



EMPLOYMENT TRIBUNALS

Claimant: Mr John Dunbar

Respondent: Mr John Giffard

Heard at: Birmingham

On: 25 April 2017

Before: Employment Judge Self

Representation

Claimant: Mr J Gidney, Counsel

Respondent: Mr S O'Brien, Counsel

JUDGMENT

1. It is declared that the Respondent failed to pay the Claimant his outstanding holiday pay upon termination of his employment and that the Respondent shall pay the Claimant £94.59 in respect of that liability pursuant to the Working Time Regulations 1998.

2. The unfair dismissal claim has been brought within the statutory time limit and shall proceed to a final hearing.

REMAINING ISSUES

The Claims

The Claimant brings the following claims:

1. Unfair Dismissal under the Employment Rights Act 1996 ("ERA 1996")
2. Uplift for breaches of the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code")

- **Unfair Dismissal**

1. Did the Respondent dismiss the Claimant for a potentially fair reason?
2. Can the Respondent rely on conduct as the reason for dismissal?
3. Did the Respondent act reasonably in all the circumstances of the case as set out at s.98(4) ERA 1996 in treating conduct as sufficient reason to dismiss the Claimant?
4. Did the Respondent follow a fair procedure including a reasonable investigation, hearing and appeal?
5. At the time of the dismissal, did the Respondent genuinely believe the Claimant to have committed the misconduct alleged?
6. Did the Respondent have reasonable grounds for believing that the employee had committed the misconduct alleged?
7. At the time that the Respondent formed its belief on those grounds, had it carried out as much investigation as was reasonable in the circumstances?
8. Was the Respondent's decision to dismiss within the band of reasonable responses?
9. If the Tribunal finds that the dismissal was procedurally unfair, should it reduce the amount of compensation payable to reflect the chances that there would have been a fair dismissal had the decision not been procedurally unfair? (*Polkey v AE Dayton Services Ltd* [1987] IRLR 503 (HL))
10. If the Tribunal finds that the dismissal was unfair, should any award be reduced to reflect the extent to which the Claimant's actions contributed to the decision? (s123(6) ERA 1996)

If the Tribunal finds that the dismissal was unfair, was the Claimant's conduct prior to the dismissal such that it would be just and equitable to reduce compensation to any extent? (s122(2) ERA 1996)

- **ACAS Code of Practice**

1. Has the Respondent acted unreasonably failed to comply with the applicable ACAS Code of Practice in relation to the procedure followed?
2. If not, should the Tribunal increase any compensatory award by up to 25%?

DIRECTIONS

1. The parties shall compile a numbered list of all relevant documents in their respective possession which shall include documents that may be adverse to their case and documents which they may not intend to use. The said lists shall be exchanged by no later than 4 pm on 9 May 2017

2. The parties shall request copies of such documents in the other parties' list that they wish to see by no later than 4pm on 16 May 2017 and the party from whom documents have been requested shall send photocopies of the documents requested to the other party within 5 working days of any request.

3. The parties shall agree the contents of a single bundle for use at the final hearing being those documents that will be referred to in evidence by no later than 4 pm on 30 May 2017. For the avoidance of doubt the bundle should ensure that relevant pleadings and orders are at the front of the bundle in Section 1; relevant policies and procedures are set out next in Section 2 and then all other relevant documents are set out chronologically in Section 3. Any "without prejudice" documents should not be included.

4. The Respondent shall be responsible for the production of the bundle and an index thereto. The bundle shall be numbered and contained in a ring binder. The Respondent shall bring sufficient bundles for the Tribunal and the witnesses.

5. On or before 20 June 2017 the parties shall exchange witness statements of fact (including statements of the parties themselves). Those statements should be in numbered paragraphs, describe events in the order in which they happened and cross refer to any relevant pages in the bundle. The witness statements should deal with matters of remedy as well as liability, including any efforts made to reduce that loss. No further statements may be served without the consent of the Tribunal.

6. The parties shall agree a neutral chronology of the major events in the claim which should be handed in to the Tribunal on the first morning of the hearing.

7. This matter is listed for a final hearing before a Judge sitting alone starting at 10 am on 8th and 9th August 2017 with a time estimate of 2 days.

Employment Judge Self

Date: 16 May 2017

JUDGMENT & DIRECTIONS SENT TO THE PARTIES ON

17 May 2017