

EMPLOYMENT TRIBUNALS



Claimant

Mr Glen Connelly

Respondent

Whitefriars Plant Limited

v

Heard at: Bury St Edmunds

On: 7 January 2022

Before: Employment Judge R Wood

Appearances

For the Claimant: In person

For the Respondent: No attendance

JUDGMENT

1. The name of the Respondent is substituted to 'Whitefriars Plant Limited' from 'Hire-test'.
2. The Respondent is in breach of contract by dismissing the Claimant without notice and the Respondent is ordered to pay to the Claimant damages of **£544** for that breach, this being one week's net weekly wage.

REASONS

Claims and Issues

1. The Claimant alleges that he was not given appropriate notice of termination of employment, which would be a breach of contract. The Claimant states that he was entitled to 1 week's notice of termination. He states that he was wrongly dismissed without notice on the grounds of having misappropriated a mobile telephone. The Respondent argues that the Claimant was dismissed by reason of gross misconduct and that it was therefore entitled to dismiss without notice pay.
2. Upon discussion with the Claimant, it was apparent that it was common ground that he had been employed by Whitefriars Plant Limited and not 'Hiretest' or 'Hire-test Limited'. The Respondent had submitted a copy of a

'P11 Deduction Card' for the Claimant which bore the name 'Whitefriars Plant'. The Claimant stated that his wage slips also bore the name 'Whitefriars Plant Limited'. Therefore, I substitute the identity of the Respondent accordingly under rule 34 of the Employment Tribunals Rules of Procedure 2013, as amended.

Procedure, Documents and Evidence Heard

3. The Hearing took place on 7 January 2022. I heard evidence from the Claimant, Mr Glen Connelly. He had not submitted a witness statement. I took his evidence in chief orally at the Hearing. The Respondent had put the Tribunal on notice that it would not be sending a representative to the Hearing. I did have the benefit of a document entitled 'Written Representations of the Respondent' dated 24th September 2021, and a witness statement from Ciaran McGreal, who was the project manager at the site where the Claimant worked. His statement is dated 15th July 2021. Mr McGreal did not attend to give evidence. There was no bundle of evidence. I had a copy of the ET1 (claim form). There did not appear to be an ET3 (the response).

Findings and Reasons

4. In contractual terms, I find that the Claimant was entitled to a notice period of one week. This was common ground between the parties so far as I could ascertain. The Claimant agreed that he would not be entitled to a week's notice if he had properly been dismissed for gross misconduct.
5. The Claimant began working for the Respondent on 20 September 2019. He was employed to work at a construction site at HMP Wellingborough as a ground worker, taking home £544 per week. He was dismissed on 21 January 2020. It is not in dispute that on that day, the Claimant arrived at work at about 8am. He changed into work clothes which had been hung up in the drying room. He went out on the site and within a relatively short time it was discovered that he had, in his outside jacket pocket, a mobile telephone which belonged to Kieran Molloy, a Foreman on the site. He was challenged about his possession of the telephone. He suggested that he had been "set up" and that he had not stolen the telephone. He was ordered off site. Before leaving the premises, he attended the Site Office and spoke to others there, including Ciaran McGreal. He made a written statement, still protesting his innocence. He then left the site. There was no disciplinary procedure engaged at all, by which I mean he was not subsequently called to a meeting on the issue. He was dismissed on the spot.
6. The Respondent sets out in its documents that Kieran Molloy had come into work with the telephone and had left it on a table in the presence of several others including the Claimant. Within a minute or so, it had disappeared. This was at about 7.50am. It is suggested that the phone was rung several times but was not answered. Then using a "find my phone" app, Mr Molloy was able to track the location of his phone. As I have stated, there is no issue that the phone was discovered in the Claimant's pocket.

7. The Claimant suggests that the phone did not ring several times, but that it had rung only a few moments before he was challenged by Mr Molloy and another member of staff, Tony. He was not given the chance to look at the app on which they are said to have tracked the phone. It was the Claimant's contention that Kieran and / or Tony knew who had the telephone and didn't need to track it. He stated to me at the Hearing that the telephone had been planted on him probably by Tony (he could not recall his second name) whilst on the site that morning. He was adamant that he had not taken the phone. He said he was a man of good character who had never been accused of stealing before. He stated that he had been fuming at the time and he clearly still felt strongly about it at the Hearing.
8. In short, I accept the Claimant's evidence. This is a contractual claim, so I am required to decide whether, on a balance of probabilities, the Claimant committed an act of gross misconduct which entitled the Respondent to dismiss him without notice pay. I find that, on balance, the Claimant did not take the phone. I found him to be a plausible witness who gave evidence in a credible manner. I was not necessarily convinced that the phone had been planted on him out of malice. However, I do not need to make findings about what motivated the events of 21 January 2020. It may have been some sort of prank gone wrong. However, I am satisfied that the Claimant did not take the phone, and that it was placed into his pocket without his knowledge.
9. I take into account that the Claimant's evidence was not challenged today, there being no-one present from, or on behalf of, the Respondent to do so. This was a grave allegation, tantamount to theft. Such allegations strike at the heart of someone's reputation. They must be dealt with accordingly by all parties. In my judgement, the Claimant has shown a high level of motivation in dealing with this matter. These are events from January 2020, and it was apparent that he still felt strongly about them two years later. This is to be contrasted with the approach of the Respondent who had not felt sufficiently strongly to attend the Hearing, either to present evidence or to challenge the Claimant. I have had regard to the written representations from the Respondent, and to the witness statement from Mr McGreal. However, the witness did not attend the Hearing and it was not possible for the Claimant to challenge his evidence. I therefore give the Respondent's evidence and submissions limited weight.
10. I also take into account the fact that the Respondent failed to hold any kind of disciplinary process arising out of the allegations made against the Claimant on 21 January 2020. I have not seen a copy of the Claimant's Terms and Conditions of Employment. He told me he had not received any, which I accept. The Respondent has not sought fit to send a copy to the Tribunal. Regardless, I find that those terms and conditions would have incorporated a disciplinary procedure which required that the allegation be impartially and fairly investigated, and for there to be a Hearing at which the Claimant would have had the chance to put his case. None of this happened. He was simply dismissed without further enquiry. Neither the

Claimant (or myself for that matter) have been able to examine the phone, or the app on which the phone was apparently tracked. I draw inferences from these matters, namely that it supports the Claimant's suggestion that the motivation or reasons of the Respondent were not genuine.

11. I also have regard to the fact that the Claimant told me that he was on good money working for the Respondent. He clearly valued the employment. I accept that he would not have wanted to do anything to jeopardise it. As a man of good character (a proposition which was not challenged), he is less likely to engage in acts of dishonesty. I also find that he had a mobile phone and would have less reason to steal one. In my judgement, for all of the reasons set out above, it is less likely than not that the Claimant took the phone.
12. Accordingly, I find that the Claimant was wrongfully dismissed. The Claimant received £544 per week take home pay. Damages for breach of contract, are intended, so far as is possible, to put the Claimant into the position he would have been in had it not been for the breach. He is therefore entitled to one week's net wages, that being what he should have been paid in terms of his notice pay.
13. That is the decision of the Tribunal.

14 January 2022

Employment Judge R Wood

Sent to the parties on: 26/1/2022

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For the Tribunal Office