



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case no: 4102782/2019

Held at Dundee on 10 May 2019

Employment Judge: W A Meiklejohn

10

Mr Thomas Kadoch

**Claimant
Represented by:
Mrs C Kadoch
Claimant's mother**

15

20

Trademark Construction

**Respondent
No appearance and
no representation**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30

The Judgment of the Employment Tribunal is as follows –

35

(a) The Claimant's claim of breach of contract (failure to pay notice pay) succeeds and the Respondent is ordered to pay to the Claimant the sum of SEVEN HUNDRED AND TWENTY POUNDS (£720.00).

40

(b) The Claimant's claim of breach of contract (failure to return tools) succeeds and the Respondent is ordered to pay to the Claimant the sum of FOUR HUNDRED AND THIRTY SIX POUNDS (£436.00).

(c) The Claimant's claim of unfair dismissal succeeds and the Respondent is ordered to pay to the Claimant the sum of TWO

THOUSAND TWO HUNDRED AND THIRTY POUNDS AND NINETY EIGHT PENCE (£2230.98).

- 5 (d) The Claimant's claim of unlawful deduction of wages succeeds and the Respondent is ordered to pay to the Claimant the sum of NINETY POUNDS (£90.00).
- 10 (e) The Claimant's claim for holiday pay succeeds and the Respondent is ordered to pay to the Claimant the sum of THREE HUNDRED AND TWENTY FOUR POUNDS (£324.00).
- (f) The Claimant's claim for failure to provide a written statement of reasons for dismissal does not succeed and is dismissed.
- 15 (g) Having failed to give the Claimant a written statement of initial employment particulars, the Respondent is ordered to pay to the Claimant the sum of ONE THOUSAND SEVEN HUNDRED AND TWENTY NINE POUNDS AND FIFTY SIX PENCE (£1729.56).

20

REASONS

Introduction and issues

- 25 1. This case came before me for a Final Hearing on liability and remedy in Dundee on 10 May 2019. The Claimant was represented by his mother, Mrs Kadoch. The Respondent had not submitted a response to the claim and was not in attendance or represented at the Final Hearing.
- 30 2. The Claimant was pursuing the following claims against the Respondent –
- Breach of contract in respect of failure by the Respondent to give the statutory minimum period of notice of termination of employment provided for in section 86(1) of the Employment Rights Act 1996 ("ERA").
- 35

- Breach of contract in respect of failure by the Respondent to return to the Claimant tools belonging to the Claimant.
- Unfair dismissal in terms of sections 94 and 98 ERA.
- Unlawful deduction of wages contrary to section 13 ERA.
- 5 • Holiday pay in terms of regulations 13, 13A, 14 and 16 of the Working Time Regulations 1998 (“WTR”).
- Failure to provide a written statement of reasons for dismissal contrary to section 92 ERA.

10 **Evidence and findings in fact**

3. I heard evidence from the Claimant. I had a bundle of documents from the Claimant comprising –

- 15 • Letter from the Claimant to the Respondent dated 23 November 2018 (document 1)
- Letter from NEST to the Claimant dated 16 February 2018 (document 2)
- Royal Mail proof of delivery in respect of document 1 (document 3)
- 20 • Document detailing the replacement cost of the Claimant’s tools (document 4)
- Claimant’s bank statements showing Respondent’s change of name (document 5)
- 25 • Claimant’s bank statements showing payments from Respondent in June – August 2016 (document 6)
- Letter from NEST to Claimant dated 30 May 2018 (document 7)
- Letter to NEST to Claimant dated 3 December 2017 (document 8)
- 30 • Letter from NEST to Claimant dated 5 April 2017 (document 9)
- Letter from HMRC to Claimant dated 18 July 2018 (document 10)
- Details of payments by Respondent to Claimant for 2017/18 (document 11)
- 35 • Claimant’s P60 for 2016/17 (document 11)

- Letter from HMRC to Claimant dated 27 June 2017 (document 12)
- Claimant's contract of employment with his current employer (document 13)

5

4. The Claimant is a time served joiner. He secured employment with the business operated by Mr M Teviotdale following a word of mouth introduction from a friend. He spoke with Mr Teviotdale and was given a start date of 13 June 2016. He understood Mr Teviotdale to be his employer. The Claimant was not given a statement of initial employment particulars as required by section 1 ERA. He normally worked 5 days per week.

10

5. Document 6 was the Claimant's bank statement covering the period from 7 June to 8 August 2016. This showed a number of payments representing the Claimant's pay coming from a numbered account and one payment (on 5 August 2016) coming from Trade Mark Joiners. The Claimant understood from this that Mr Teviotdale was at that time operating his business under that name.

20

6. Document 5 was the Claimant's bank statement covering the period from 3 August to 1 September 2017. This showed payments from Trade Mark Joiners on 4 August and 11 August 2017, and then a payment from Trademark Construction on 1 September 2017. The Claimant understood from this that Mr Teviotdale was from that date (or on or around that date) operating his business under that name (ie Trademark Construction).

25

7. On the morning of 6 November 2018, before 8am, the Claimant sent a text message to Mr Teviotdale to apologise to him that he (the Claimant) would be unable to attend work due to severe depression/anxiety. Mr Teviotdale replied by text saying "You are finished no job here". When the Claimant queried this Mr Teviotdale sent a second text saying "You are sacked not paid off". The Claimant had received no prior warnings.

30

8. The final payment of wages which the Claimant received from the Respondent was paid into his bank account on 8 November 2018 and related to the week commencing 29 October 2018. The Claimant was not paid for working on 5 November 2018.

5

9. On 23 November 2018 the Claimant sent a letter (document 1) to Mr Teviotdale asserting that he had been unfairly and wrongfully dismissed. The letter was sent by recorded delivery and the Claimant had proof of delivery on 26 November 2018 (document 3). In his letter the Claimant requested from Mr Teviotdale –

10

- Payslips for 2017/18 and 2018/19 to date demonstrating that National Insurance and Income Tax has been deducted and provided to the authorities
- Statutory pay in lieu of notice – 2 weeks @ £360 = £720
- Statutory Holiday Pay in lieu of notice – 14 days net = £1008
- Provision of 2017/18 P60
- Provision of P45 relating to payroll end including the above
- Evidence of backdated contributions to NEST pension per attached
- Access to retrieve those of my belongings, ie tools, that you still hold

15

20

10. When the Claimant received no response from Mr Teviotdale he initiated ACAS Early Conciliation (“EC”). Following the issuing of ACAS EC certificate number R107234/19/44 the Claimant submitted his Employment Tribunal ET1 claim form naming his employer as “Mark Teviotdale (Trademark Construction)”. The case has proceeded on the basis that the Respondent is Trademark Construction.

25

30

11. At the time of his dismissal on 6 November 2018 the Claimant was being paid at the rate of £360 net per week. This equates to £429.42 gross per week. The Claimant understood from document 8 that his employer’s weekly contribution to NEST was £2.97 (as at 3 December 2017). Accordingly his gross pay including this contribution was £432.39. He

35

secured alternative employment with effect from 3 December 2018. He was not pursuing compensation for future loss beyond that date.

12. The Claimant understood that his annual holiday entitlement was 28 days. He had taken 5 days' holiday in July/August 2018 and a long weekend (ie 2 days' holiday) in October 2018. He received no payment in respect of holidays accrued but untaken on termination of employment.
13. The Respondent had not returned the Claimant's tools as requested in the Claimant's letter of 23 November 2018 (document 1). It was an implied term of the Claimant's contract of employment that the Respondent would return to the Claimant the tools belonging to him (ie the Claimant) on termination of employment. The Respondent had failed to do so. The Claimant had obtained prices to replace his tools (document 4) indicating a replacement cost of £436.

Discussion and disposal (including applicable law)

14. I found the Claimant to be an entirely credible witness.
15. The Claimant had been dismissed by the Respondent without notice on 6 November 2018. At that date he had completed two years of continuous employment and the minimum period of notice to which he was entitled in terms of section 86(1) ERA was two weeks. His dismissal without notice was a breach of his contractual right to statutory minimum notice. His net weekly pay was £360. Accordingly the Claimant is entitled two weeks' pay in lieu of notice which equals £720.
16. The Claimant was entitled to the return of his tools on termination of employment. The Respondent was asked by the Claimant for access to retrieve these but failed to respond. The Claimant produced to the Tribunal a list of those tools with replacement costs totalling £436. By failing to return the Claimant's tools the Respondent was in breach of contract. The Claimant is entitled to payment from the Respondent of the replacement cost of his tools in the sum of £436.

17. In terms of section 98(1) ERA it was for the Respondent to show the reason for the Claimant's dismissal. As the Respondent had not submitted a response to the claim it followed that he had failed to discharge this onus and that the Claimant's dismissal was unfair. The Claimant was entitled to a basic award under section 119 ERA and a compensatory award under section 123 ERA.
18. The Claimant was 26 years of age at the date of his dismissal. He had two years' continuous service, over the age of 22 and under the age of 41, so the statutory multiplier was 1. His gross pay was £432.39 per week. Accordingly the basic award in respect of his unfair dismissal was £432.39 times 2 (years' service) times 1 (applicable multiplier) which equals £864.78.
19. The Claimant suffered two weeks' loss of earnings between the date upon which his notice entitlement would have expired (20 November 2018) and the date upon which his new job started (3 December 2018). This amounts to £720.
20. By reason of being unfairly dismissed the Claimant lost the benefit of his statutory employment protection rights. I considered that a figure of £200 would be appropriate compensation for that loss.
21. The total compensation for unfair dismissal is therefore £864.78 plus £720 plus £200 which totals £1784.78.
22. I considered that the Claimant's unfair dismissal claim was one to which the ACAS Code of Practice: Disciplinary and Grievance Procedures (2015) applied because the Respondent had dismissed the Claimant for failing to attend at work on 6 November 2018 without making any enquiry into the reason for his inability to do so. There had been no attempt by the Respondent to follow the Code. The Respondent's failure to do so was unreasonable. Accordingly I decided that in terms of section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (the "1992

Act”) the award of compensation for the Claimant’s unfair dismissal should be increased by the maximum uplift of 25% to a total of £2230.98.

- 5 23. The Claimant had suffered an unlawful deduction of wages contrary to section 13 ERA by reason of the Respondent’s failure to pay him for working on 5 November 2018. His net earnings for that date amounted to £72 and he was entitled to an award of this amount. He was also entitled to an uplift in terms of section 207A of the 1992 Act for the reasons explained in the preceding paragraph. Accordingly the award to the Claimant under this head of claim is increased to £90.
- 10
24. In the absence (as was the case here) of a relevant agreement as defined in regulation 2 WTR, the Claimant’s holiday year ran from the anniversary of his start date in terms of regulation 13(3)(b)(ii) WTR. That meant that at the date of his dismissal the Claimant was part way through a holiday year which commenced on 13 June 2018. The Claimant was entitled to 5.6 weeks’ annual leave which equated to 28 days per year (as the Claimant normally worked five days per week).
- 15
- 20 25. As at 6 November 2018 the Claimant’s accrued holiday entitlement calculated in terms of regulation 14(3)(b) WTR was 11.5 days (calculated to the nearest half day). As the Claimant had taken 7 days’ holiday as detailed above, he was on termination of employment entitled to be paid in respect of his accrued but untaken holiday entitlement of 4.5 days. That amounts to £324.
- 25
26. In terms of section 92(2) ERA an employee is entitled to a written statement of reasons for dismissal only if he makes a request for one. While provision of a reason for dismissal was mentioned in the said letter of 23 November 2018, the letter did not actually request a written statement. Accordingly this head of claim could not succeed.
- 30
27. As an award was made to the Claimant in these proceedings and the Respondent was in breach of the duty to give the Claimant initial employment particulars under section 1(1) ERA when the proceedings
- 35

commenced, I was obliged by section 38 of the Employment Act 2002 to make an award of the minimum amount of two weeks' pay to the Claimant and could, if I considered it just and equitable in all the circumstances, increase the award to the higher amount of four weeks' pay. As there had
5 been no compliance whatsoever by the Respondent in terms of providing initial employment particulars in this case I decided that the award should be the higher amount which was four times £432.39 which equals £1729.56.

10 28. It is for the Respondent to account to HM Revenue and Customs for income tax and National Insurance Contributions in respect of the awards for unlawful deduction of wages and holiday pay.

15 29. The Claimant's issues with pension contributions are not a matter for this Tribunal and may require to be addressed by the Claimant to The Pensions Regulator.

20

25

30

35 **Employment Judge:**
Date of Judgment:
Entered in register:
and copied to parties

Alexander Meiklejohn
15 May 2019
16 May 2019