



EMPLOYMENT TRIBUNALS

Claimant: Mr J Siddons

Respondent: Andrew Weed Ltd

Heard at: Cardiff

On: 26 July 2017

Before: Employment Judge S Davies

Representation:

Claimant: In person

Respondent: Mrs Weed

JUDGMENT

It is the decision of the Employment Judge sitting alone that the claim for wrongful dismissal is upheld in the sum of £278.

REASONS

1. Oral judgment with reasons was given and the hearing. These written reasons are produced at the request of the claimant.
2. I explained at the outset of the hearing, before I heard evidence from Mr Siddons and Mr and Mrs Weed for the respondent, the test that I had to apply for wrongful dismissal (or failure to pay notice pay).
3. The Claimant needs only to establish that notice was not paid, which is accepted, for the burden of proof to shift to the Respondent to show three things on the balance of probabilities;
 - a. firstly, that the employee did the act on which the Respondent relies;

- b. secondly that the act amounts to a fundamental breach of contract;
and
 - c. thirdly that the Respondent dismissed the Claimant for that reason.
- 4. The evidence was largely verbal from both sides. I was shown some documents (City & Guilds assessment records of 21 September and 21 November 2016 and 3 invoices issued by the respondent dated 2 February 2017 and two dated 23 February 2017).
- 5. The documents did not particularly assist me with the issues that I needed to determine. Mr Siddons accepted that he had carried out work on the 3 vehicles on the dates in question. Mr Weed said that he did not rely on the work performed on 2 February 2017 when dismissing the claimant; he relied upon the work carried out on 23 February 2017 which led to customer complaints. In one instance Mr Weed asserted that a customer complained on/around 27 February 2017 that a wheel came off their car. In the other instance the customer complained on 6 March 2017 about the brake pads, which a BMW garage identified as having been fitted incorrectly.
- 6. The question was whether the respondent could show that the Claimant's work was of such a poor quality, on the 2 cars he serviced on 23 February 2017, as to amount to a fundamental breach of contract.
- 7. As for the City & Guilds assessment records that the Claimant provided, these were relevant only to a limited extent. The records related to work carried out in 2016 and so were not directly relevant to the issues that the respondent says led to dismissal; albeit that they showed some level of competence during the third year of the claimant's apprenticeship.
- 8. The Respondent needs to establish that the Claimant carried out the act on which it relies. There was no dismissal letter from the Respondent to the Claimant setting out the reasons for the dismissal. The Claimant remembered an issue with a client saying a wheel came off a car, and being asked by Mr Weed to check his work on completion, but he did not remember being given a warning. There was no documentary evidence of investigation or giving the claimant a warning. There was no external evidence shown to me that the Claimant had failed to tighten nuts on the wheel. The Claimant says he did, he says he used a torque wrench and the Respondent has presumed that he did not, as a result of the complaint and rather than any other reason. I find that there is nothing to persuade me, on a more than 50% likelihood basis, that it was the Claimant's poor workmanship that led to that wheel coming off. All I have is one word against another in circumstances where Mr Weed has assumed the Claimant was at fault.

9. As for the brake pads, the Claimant suggests that he fitted them correctly, it was a task he had carried out previously and he had not forced the calliper. After the customer complained, Mr Weed showed the Claimant the brake pads after they were taken off the vehicle. He did not show the Claimant evidence of them on the vehicle, for instance, a photograph. I was not shown the BMW service report referred to by the Respondent. I have not been shown any evidence to suggest that it was the Claimant's work that led to the issue, other than Mr Weed's assertion unsupported by investigation. It is possible that there was another explanation. The evidence that I heard was not conclusive and the burden of proof is with the Respondent.
10. Even if the burden of proof had been satisfied by the Respondent, I would then need to consider whether the act amounted to a fundamental breach of contract. I was not shown any contract of apprenticeship between the parties, but it is accepted by the parties that the Claimant would have worked under supervision, albeit it may be limited as he was coming to the end of his 3-year apprenticeship. An apprenticeship by its very nature, means that the apprentice is engaged to learn. I would find some difficulty in concluding that an error in completing work amounted to a fundamental breach of contract in such circumstances.
11. In light of the findings above, I do not need to decide whether the Respondent was dismissed for the reason put forward, albeit that I have no reason to doubt what Mrs Weed said on this. All witnesses appeared to give direct and truthful evidence.

Employment Judge S Davies
Dated: 31 August 2017

JUDGMENT SENT TO THE PARTIES ON
13 September 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS