



EMPLOYMENT TRIBUNALS

Claimant

Mrs T Glica

v

Respondent

Sun Valley Foods Limited

t/as Cargill Meats Europe UK

CLOSED PRELIMINARY HEARING

Heard at: Birmingham

On: 16 March 2017

Before: Employment Judge Dimbylow

Appearances:

For the claimant: Mrs M Gorniak, Lay Representative (claimant's daughter)

For the respondent: Mrs H Barney, Counsel

JUDGMENT

By consent

1. **The claimant is entitled to a redundancy payment. The respondent is ordered to pay the claimant the sum of £4,583.00.**
2. **The claim for holiday pay is dismissed upon withdrawal by the claimant.**

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that there should be an Open Preliminary Hearing (OPH) in this claim and it would be completed within 1 day. It has been listed at Birmingham Employment Tribunal, to start at 10am or so soon thereafter as possible on 2 May 2017. The parties are to attend by 9.30 am. The purpose of the OPH is to determine the two preliminary issues set out in the next two paragraphs.
2. Whether, having regard to the effective date of termination of the claimant's employment and the time limit contained in section 111 (2) of the Employment Rights Act 1996 (three months), the tribunal has jurisdiction to consider the claimant's complaint of unfair dismissal.
3. Whether, have a regard to the effective date of termination of the claimant's employment and the time limit contained in Article 7 of the Employment Tribunals

Extension of Jurisdiction (England and Wales) Order 1994 (three months), the tribunal has jurisdiction to consider the claimant's complaint of breach of contract.

4. A Polish interpreter will be required at the OPH.

The complaints

5. By a claim form presented on 18 January 2017, the claimant brought complaints of: (1) unfair dismissal, (2) breach of contract over notice, (3) failure to pay a redundancy payment, and (4) holiday pay. The respondent defended the claims in a response form lodged on 22 February 2017. Two of the claims were disposed of today and I made a consent judgement as set out above.

The background and issues

6. The claimant was born on 3 October 1957 and is now 59 years of age. She commenced work the respondent on 25 October 2005 and the effective date of termination of the contract of employment was on 12 August 2016. The claimant was employed as a factory operative, working 40 hours per week for about £305 gross. The claimant was in the respondent's stakeholder pension scheme. At the time of issuing the claim form the claimant had not found other work and that is also the case now. The claimant received Jobseekers Allowance after her dismissal. However, I notice that although the claimant has served a schedule of loss she has not put in it the amount that she has received in benefits. The respondent is in the business of supplying food products to retail, food service and food manufacturing customers in European and world markets. It has approximately 2,400 employees at a number of sites across Great Britain and there were about 860 where the claimant worked in Hereford. I now record that the issues between the parties which will fall to be determined by the Tribunal are as follows:

7. Unfair dismissal and breach of contract claims

- 7.1. What was the reason for the dismissal? The respondent asserts that it was a reason related to redundancy which is a potentially fair reason for section 98(2) Employment Rights Act 1996. It must prove that it had a genuine belief in the redundancy and that this was the reason for dismissal.
- 7.2. Overall fairness is neutral, the being no burden of proof on either side. However, the tribunal would usually ask itself a series of questions to determine the fairness of a redundancy dismissal as follows, as set out in the next three questions:
 - 7.2.1. Was the claimant dismissed? There is agreement between the parties that this happened.
 - 7.2.2. If so, had the requirements of the respondent's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
 - 7.2.3. If so, was the dismissal of the claimant caused wholly or mainly by the cessation or diminution?

7.2.4. There are further issues which the tribunal should consider, concerning, for example what happened during a trial period of other work undertaken by the claimant.

7.3. If there is any procedural unfairness the tribunal may go on to consider the question, does the respondent prove that if it had adopted a fair procedure the claimant would have been fairly dismissed in any event? And/or to what extent and when?

7.4. In relation to the breach of contract claim, the respondent accepts that the claimant did not work the notice period which she was given; and to this point in time, perhaps rather surprisingly, she has not been paid in lieu of that notice. However, the respondent is relying upon the time point.

8. Time/limitation issues

8.1. The claim form was presented on 18 January 2017. Accordingly, and bearing in mind the effects of ACAS early conciliation (and the dates on the certificate are to November 2016 and 2 December 2016), the claims are out of time (the limitation date being to January 2017), so that the tribunal may not have jurisdiction.

8.2. For both claims, there is an escape clause, and stated shortly, where the tribunal is satisfied that it was not really practicable for the claim to be presented before the end of the limitation period concerned, it may extend the time for such period as it considers reasonable.

Other matters

9. If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.

10. The claimant was given a list of sources of free legal advice and assistance; and I recommended that the claimant and her daughter obtained advice from a specialist in employment law. I pointed out to the parties that even at this stage there is some wisdom in settlement (and negotiations which come to nothing are not to be mentioned to the Tribunal). The claimant and her daughter should consider sitting in on some other case in advance of the OPH.

11. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amendment to the respondent's name

The name of the respondent is amended from Cargill Meats Europe UK to Sun Valley Foods Ltd trading as Cargill Meats Europe UK.

2. Disclosure of documents for the OPH issues only

2.1. The parties are ordered to give mutual disclosure of documents relevant to the preliminary issues identified above by list and copy documents so as to arrive by 4pm 30 March 2017.

- 2.2. This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
 - 2.3. The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.
3. **Bundle of documents for the OPH issues only**
- 3.1. It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
 - 3.2. To this end, the claimant is ordered to notify the respondent by 4pm on 6 April 2017 of the documents to be included in the bundle at her request. These must be documents to which she intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the OPH.
 - 3.3. The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive by 4pm on 13 April 2017.
 - 3.4. The respondent is ordered to bring sufficient copies (at least three) to the Tribunal for use at the OPH, by 9.30 am on the morning of the OPH.
4. **Witness statements for the OPH issues only**
- 4.1. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
 - 4.2. The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
 - 4.3. The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
 - 4.4. If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
 - 4.5. It is ordered that witness statements are exchanged to arrive by 4pm on 20 April 2017. The parties shall bring three copies of each to the OPH.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response

shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Signed by Employment Judge Dimbylow

On 16 March 2017

Sent to the parties on:

17 MARCH 2017

For the Tribunal:

C Campbell