of the Claimant's holiday taken but failed to do so. The Tribunal accepts the Claimant's evidence and finds that he took 3 days leave up to 17 June 2016. He therefore had accrued 10.5 days leave entitlement which he had not taken. The Tribunal finds that the Claimant is entitled to be paid for his 10.5 days accrued holiday. His daily net pay is calculated as £67.11 (£335.54 divided by 5). His holiday pay amounts to $10.5 \times £67.10 = £704.66$.
16. The Claimant was not given notice when he was dismissed. The Claimant is entitled to 2 weeks' statutory notice pay which is calculated as $£335.54 \times 2 = £671.08$.
17. For being unfairly dismissed the Claimant is entitled to a basic award which is calculated based on gross weekly pay and a fixed multiplier based on age and years service. The Claimant is entitled to a basic award of £607.78 (403.85×1.5).
18. The Claimant immediately started looking for work after his dismissal. He has managed to obtain work on building sites. He is currently working as a Mate and hopes to progress to an Improver but will need to buy more tools before moving up to that level. He started working on an hourly rate of £8.50 and has had pay rises to £10 and to £11.50 per hour. His hourly rate may go up but for a significant jump he needs to become an Improver.
19. To do his current work he had to obtain a CSCS card. The Claimant failed his first attempt which cost him £39.99 and passed on his second attempt at £20.00. He also needed to purchase tools. A friend sold him tools for £500 on the basis he could pay for them when he could afford to. He paid for them in February 2017. The Tribunal finds that the cost of the claimant's successful CSCS card £20 and the £500 for his tools were costs incurred as a direct result of his unfair dismissal and therefore can be included in the calculation of the compensatory award.
20. From hearing evidence from the Claimant and looking at pay slips the Tribunal finds that the Claimant has earned £11,640.66 net pay since his dismissal. He would have earned £15,386.90 had he remained employed by the Respondent. So his net loss of earnings to the date of the hearing is £3746.24.
21. The difference in pay the Claimant is now earning per week from his previous employment is £61.90 per week. The Tribunal finds that it will take the Claimant 25 weeks before he earns an income equivalent to his salary at the Respondent. Although his hourly rate may go up his hours are not regular. He will need to invest in more tools before he can move up to an Improver. So the Claimant's future loss of earnings is $25 \times £61.90 = £1547.50$.
22. The Claimant was also paid a bonus of £250 at Christmas and £500 in March. This amounts to approximately £600 net bonus pay which the Claimant has also lost since the dismissal to the day of the hearing

23. The Tribunal also awards the Claimant £300 for the loss of statutory rights.

Calculation

24. The total basic award is **£605.78**. The Compensatory award is calculated as follows: loss of earnings from dismissal to date of hearing £3746.24 plus £600 bonus; plus loss of future earnings £1547.50; plus 2 weeks notice pay £671.08; plus £300 loss of statutory rights; plus £520 expenses for finding other work makes a total of £7384.82.

25. The compensatory award is uplifted by 25% £1846.21 making a total of **£9231.03**.

26. The Claimant is awarded 4 weeks gross pay of **£1615.40** (403.85 x 4) for the Respondent's failure to provide a statement of employment particulars. It appears that the Respondent disregards its legal obligations.

27. The Claimant is awarded 2 weeks gross pay of **£807.70** for the Respondent failing to provide written reasons for his dismissal, despite the Claimant seeking the reasons.

28. The Claimant is awarded **£704.66** as compensation for his accrued holiday entitlement.

29. The Respondent is ordered to pay to the Claimant the sum of **£420** which is the amount of Tribunal Fees the Claimant paid.

30. The total amount the Respondent is ordered to pay to the Claimant is **£13,384.57**.

Employment Judge Isaacson
25 May 2017