



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr Philip Whittam

**Respondent** Skanda UK Limited

**Heard at:** Mold **On:** 8 May 2017

**Before:** Employment Judge S J Williams (sitting alone)

**Members:**

**Representation:**

Claimant: In person

Respondent: Mr Mills

## JUDGMENT

The judgment of the tribunal is that the claimant was not dismissed by the respondent. The claimant has received all monies owing to him.

## REASONS

1. In this claim the claimant contends that he was constructively and unfairly dismissed by the respondent and that he is owed holiday pay. At the outset of the hearing the claimant accepted that he had received all monies owing to him, and withdrew his claim for holiday pay.
2. The claimant, on his own behalf, and Mr Carroll, for the respondent, were the sole witnesses. Both gave evidence from prepared statements and were cross examined. Both the claimant and Mr Mills made closing submissions. The tribunal was provided with a bundle of documents containing 62 pages.

### The Facts

3. The claimant was employed for some 16 years by the respondent until his resignation with immediate effect communicated by his letter of 9 March 2016. At the end of his employment the claimant's position was that of driver/transport coordinator.
4. The respondent company was established by Mr Tony Carroll, and until 2014 he and the claimant were the sole employees. In 2014 the claimant was absent for an extended period because of an injury and during that period Mr Carroll engaged the services of Mr Wayne Davies, initially as an agency worker but later as a permanent employee. The company had grown and become busier so that a third employee was permanently required.
5. It is clear from the evidence I heard that Mr Davies and the claimant were very different personalities. Mr Carroll described Mr Davies as a loud, noisy, bubbly personality who was "brilliant for a trade counter". On the other hand, the claimant took exception to Mr Davies's brusque, and sometimes crude, language. According to the claimant, Mr Davies, for example, called him a dickhead and an idiot. The claimant raised his concerns about Mr Davies's treatment of him with Mr Carroll on a number of occasions, but did not give any specifics or dates and accepted that Mr Carroll would have been in difficulty investigating on the basis of the information the claimant provided.
6. In late 2015 the claimant went on holiday with his family to America returning to work on 7 December 2015. On 6 December he wrote on his Facebook page:

"Looking for a new job anything interesting out there??? I have had great holiday well needed I can't really be assed going back tomorrow but xmas is on the way so just for now only!!"
7. On 8 December the claimant returned from a local delivery run to be challenged by Mr Davies over why he had taken so long and why he had taken a particular route instead of an alternative. Mr Davies used rather coarse language towards the claimant who, in an excited state, went to Mr Carroll's office saying words to the effect of "I'm not f...ing putting up with this.... 15 f...ing years down the drain." The claimant punched the wall outside Mr Carroll's office.

8. At that point Mr Carroll judged it better to allow the situation to calm down before taking any steps.
9. On 11 December Mr Carroll summoned the other two men to a breakfast meeting at which he attempted to delineate more clearly the duties of Mr Davies and the claimant. The claimant's duties were primarily driving whilst Mr Davies, who did not have a driving licence, was responsible for the warehouse and trade counter. Effectively, Mr Carroll was putting the management of the warehouse into Mr Davies's hands. However, in a company as small as the respondent it was inevitable that flexibility was required.
10. Mr Davies's understanding was that the claimant would take his allocation of work from him, something which the claimant did not appreciate after having worked together with Mr Carroll for such a long time unaided.
11. The respondent company closed from late December until 4 January 2016. The claimant did not return to work on 4 January, telephoning Mr Carroll to complain that he was unwell with a cold. He submitted a doctor's certificate dated 5 January, received by the respondent on 8 January, certifying that he was unfit to work by reason of stress at work. That diagnosis remained in force until the claimant's resignation on 9 March. The claimant did not return to work after Christmas 2015.
12. By letter of 27 January 2016 the claimant submitted a grievance complaining essentially of Mr Davies's bullying behaviour and apparent promotion. Mr Carroll invited the claimant to a grievance meeting on the 9 February 2016. The claimant was permitted to be accompanied by a fellow employee but the respondent company should have recognised that that was not practicable since the only other employee was the subject of the claimant's grievance. However, it is clear that the claimant did not suffer any actual disadvantage by not being accompanied on that day. Mr Carroll also interviewed Mr Davies to obtain his version of events.
13. Mr Carroll confirmed the outcome of the grievance meeting by his letter of 18 February 2016. He found that the evidence before him did not establish that Mr Davies's behaviour had been unprofessional or bullying and that, apart from 8 December incident, the claimant had not provided any specific incidents or dates. That part of his grievance was not upheld. Mr Carroll also found that the alteration of Mr Davies's role was made in order to meet a business need and that Mr Davies was effectively managing the warehouse. That part of the claimant's grievance was also not upheld. The claimant was given the right of appeal against Mr Carroll's decision.

14. The claimant wrote on 23 February expressing dissatisfaction with the way in which Mr Carroll had dealt with his grievance and with Mr Carroll's response. He repeated some of his allegations and wanted to know what his job role clearly was and who had authority for what. Mr Carroll, however, had dealt substantively with the issues raised by the claimant and I do not accept that the claimant was in any significant doubt about the scope of his duties. Whilst, of course, no particular formality is required, the claimant did not state at any point in his letter that he wished it to be treated as an appeal. Mr Carroll did not treat it as such, but rather by his letter of 26 February repeated his finding that there had not been the alleged verbal abuse and referring again to the claimant's list of main duties. He also stated his intention to issue a memo to staff reminding them to treat colleagues with dignity and respect at all times. The claimant did not see any such memo because, as stated above, he did not return to work after Christmas 2015. The claimant then resigned by his letter of 9 March 2016.
15. On 11 March Mr Carroll wrote two letters to the claimant, the first expressing surprise at his resignation and inviting the claimant to reconsider, the second referring to a welfare meeting, initially arranged for 10 March then rearranged for 17 March, to be chaired by an impartial consultant; Mr Carroll renewed that invitation. The claimant did not attend.

### The Law

16. The Employment Rights Act 1996 provides

#### **95 Circumstances in which an employee is dismissed**

- (1) For the purposes of this Part an employee is dismissed by his employer if....
  - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct

#### **98 General**

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
  - (a) the reason (or, if more than one, the principal reason) for the dismissal, and

- (b) that it is either a reason falling within sub section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this sub section if it –
  - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
  - (b) relates to the conduct of the employee,
  - (c) is that the employee was redundant, or
  - (d) is that the employee could not continue to work in the position which he held without contravention... of a duty or restriction imposed by or under an enactment.

....

- (4) Where the employer has fulfilled the requirements of sub section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –
  - a. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - b. shall be determined in accordance with equity and the substantial merits of the case.

#### Discussion and conclusions

- 17. The claimant's recollection that the breakfast meeting referred to above took place on 11 November, and not December, was faulty. I accepted the account of Mr Carroll because, firstly, that meeting was at least in part a response to the incident of 8 December and, secondly, Mr Carroll would not have called such a meeting shortly before the claimant was due to go on annual leave.
- 18. It is clear from the claimant's entry on his Facebook page dated 6 December 2015 that he had become disenchanted with his job before either the incident of 8 December or the clarification of the respective roles on 11 December and, certainly, well before his expressed dissatisfaction with the way in which Mr Carroll dealt with his grievance. In the absence of any other explanation, I accept it as highly likely that the claimant was dissatisfied with his working relationship with Mr Davies. From 2014 there were now two employees working for Mr Carroll, instead of the claimant alone. That meant that the claimant no

longer had such a free hand as previously in the organisation of his own duties and the day-to-day operations of the company. The claimant resented Mr Davies's assumption of responsibilities in the warehouse, culminating in his effectively being made warehouse manager. Neither the Claimant nor Mr Davies had high regard for each other's abilities in that department of the business.

19. As manager of a growing business, Mr Carroll had the right to allocate duties to staff in accordance with what he judged to be the best interests of the business. When the claimant raised a grievance Mr Carroll made a genuine and honest attempt to investigate – bearing in mind the limited resources available to him in a very small company – and was faced with two people effectively saying opposite things in relation to the alleged bullying.
20. The claimant had the right to have his grievance thoroughly and conscientiously investigated and determined; he did not have the right to have a finding made in his favour. There was no breach of contract, much less a fundamental breach of contract, associated with the way in which Mr Carroll determined the claimant's grievance.
21. The claimant accepted in evidence that he had not provided Mr Carroll with any dates or details sufficient to enable him to investigate any other allegations of bullying. The claimant expressed in his letter that his reasons for resigning concerned the outcome of the grievance, which he described as the last straw, his allegation that the grievance was not properly dealt with and that he was not invited to a further meeting, by which he meant an appeal meeting.
22. Whilst the claimant was of course entitled to resign his position for his own reasons, I cannot find that there was anything in the conduct of Mr Carroll to support the claimant's contention that the company had breached his contract of employment in a fundamental way.
23. For the reasons given above I find that the claimant was not dismissed and that his claim of unfair dismissal therefore fails. The claimant has received all monies owing to him.

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Employment Judge S J Williams  
Dated: 23 May 2017

JUDGMENT SENT TO THE PARTIES ON

26 May 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

**Case Number: 1600400/2016**

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