



EMPLOYMENT TRIBUNALS

Claimant:
Mr W Skeet

v

Respondent:
Team Industrial (UK) Limited t/a
Team Solutions

Heard at: Reading

On: 18 April 2017

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mr C J Helm (Father-in-law)

For the Respondent: Mr M Noblet (Solicitor)

JUDGMENT having been sent to the parties on 25 April 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In a claim form presented on 4 January 2017, the claimant made a complaint about breach of contract. He claims that was dismissed in breach of his contract of employment and he claims that he is entitled to recover the sum of £1,583.33 in respect of notice pay. The respondent denies the claimant's claim and contends that the claimant was dismissed for gross misconduct and that the respondent is therefore not required to pay the claimant notice pay and is not in breach of contract.
2. I heard evidence from the claimant and also heard evidence from Mr Onkar Sandhu. I was provided with a copy of the claimant's employment service agreement and also a copy of an email from Mr Sean Murphy to Gerry Faherty dated 30 October 2016 with the subject heading "Wayne Skeet" and finally I was also provided with a copy of a letter dated 6 October 2016 which confirmed the claimant's summary dismissal by Mr Sandhu on 5 October.
3. Mr Sandhu gave evidence that the reason that the claimant was dismissed was set out in the letter of 6 October 2016. What Mr Sandhu says is that the claimant's employment began on 30 April 2016 and ended on 5 October 2016. The claimant was not working his full contractual hours. He was contracted to work 24 hours but was only working 14 or 15 hours. In the time that he was employed, the claimant in fact only worked the full number of hours on three occasions. Mr Sandhu stated that the claimant

was expected to work four hours on a Friday, 12 hours on a Saturday, and eight hours on a Sunday. At his disciplinary hearing, he accepted that he had only worked on a Sunday on three occasions and accepted that he was not working 24 hours a week. Mr Sandhu said that the claimant said that he thought that he was only required to work 20 hours per week in respect of his contract. Mr Sandhu stated that he did not believe that the claimant was working his full 24 hours and Mr Sandhu also stated that the claimant had failed to complete his safety training online as he was required to do. For those reasons, he came to the conclusion that the claimant's employment ought to be terminated.

4. The claimant in his evidence stated that he was not required to work on a Sunday because the client had in fact stated that he was not required to do any Sunday work and he however contested that he did not work his full number of hours. The claimant accepted however that he failed to complete the safety training and also accepted that he was told in August that the safety training ought to have been completed within five days of his commencing employment with the respondent but in fact that had not occurred and that he was told by Mr Sandhu that he was required to do the safety training as soon as possible.
5. The claimant explained that he was not able to do the safety training because he did not have sufficient time to do it during work hours and during his non-work hours he stated that he had a number of personal problems outside of the work environment which meant that he could not devote time to do the safety training.
6. I have been provided with a copy of an email from Sean Murphy which sets out the efforts that were made to discuss a number of issues including the claimant's contracted hours of working and the safety training and his general site management. This email shows that the respondent had a number of significant concerns about the claimant's employment from the summer of 2016.
7. The claimant's contract of employment contains a number of clauses. The ones that I have been concerned with are to be found at clause 6 which sets out that: "During your employment you must carry out your duties diligently and to the best of your ability complying with all lawful and reasonable instructions of the company, do your utmost to promote the interests of the reputation of the company, refrain from making any false or misleading statement relating to the company or its suppliers, customers or clients and take all possible care not to damage any of the company's property or equipment."
8. In clause 21 of the agreement, it provides for summary dismissal which includes the following provisions: "The company is entitled to terminate your employment without notice or payment in lieu of notice in any of the following circumstances"; and then at 21.1.2, it says: "You commit a serious breach of any term or conditions of this agreement"; 21.1.13: "you repeat or continue any breach of this agreement, the cumulative effect of which in the reasonable opinion of the company constitutes a serious breach"; 21.1.4: "you are guilty of any conduct which in the company's opinion is likely to prejudice the interests of the company whether or not

such conduct occurs in the course of your employment”.

9. I am satisfied that the respondent was entitled to terminate the claimant's contract of employment. I consider that this was a case which was borderline. The claimant's employment was said initially to have been terminated because the claimant committed gross misconduct by not working 24 hours of work. I am not satisfied that the claimant's failure to work 24 hours was gross misconduct. It is clear that the claimant was not required to work on a Sunday and in the circumstances I find it difficult to understand how the claimant was expected to therefore work 24 hours in circumstances where the eight hours which were to be worked on a Sunday were actually not required by the client. I do not find the fact that the claimant failed to work 24 hours a week was an act of gross misconduct. I do however accept that the claimant's failure to comply with the safety training was gross misconduct. I come to that conclusion because the claimant was informed that he was required to carry out the safety training and he failed to do so. He was required to do it within five days of the start of his employment. This requirement was repeated to the claimant on 9 August when he was told by Mr Sandhu that he was required to complete his training as quickly as possible and he was reminded that he should have done it within five days of the commencement of his employment. The claimant failed to do so by 5 October. The claimant's reasons or explanations for not doing so in my view do not remove the fact that the claimant was required to do it by the respondent.
10. I am not satisfied that the claimant in fact took any steps to alert the respondent of any difficulties that he may have had in respect of him failing to carry out the training as is required. The claimant accepted that it was important training which should have been done promptly.
11. I am satisfied that by failing to carry out the training as required, the claimant was in breach of clause 6 of the contract of employment which required him to carry out any reasonable instruction. In particular he failed to comply with the instruction from Mr Sandhu to complete the training as soon as possible.
12. I am satisfied in the circumstances that having considered the contents of clause 21 of the claimant's contract of employment that the respondent was entitled to terminate the claimant's employment without notice and in the circumstances the claimant's complaint of wrongful dismissal is therefore not well founded and is dismissed.

Employment Judge Gumbiti-Zimuto

Date: 31 May 2017.....

Reasons sent to the parties on

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For the Tribunal office