Case Number: 1400976/2017

EMPLOYMENT TRIBUNALS

Claimant: **Mr N Meakin**

Respondent: **Burry and Knight Ltd**

Heard at: **Southampton** **On:** **9 November 2017**

Before: **Employment Judge Kolanko**

Representation
Claimant: **in-person**
Respondent: **Mrs JW Headford solicitor**

JUDGMENT having been sent to the parties on 15 November 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Nature of Claims

1. The nature of the claims and issues to be determined in this case relate to a complaint brought by the claimant in which he complains of unfair dismissal. He also claims breach of contract in respect of notice moneys. The latter issue being an issue as to whether or not lawful notice could be withheld on account of the claimant's gross misconduct ..

Evidence

2. The Tribunal heard evidence from Mr Richard Wingfield General Manager of Hoburne Park Christchurch who was the Dismissing Officer, Mr Simon Phillips Director of Operations who was the Appeal Officer and a Miss Philippa Goodwin Finance Director who heard the claimant's grievance appeal. I also heard from the claimant himself.

3. The Tribunal was provided with a bundle of documents comprising of around 156 pages although the Tribunal's attention was drawn to a

substantial number of documents in the bundle some documents were not drawn to the Tribunal's attention.

Findings of Fact

4. Having heard the evidence of the witnesses and having looked at documents introduced into evidence, I find the following basic outline facts in relation to the period of the claimant's employment which is the subject of these proceedings. In relation to the individual matters I make further findings in my conclusions:

   4.1 The claimant commenced employment with the respondent at its holiday park in Christchurch Dorset as a Resident Site Warden on 14 February 2000. The claimant at that time was provided with accommodation on site although it was not a service occupation in the legal sense. In the offer letter it stated *"the Company will make available to you suitable unfurnished living accommodation rent and rate free subject to a contribution towards your heating and lighting costs"*. Attached to this letter of offer of employment were the terms relating to service occupancy which was subsequently signed by the claimant. In the first paragraph is stated *"the Company reserves the right to require the employee to vacate the premises at any time, in any event the employee shall forthwith vacate the premises on ceasing for any reason whatsoever to be employed by the Company"*.

   4.2 The accommodation occupied by the claimant at the outset of the his employment I was informed was of bricks and morter bungalow. It appears that in or around 2010/2011 the claimant was required to vacate the property as it was being developed, and was placed into a temporary unit during the winter months before moving to a static caravan which was known subsequently as R47.

   4.3 In 2016 or possibly earlier the respondent was in the process of developing various parts of its Hoburne site. In particular, its head office and car park which required a number of containers and garages that had been utilised by the housekeeping department to be moved from that area to facilitate the head office development and attendant car park.

   4.4 In view of the limited space on site it was considered that a parking area alongside the claimant's unit at R47 could be utilised for the purposes of storing the housekeepers' units, with the housekeepers taking over the claimant's accommodation at R47 for general office use and storage of linen, especially during the winter months. Adjacent and indeed alongside R47 was an area which has been described as the barn area comprising of a number of barns and garages which was to be redeveloped in order to locate further holiday units, which would result in the claimant's accommodation at R47 being alongside a building site. I was informed that planning permission had been granted in December 2016, although progress in relation to that has been delayed as a result of a number of bat investigations that need to be undertaken in the summer of 2018.

4.5 As a consequence of these measures, on 9 December the claimant was informed by his line manager Mr Palmer together with Mr Richard Wingfield the General Manager of the proposal. I am satisfied that the rationale for the proposed changes was explained fully to the claimant, and at this tentative meeting his views were sought. Relocation, I judge, on the site was discussed. There is dispute as to precisely what was said or agreed, it is not necessary for present purposes to determine the disputes. It appears that some discussion was made with regard to moving the claimant's current unit R47 to a new site, although this was considered impractical in view of the limited space area in which R47 was located and having regard to its size. Although, again there was some dispute, it appears that later that day there were discussions with regard to the claimant moving to other sites on what has been called "The Crocus Site". The unit C2 on that site, which was a caravan site, appears to have been offered to the claimant but rejected by him. It appears that discussion took place as to what he would want, and I find the claimant indicated that he would want a caravan similar to another warden on site, who had the benefit of a Willerby Vogue unit. My view is fortified by the fact that later on that day Mr Wingfield purchased a property a Willerby Vogue unit from a site owner who wished to get a more modern caravan on site. It appears that initially the respondent, certainly Mr Wingfield thought that the claimant was amenable to this change perhaps not surprisingly, bearing in mind that he had undertaken such a change a matter of some six years earlier. However later on in the day it appears that the claimant conveyed his unhappiness at being forced to move.

4.6 On 16 December 2016 the claimant discussed matters further with Mr Wingfield and expressed the wish for his unit to be moved to the site at C23. It was indicated that this would not be logistically possible not least because the size in getting it out of its original site but also because the size of the caravan required was particularly large and would have to be recited on a larger site which was at premium on the site for purchasing purposes. Similarly, it was acknowledged that the proposed move of C47 would not be in keeping with the other modern caravans that were located in the C field. The claimant was informed that they had been able to purchase the Willerby Vogue van that would be located at C48. It appears that the claimant objected to this saying that the U unit did not have a letterbox unlike his current premises.

4.7 On 22 December, soon after this meeting the claimant went of sick.

4.8 On 30 January 2017 it appears to be that further discussions took place between the claimant and Mr Palmer his line manager regarding the proposed move to the Willerby Vogue caravan and that he would be provided with help and support in moving.

4.9 On 7 December 2017 Mr Wingfield hand delivered a moving pack to the claimant with a notice to quit which is at page 47 in the bundle requiring the claimant to quit his current pitch by 20 February 2017.

4.10 On 6 February 2017 a notice to quit was served requiring the claimant to vacate by 28 February.

4.11 On 9 February 2017 the claimant phoned in sick and on 10 indicated that he was signed of for a further fourteen days and would be lodging a grievance. In subsequent conversations with Mr Wingfield the claimant had repeated his unwillingness to move.

4.12 By letter dated 15 February 2017 Mr Wingfield wrote to the claimant referencing his recent discussion when he enquired as to whether the claimant needed help in arranging the transfer to the new unit on C48 and indicated that they had allocated a twelve day window to move belongings to the new site. In the letter he indicated that he would not be moving at all. Mr Wingfield indicated that they would be providing him with a unit with central heating, double glazed and was the exact model that he had initially requested as the same as his fellow resident site warden. He was informed that if he continued to refuse they would have to apply to the County Court for a Possession Order and he was reminded that he may well be considered to be in breach of the signed occupancy agreement which could constitute a disciplinary matter.

4.13 On 16 February 2017 the claimant lodged a grievance (bundle page 48). He essentially complained about his being required to move accommodation, and being served with a notice to quit. He complained of having to move to a substantially lower grade caravan that would be for seasonal use only.

4.14 On the same day a further notice to quit was served, in view of the fact that the claimant had by this time sought advice from solicitors and it was noted that the original notice to quit had been served unsigned. The fresh notice to quit required the claimant to vacate by 16 March 2017.

4.15 On 28 February 2017 the claimant's grievance was heard, and on 3 March a letter was sent informing the claimant that his grievance had been dismissed. The claimant returned to work and was subject to a return to work meeting on 23 March. The claimant had lodged by this time an appeal against the grievance which was heard on 17 March and on 22 March a letter was sent dismissing the claimant's grievance. It is proper to note that Phillippa Goodwin who had heard the appeal in her letter wrote:

> "I have considered all of the information to ensure that our approach has been reasonable and fair and have concluded the following:
>
> There is a business need to relocate you from your current unit due to the Barnes Development.
>
> There is an immediate need to relocate the maintenance and the house keeping teams from the Barnes area and unit R47 will subsequently need to

be moved off the park when the Barnes Development nears completion in or around twelve months time. With regards to the standard of the unit the Company wishes to move you to there is, and never has been any commitment on our part, nor have we implied that we would provide you with a certain standard of accommodation. The accommodation that we have identified is exactly the same as the unit that Tom our other warden is accommodated in and you had previously indicated this was something that you were happy with. We have also explained to you and you will know this from your employment with us, that your current unit could not be moved to another area of the park due to its size, age and the risk associated with moving it. We have discussed with you in detail where you might like to move to and you have been offered a choice of location. We have addressed specifically your need for a postal address and can confirm all employees in staff accommodation pick up their post from the park reception.

I must remind you that you signed the occupancy agreement which is a standard agreement stating that the Company reserves the right to require employees to vacate the premises at any time. I do believe that we have taken your case seriously and have considered the options for you and it is very regrettable that the discussions regarding your move have caused you to become distressed, however, we believe we have done everything possible to engage you in a positive constructive way. There was no further right of appeal".

4.16 The deadline for vacating the property under the second notice to quit had expired and Mr Wingfield on 24 March sent a letter inviting the claimant to a disciplinary (bundle page 68). He referred to his earlier letter 23 March where he indicated that breaching the occupancy agreement could also be a disciplinary matter, and indicated that the purpose of the meeting was to discuss the following matters namely the claimant's continual refusal to vacate the current residence at R47, which could constitute refusal to obey a reasonable instruction, and therefore constituting gross misconduct. He informed the claimant that if the allegations against him were established, this could lead to his dismissal, and he was asked to confirm his attendance and whether or not a companion would be accompanying him.

4.17 On 20 March the disciplinary hearing was convened before Mr Wingfield. At the outset he recited an aid memoire that was provided for Mr Wingfield at the time, it indicated by way of explanation details of the allegations that had prompted the invitation to the disciplinary hearing stating:

> "Your continual refusal to vacate your current residence R47 within the required time frame, you should understand that refusal to obey reasonable instructions constitutes gross misconduct in our disciplinary policy".

4.18 He had by that stage been informed of the risk of loss of employment in consequence.

4.19 Following the hearing, Mr Wingfield spoke to other managers regarding the suitability of the Willerby Vogue units and concluded that the unit which had been offered was similar to the one the claimant was then occupying, and that the only difference related to insulation and acoustic qualities, however, in view of the location which was a quiet part of the site and the fact that the Company would be paying any additional heating costs, he did not consider

this to be a serious consideration. Mr Wingfield therefore determined that in the circumstances given the intransigence of the claimant he had no alternative but to dismiss him.

4.20 On 4 April 2017 Mr Wingfield wrote to the claimant (bundle page 89). He recited the background and the course of the disciplinary hearing, he concluded that the claimant had been given every opportunity to cooperate, having had explained to him the reasons why they required him to move. He concluded that he believed the claimant had continually refused a reasonable instruction, namely to vacate his current premises within the time frame as previously suggested . He stated that the refusal to obey a reasonable instruction constituted gross misconduct and therefore he was being dismissed without notice and was informed of his right of appeal.

4.21 The claimant appealed against his dismissal and an appeal hearing was convened on 18 April 2017 before Mr Simon Phillips Director of Operations. Following the hearing he inspected the unit offered to the claimant, and concluded that what was being offered to the claimant was suitable in all the circumstances. He accordingly determined to dismiss the claimant's appeal ,and a letter in full terms reciting the rationale behind his decision was duly sent to the claimant.

Submissions

5. I heard submissions from the parties. The claimant submitted simply that the dismissal was not within the band of reasonable responses. Mrs Headford on behalf of the respondent had provided me with written submissions, and elaborated upon them within her oral submissions. For the purposes of this extempore Judgment I do not propose to recite them, but bear the submissions very much in mind.

The Law

6. The relevant statutory provisions are contained within section 98 of the Employment Rights Act 1996 which states:

> "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,

In the present case it is acknowledged to be conduct.

7. Subsection (4) states:

> "Where the employee has fulfilled the requirements of Subsection (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;

(b) shall be determined in accordance with equity and the substantial merits of the case".

8. In terms of breach of contract the cases concerning gross misconduct or repudiatory breaches, stress that the employer's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract which has to be considered in the context of the claimant's behaviour.

9. The guidance from case law in respect of the principles of unfair dismissal is well known in the case of *British Home Stores v Burchell* which states:

> "In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct in determining whether that dismissal is unfair a Tribunal has to decide whether the employer who discharged the employee on the grounds of misconduct in question entertained a reasonable submission, amounting to a belief in the guilt of the employee of that misconduct at the time.
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> This involves three elements. First, there must be established by the employer the fact of that belief that the employer did believe it. Secondly, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief. And third, the employer at the stage at which he formed that belief on those grounds must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case. An employer who discharges the onus of demonstrating these three matters must not be examined further. It is not necessary that the Tribunal itself would have shared the same view in those circumstances. Nor should the Tribunal examine the quality of material which the employer had before him, for instance, to see whether it was the sort of material which objectively considered would lead to a certain conclusion on a balance of probabilities".

10. Those are the legal provisions that I must have regard to.

Conclusions

11. Having heard the evidence in this case and having regard to the findings that I make other I am satisfied that the reason for the claimant's dismissal was a refusal to obey an instruction to vacate R47, which I judge, constitutes conduct for the purposes of section 98. I am satisfied having regard to the Burchell principles that the respondent believed the claimant's action constituted misconduct, and that this was based upon reasonable grounds that were factually not in dispute. The claimant repeatedly failed to vacate R47. At the stage of reaching such a belief had it carried out as much investigation as was necessary? I am satisfied that it did. Factually, there was not a great deal of dispute I am satisfied that the respondent was entitled to conclude that the alternative accommodation the was being afforded to the claimant was suitable in the circumstances.

12. The question that needs to be considered is whether the decision to dismiss fell within the band of reasonable responses of a reasonable employer.

13. It is proper to have regard to the fact that the claimant challenges the reasonableness of the decision on a number of grounds. He complains that he would have no postal address unlike his then property, there was no letterbox. I do not judge that this constituted a serious objection bearing in mind: as I find the that post could safely be obtained from the reception. He alleges that he would not be able to be on the electoral roll and vote. There

was no evidence to suggest that that was the case indeed I have heard evidence to the contrary.

14. The claimant suggested that he would lose his garden. There is no right to a garden in any event, however there was no suggestion that the claimant could not move his plants and containers which I have seen in photographs in the bundle. Perhaps more notably he stated that that his standard of living would be seriously downgraded as the Willerby Vogue and was not a suitable permanent accommodation. The respondent I find was entitled to conclude that the accommodation offered was suitable.

15. It is proper to record and that the terms upon which occupancy was offered to the claimant did as recited in my findings indicate that the Company reserved the right to require the employee to vacate the premises at any time. There may be an argument that any capricious request to move for no good reason might breach the implied term of trust and confidence, but that is not a matter that applies in this case. I am satisfied that the Company was legitimately entitled to request the claimant to move, not least for compelling business reasons.

16. The central question therefore is, was the decision to dismiss the claimant falling within the band of reasonable responses. I conclude from the evidence that it did. I would, had it been necessary, have gratefully adopted the observations made in Mrs Headford's submissions at paragraph 4. The respondent had convened numerous meetings with the claimant to address the issues and explained fully their position. The implications of the claimant maintaining his entrenched position was fully explained to him. It necessarily follows that the decision to dismiss the claimant was fair.

17. I now turn to the question as to whether or not the claimant's conduct should be considered to constitute gross misconduct. It is always a matter of fact and degree in any case. Each case must depend on its own circumstances.

18. The facts of this case however make it quite clear that the respondent took considerable time and effort with a view to achieving consensus with the claimant, in their not unreasonable request for him to move. In the context of repeated reasonable requests, discussions and meetings where the respondent sought to encourage the claimant to change his mind, the claimant's intransigence constituted a deliberate and wilful intention to disregard a lawful and an essential requirement of the contract, which for the proper running of the business necessitated that the claimant should cooperate in moving to alternative accommodation. I am satisfied that there was a deliberate intention to disregard a lawful instruction of the respondent which was repeated on a number of occasions, I am satisfied that the claimant's claim for notice money must also stand dismissed.

Employment Judge Kolanko

Date 13 December 2017

REASONS SENT TO THE PARTIES ON

5th January 2018

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FOR THE TRIBUNAL OFFICE