



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr P Ledward

v

**David Godwin Bathrooms Ltd
“in liquidation”**

Heard at: Watford

On: 26 January 2018

Before: Employment Judge George

Appearances

For the Claimant: In person

For the Respondent: No attendance and no representation

JUDGMENT

1. The name of the respondent is changed to David Godwin Bathrooms Ltd “in liquidation”.
2. The claimant was employed by the respondent under a contract of employment within the meaning of s.230(1) of the Employment Rights Act 1996 and Article 3 of the Employment Tribunal Extension of Jurisdiction (England & Wales) Regulations 1993 between 5 February 2002 and 21 July 2017.
3. The claimant was a worker of the respondent within the meaning of Regulation 2 of the Working Time Regulations 1998.
4. The claimant was unfairly dismissed by the respondent with effect from 22 July 2017.
5. The respondent shall pay to the claimant compensation for unfair dismissal calculated as follows:
6. The claimant was employed by the respondent for two complete years of service when under the age of 41 and 13 complete years of service when over the age of 41 and therefore the calculation is $13 \times 1.5 \times £489 + 2 \times 1 \times £489$, giving a total basic award of £10,513.50, so the compensation for unfair dismissal is £10,513.50.

7. The respondent shall pay to the claimant damages for wrongful dismissal or failure to pay notice pay of 12 weeks @ £450 per week, namely £5,400.00.
8. The respondent shall pay to the claimant the sum of £675 in respect of annual leave accrued but not taken on termination of employment in accordance with Regulation 14 of the Working Time Relations.
9. There has been an unreasonable failure to provide a written statement of reasons for dismissal upon request contrary to s.92 of the Employment Rights Act 1996.
 - 9.1 The reasons for dismissal were redundancy.
 - 9.2 The respondent shall pay to the claimant £900 being two weeks' pay in respect of this unreasonable failure.
10. This makes a total award of £17,488.50.

REASONS

1. The claimant, who was born on 20 August 1962, started work on 5 February 2002 for the respondent that ran a bathroom business, supplying and installing bathrooms. He was a full-time worker, working by the end of his employment 50 hours a week. He initially started as a van driver but was more latterly working as a warehouse operative doing some driving duties with a take home pay of £450 per week. He was dismissed orally by the company secretary on 21 July 2017 but that was a Friday. His normal working hours were Monday to Friday 8am to 5pm and then Saturday 8am to 1pm and therefore since he was told by the company secretary that he could come into work on the Saturday and he had been paid a full week's wage for that week, my conclusion is that the effective date of termination was in fact 22 July 2017.
2. He wrote to his former employer on a number of occasions asking for an explanation of the situation and has been given no explanation for the circumstances which led to the dismissal save for the short conversation which I shall recite later. That left the first letter asking for an explanation was 22 July 2017. Fortunately, he has been able to obtain a new job on 11 September 2017 which is now paying £26,000 per annum gross and therefore although that does not entirely cover the losses from the loss of this job, it does in substantial measure. Sadly the leading light of the respondent company, David Godwin himself, died in June 2017 and my presumption is that this led to the business failing or winding up.
3. The claimant presented his claim form on 15 September 2017 and it was sent to the respondent on 4 October. The company was placed in creditors voluntary liquidation on 12 October 2017 and no response has been received. On 20 November the employment tribunal received a letter from

the joint liquidator, Dominik Thiel-Czerwinke of Begbies Traynor, stating that the records received from the company by the joint liquidators indicate that the claimant was not a PAYE employee of the company.

4. The claimant claims unfair dismissal, or alternatively redundancy payment. He claims notice pay alleging that he is entitled to a statutory notice of 12 weeks, and 9 days' holiday pay. I have also considered that on the face of the claim form he raises the point that he has not received a response to his request for reasons for his dismissal and that that should therefore be taken to be a complaint under s.93 of the Employment Rights Act in respect of an unreasonable failure to provide a written statement of the reasons for dismissal.
5. The issues for me to decide therefore are firstly, was the claimant employed under a contract of employment? Secondly, if not was the claimant a worker within Regulation 2 of the Working Time Regulations such that he was entitled to statutory annual leave under Regulation 13 and 13(a). If so, then I need to go on to make findings about his holiday year and how much holiday he had accrued at the date of termination of employment. He claims nine days in respect of this.
6. I need to consider was the claimant dismissed and what was the reason for the dismissal, whether it was fair or unfair in all the circumstances to treat that as a reason justifying a dismissal of an employee in the claimant's position, whether the claimant was entitled to notice pay and if so, how much? What compensation for unfair dismissal or calculation of redundancy payment is the claimant entitled to and whether there has been an unreasonable failure to provide written statements of the reason for dismissal.
7. The claimant has provided a witness statement that runs to 10 paragraphs and gave evidence confirming the truth of that statement. He expanded on that orally and said that he started as a van driver but lost his driving licence in 2004 when Mr Godwin moved him into the warehouse so that he could continue to work for him. When the driving ban expired he then continued to work partly in the warehouse and partly driving the van when needed although there was a full-time driver at that point. It was the firm's van; he did not pay for the fuel. On any given day, it was Mr Godwin who decided whether the claimant would be working at the warehouse or at driving the van. He was paid cash in hand every week. This rose to £450 per week in 2008 and continued at that sum to the end of his employment. He was assured when he asked on a number of occasions that the deductions that were being made in respect of Tax and National Insurance were being paid to the Inland Revenue and then the Revenue & Customs as appropriate under statutory together with employer's National Insurance contributions, but he was never given a payslip and was given no statement of employment terms and conditions.
8. He said that there was only one occasion that he remembered being off sick because of his knee and that was for a week. He was still paid during the week's absence despite not being able to attend for work and that was the

case also during holidays. He says that he took about three weeks' holiday every year and also was not required to work Bank Holidays.

9. His employment came to an end when on 21 July 2017 he was working temporarily in the shop for an hour or so and Olive Evans, the company secretary, came in. She was clearly in an upset state and I suspect that things had been very uncertain within the business since Mr Godwin's death on 24 June 2017. She said: "I am very sorry Paul. This is your last day." and burst into tears handing him a week's money then telling him if he wanted to work on Saturday he could. When he asked her if the company was being sold all she said was "It's out of my hands I've just been asked to say that you are no longer required" and despite the letters that I have already referred to, the claimant has had no fuller explanation than that for the reasons for his dismissal.
10. He said that he was claiming nine days' annual leave because that seemed to him to be approximately right taking into account the holiday that he had taken since the beginning of the year but said that during his employment the amount of holiday was not calculated on any arithmetically exact basis.

Conclusions

11. I have reached the conclusion that the claimant was an employee for the following reasons. The length of time that he worked for the company, some 15 years, suggests that he had become integrated into the business. There are elements that suggest the hallmarks of control in that he worked under the direction of Mr Godwin in particularly as to whether he was to work in the warehouse or driving a van on any particular day. There seems to have been an assumption of legal liability to pay and to provide work for the claimant on the part of the respondent. In particular, when he lost his licence, there was the assumption of responsibility to continue to provide alternative work for him and therefore he was continued to be employed during his driving ban despite originally being engaged as a van driver. Furthermore, the respondent gave the claimant paid sick pay and paid holidays.
12. For these reasons, I have reached the conclusion that the hallmarks of employment were present in this case, namely mutuality of obligation and control and that there was nothing inconsistent with a contract of employment and my finding is therefore that the claimant was an employee.
13. It seems likely that the reason for dismissal were redundancy given the death of Mr Godwin, the respondent has not entered a response and therefore has not put forward their reason. However, there was no consultation with the claimant in the period of approximately a month following the death of Mr Godwin and therefore I have concluded that the dismissal was procedurally unfair and therefore the claim of unfair dismissal succeeds. If I am wrong about that I am quite satisfied that the claimant would as an employee of some 15 years' standing have been entitled to a redundancy payment which would have been calculated in exactly the same way as the basic award.

14. Turning to that calculation, his net pay was £450 per week. Working back, taking into account his date of birth and his age at various stages during his employment, it seems to me that the statutory redundancy payment that the claimant has worked out using the online service has been calculated using £450 per week as the multiplier which is the net figure rather than the gross figure which is what should have been used. Although I am not aware of the precise details of the claimant's tax situation, even a modest increase upon £450 to cover the putative rate of tax very easily takes the claimant over the maximum sum which based on a dismissal after 1 April 2017 would have been £489 and therefore my conclusion is that the appropriate multiplier is £489 rather than £450 and it is that I have used to calculate the amount of basic award for the purposes of this case.
15. Turning to notice pay, given his length of service he is entitled to the maximum statutory notice under the provisions of s.86 of the Employment Rights Act. This covers the entire period of his loss of earnings and therefore there is no additional compensatory award for unfair dismissal.
16. He claims nine days' annual leave under Regulation 13 and 13(a) of the Working Time Regulations. His holiday year started on 5 February of each year and his effective date of termination was 22 July 2017. Taking into account Bank Holidays, that would have fallen in that period which he did not work, I accept that the figure of nine days seems to be broadly correct and I make an award in that sum.
17. The claimant has explained to me that he is most upset about the lack of response that has been made to his request for an explanation as to what has happened and looking at those letters and considering what he has said my conclusion is that there has been an unreasonable failure to provide a written statement for particulars of the reason for his dismissal contrary to s.92 and I make such a declaration and the mandatory award of two weeks' pay that is set out in s.93(2)(b).

Employment Judge George

9 April 2018

Date:

25 April 2018

Sent to the parties on:

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For the Tribunal Office