



EMPLOYMENT TRIBUNALS

Claimant: Mr N Richards

Respondent Zenith Media

Heard at: Cardiff

On: 13 March 2017

Before: Mr P Cadney

Members:

Representation:

Claimant: In Person

Respondent: Ms A Copley

JUDGMENT

The judgment of the tribunal is that the claimant's claim for unfair dismissal is dismissed.

REASONS

1. By his ET1 the Claimant brought a sole formal claim made in the ET1 for unfair dismissal. There are however, a number of other complaints canvassed both in the ET1 and in the documents that are before me. In particular the Claimant complains of bullying, he seeks compensation for personal injury and has alleged that there is unpaid holiday pay dating back from the holiday year 2014/2015. There is no formal claim before me in respect of any of those matters, and at least in respect of the first two

- the Tribunal would not have any jurisdiction in any event. Accordingly the only claim which is actually before me is that of unfair dismissal.
2. The claimant asserts that he was expressly dismissed. The respondent denies this, but does not advance any potentially fair reason for dismissal in the event that I were to find that the claimant was dismissed. In addition if the claimant was dismissed it would self evidently be procedurally unfair. The resolution of the claim therefore turns on the dispute as to whether the claimant was or was not dismissed.
 3. The sequence of events leading to the termination of the Claimant's employment are as follows. The Claimant had previously been employed by a company MWL which was acquired by the current Respondent in August of 2014. The Claimant transferred at that point into the Respondents employment. However he only remained their employee for a matter of a few days and then left to join another company returning some time later. Mr Partridge in his Witness Statement estimates that that was approximately two months. The Claimant in his evidence said it was less than that, in the order of some two to three weeks but what is not in dispute is there was a period during which the Claimant was not employed by the Respondent and was employed elsewhere. The Claimant accepted that the contract of employment before me which records his period of continuous employment starting on 31 October 2014 is correct. In June 2015 the Claimant was dismissed at an original disciplinary hearing but his employment was restored on appeal.
 4. The matters which lead to the claim being before the Tribunal today occurred on 27 September 2016. It is not in dispute that on that day there was a meeting between the Claimant and Mr Partridge at which Mr Lee Prothero was also present. The Respondents case is that was not intended to be a disciplinary meeting and certainly not a meeting which might lead to the dismissal of the Claimant, but was intended to discuss his performance. After the meeting notes were made and those notes were signed within a few days thereafter by both Mr Prothero and Mr Partridge, both of whom have given oral evidence that they are a reasonably accurate record of what occurred and have confirmed that the sequence of events is as set out at page 16 of the bundle:-

Mr Partridge: "Nigel, this cannot continue, we are letting customers down";

The Claimant: "I will try and improve",

Mr Partridge: "I cannot let these mistakes and problems from yourself continue Nigel"

Claimant: "I'd better collect my kit and tools from downstairs then."

Mr Partridge and Mr Prothero say that this accurately reflects the meeting and that the Claimant was not expressly dismissed. He decided to leave and did leave very shortly thereafter. The Claimant's evidence that that is not correct and that in fact between the entries and the notes "I cannot let these mistakes and problems from yourself continue Nigel" and him being recorded as saying "I'd better collect my kit and tools from downstairs then" there was in fact an express dismissal on the part of Mr Partridge which has not been recorded in the notes and about which Mr Prothero and Mr Partridge are not giving accurate evidence.

5. The Respondent submits that its evidence should be preferred for a number of reasons. Firstly, as was demonstrated in the summer of 2015 had the Respondent intended to dismiss the Claimant it would have followed a proper procedure which would have included formal written notification of dismissal, and of the right of appeal. As no such things occurred in this case, it follows that the Respondent neither intended to nor had in fact dismissed the Claimant. In addition it is extremely unlikely that both Mr Prothero and Mr Partridge would have concocted an untrue note of the meeting and have come to give perjured evidence. This conduct is also similar to the way the claimant had acted when he simply left in 2014, as the Respondent says he did on this occasion.
6. The Claimant simply relies on his own oral evidence and hopes to persuade me that in fact his evidence is correct and that he was dismissed despite the evidence of Mr Partridge and Mr Prothero and of the contemporaneous documentary evidence.
7. There is in fact a problem irrespective of the merits of the resolution of that dispute for the Claimant as there is a jurisdictional difficulty. In order to bring a claim for unfair dismissal an employee must have been employed continuously for a period of two years. It is not in dispute that in this case that continuous period of employment began on 31 October 2014 and ended on 27 September 2016. Accordingly even if that had been a dismissal and even if the Claimant's effective date of termination should be increased by one week to take into account statutory notice he was entitled to, he would still not have achieved two full years continuous employment and his claim would therefore be bound to be dismissed in any event.
8. However having heard the evidence it is only right that I give the parties my conclusion and having heard from Mr Partridge and Mr Prothero I accept their evidence and accordingly even without the jurisdictional issue I would have decided that the Claimant was not dismissed from which it would automatically follow that his claim of unfair dismissal must itself be dismissed.

Employment Judge P Cadney
Dated: 24 March 2017

JUDGMENT SENT TO THE PARTIES ON
31 March 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS
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NOTE:
This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.