



EMPLOYMENT TRIBUNALS

Claimant: Philip Borkor Benne
Respondent: Cordant Cleaning Ltd
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 16 April 2021
Before: Employment Judge Housego

Representation

Claimant: Julia & Rana Solicitors
Respondent: Appearance not entered

JUDGMENT

1. The name of the Respondent is amended to “Cordant Cleaning Ltd.”.
2. The Respondent is ordered to pay the Claimant the sum of £8,633.
3. The Recoupment Regulations do not apply to this award.

REASONS

1. The claim form gives the name of the Respondent as “Cordant Cleaning”. The employer of Mr Benne is a limited company of that name, and so I amend the name of the Respondent to Cordant Cleaning Ltd.
2. Mr Benne was dismissed from his employment (as a bus cleaner) by the Respondent. He attended a disciplinary hearing on 15 June 2020. He was told not to attend work until he received the outcome letter. That letter was dated 19 June 2020, but was not received by him until 13 July 2020. It summarily dismissed Mr Benne.

3. Mr Benne instructed solicitors, who (on 21 July 2020) wrote to the Respondent appealing that decision. On 07 August 2020 the Respondent asked Mr Benne to attend an appeal hearing, but listed it for 07 August 2020. After this was pointed out, the date was moved to 01 September 2020, and the hearing then took place.
4. On 08 October 2020 this claim was lodged, for unfair dismissal, the outcome of the appeal not having been communicated to Mr Benne, and the time limit approaching.
5. On 09 October 2020 the Respondent wrote to Mr Benne and upheld Mr Benne's appeal, in part. Because of the parts upheld his dismissal was rescinded because it was too severe a sanction for what remained. He was reinstated with a final written warning (by reason of the parts of the appeal which were not upheld). The letter asked him to contact them to arrange resumption of work.
6. On 16 October 2020 Mr Benne resumed work, as the outcome of the appeal was that dismissal was replaced with a final written warning, and he was offered (and accepted) reinstatement.
7. Mr Benne has not been paid for the period 16 June 2020 – 15 October 2020.
8. The Respondent has not responded to the claim.
9. Between June and October Mr Benne sought but was not able to find alternative employment (understandable as he is a cleaner and economic activity was severely reduced during this period).
10. Mr Benne relied on the income of his wife and son in that period and did not claim state benefits.
11. Those instructed by Mr Benne sought a basic award for dismissal, but re-engagement means that there has in law been no dismissal, and no break in continuity of employment, and so there is no basic award.
12. As Mr Benne was reinstated, he should be paid for the period between dismissal and reinstatement. This is because S114 of the Employment Rights Act 1996 states that the effect of a reinstatement order is that the employer shall treat the claimant in all respects as if he had not been dismissed. While this was not a reinstatement ordered by the Tribunal under the Employment Rights Act 1996, it cannot be right that he is in a worse position if accepting reinstatement by the Respondent than if it was ordered by the Tribunal.
13. Whether this is by reason of a reinstatement order under S114 or a deduction from wages contrary to S13 is not material, other than the recoupment regulations do not apply to a S13 claim. It would be unjust enrichment for Mr Benne if he was paid in full, and received state benefits as well, and an unwarranted expenditure of taxpayers' money if the

recoupment regulations apply. However, Mr Benne says that he has received no state benefits.

14. I note that this was the outcome of the disciplinary appeal and not a negotiated outcome to this claim. If it were a negotiated outcome it would have been possible for the claim to be settled on the basis of reinstatement but no back pay. That was not what happened.
15. Mr Benne was paid £485 a week gross, which was £435 a week net.
16. The period between the two dates is 17 full weeks and 4/5th of the 18th week. (He worked 5 days a week.)
17. I decide that the amount should be paid gross, because the Respondent will run the payment through its payroll, and so tax and NI contributions will be paid.
18. $17 \times 485 = \text{£}8,245$. $4/5^{\text{th}}$ of $\text{£}485 = \text{£}388$. These total $\text{£}8,633$, and this is the sum I order the Respondent to pay to Mr Benne.
19. The recoupment regulations would apply to the whole period 16 June 2020 – 15 October 2020, at £485 week gross, save that Mr Benne says that he received no state benefits.
20. There are no other losses claimed, and no order is sought in respect of pension rights or other benefits for the period.

Employment Judge Housego
Date: 19 April 2021