



EMPLOYMENT TRIBUNALS

Claimant: Mr S Campbell
Respondent: Castle Freight Limited
Heard at: Leicester
On: 7 and 8 August 2017
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person
Respondent: Mr Matthews, Company Secretary

JUDGMENT

The Judgment of the Tribunal is that:-

1. The Claimant was unfairly dismissed.
2. The complaint of breach of contract succeeds.
3. The complaint of an unlawful deduction of wages in respect of holiday pay is dismissed.
4. The issue of remedy is adjourned to Thursday 14 September 2017 at 10.00 am at the Leicester Hearing Centre. Case management orders in respect of the remedy hearing are issued separately.

REASONS

1. This was a hearing to determine complaints of unfair dismissal, breach of contract and an unlawful deduction of wages. At this hearing Mr Campbell gave evidence on his own behalf. The Respondents were represented by the Company Secretary, Mr Matthews, who also gave evidence along with Mr David Owen, the Managing Director and Mr Steven Neal, an employee of the Respondent.
2. Neither party have been legally represented up to and including today. The witness statements produced by them therefore needed to be expanded

considerably in oral evidence. The determination of the case depends entirely on whose version of the facts is preferred.

3. The crucial factual issue is whether the Claimant resigned from his employment or whether he was dismissed. The distinction is important because for an employee to be unfairly dismissed there must, unsurprisingly, be a dismissal. The only exception is of course in relation to constructive dismissal but this case does not involve any consideration of the principles relating to constructive dismissal.

4. The Claimant's case is that he was given an ultimatum by the Respondent on Friday 25 November 2016 that he could either resign or face disciplinary proceedings. He contemplated resigning but before he had made up his mind he was dismissed by his employer on Monday of the following week when he had reported in sick but had gone to the CAB to seek advice. The Respondent's case is that at the meeting on 25 November, in the face of potential disciplinary proceedings, Mr Campbell said that he would 'quit' so that he could avoid such disciplinary proceedings. The Respondents agree that disciplinary action was planned, which may or not have resulted in dismissal, but no pressure was applied upon him to resign. Of course on the authority of **East Sussex County Council v Walker** [1972] ITR 280, if this was a case of 'resign or be dismissed' then as a matter of law that would be deemed a dismissal by the employer. The Claimant's position is ultimately he did not succumb to any pressure but before he had made up his mind he was dismissed anyway.

5. It is agreed that on 25 November 2016 there was indeed a meeting between the Claimant and two of the Directors, Mr Owen and Mr Les Coupe. Mr Coupe did not give evidence at this hearing. He has produced a short statement. There is no reason for his absence other than that someone needs to be in the office to run the business. As the Claimant has been deprived of the opportunity of cross-examining Mr Coupe I attach very little weight to Mr Coupe's statement, such as it is.

6. The purpose of the 25 November meeting was to give the Claimant a letter suspending him from his employment and to call him to a disciplinary hearing the following Tuesday, 29 November. The reason for the disciplinary hearing was that the Claimant had been involved in yet another accident at work involving his lorry (his sixth in three years, his third in the same year and the second in as many months) and he had also failed to report the most recent accident. The Respondent's insurance premiums were spiralling principally because of the Claimant's accidents. One of those accidents only came to light when a dashboard camera was being viewed as they routinely are and thus there was also a failure to report it.

7. It is the Respondent's case that the Claimant said he would resign when he was told of the planned suspension and disciplinary meeting. It is common ground that the letter of suspension which had been pre-prepared was never actually given to Mr Campbell. It is the Claimant's case that he said he wanted to think things over. He accepts that he had offered to resign a few weeks earlier but this time as he did not think he was at fault for the latest accident. The Claimant worked his normal shift on the following day.

8. On Monday 28 November at 5.30 am, Mr Campbell telephoned the office to say that he was ill and would not be coming in to work that day. It is now conceded by the Claimant that this was not the real reason. He wanted to take

legal advice before he resigned and wanted to visit the CAB on Monday when they were next open, hence he said that he was ill.

9. The call was taken Mr Neal. There is disagreement as to what was said. Mr Neal says that Mr Campbell told him he would not be attending work that day as he had 'now quit'. Mr Campbell says he said nothing of the sort, that he did not use the word 'quit' and it was just to let Mr Neal know that he was not coming in because he was sick.

10. Later that same day, Mr Owen sent the Claimant a text message which simply said:

"If you're not now working your notice, then I need our property back before payday, tomorrow."

11. Having regard to the evidence, I prefer the Claimant's evidence that he had did not resign on Friday 25 November for the following reasons:

11.1 There is clear evidence that Mr Campbell *did* go to the CAB offices on Monday 28 November. Mr Campbell has produced a leaflet from the CAB offices. He would not have known the significance of that piece of evidence at the start of this hearing. Indeed it is not in the bundle and it was only produced when I asked Mr Campbell if there was any proof he had gone to the CAB. Clearly, he would not need to go to the CAB to seek advice as to whether he should do so if he had already resigned.

11.2 Whilst the Claimant had offered to resign in September that was because he accepted that he was at fault for an accident. On the most recent occasion he did not accept fault.

11.3 Mr Neal's evidence that the Claimant telephoned at 5.30 (in his witness statement he says between 6.00am and 8.00am but he now accepts it was much earlier) to tell him he had quit seems implausible. There is no reason why the Claimant would telephone at that time to say he had quit when (a) had no need to do so (b) he could have telephoned much later in the day if that was the purpose of the call and (c) if the Claimant had indeed resigned on Friday Mr Neal would in all probability already know it.

12. As for Mr Owen's evidence that the Claimant had said on Friday that he quit, whilst there are references to the Claimant using the word 'quit', they are all conditional – "*if I am becoming a burden to the company, I will quit*" and "*if I quit now will we have to go through that?*" None of them are indicative of an actual resignation there and then. It cannot be said therefore, on Mr Owen's own evidence as set out in his witness statement, that the Claimant had actually resigned, only an indication that he was prepared to do so conditionally. There are no words of a clear an unambiguous intention to resign immediately.

13. I am therefore satisfied that there was no resignation on Friday 25 November. The question then is whether the text message could reasonably be construed as words of dismissal. I am satisfied it can be. Asking for company property to be returned usually refers to circumstances involving a termination of employment.

14. I am referred to a letter from the Respondent which purports to confirm the Claimant's resignation. I am not satisfied this letter was ever sent. It is not on the company's headed notepaper as all the other items of correspondence. It is in a different format and is undated. There is no evidence of who drafted it, signed it or who sent it. There is no written confirmation of resignation by the Claimant.

15. In the circumstances as the Claimant was dismissed without any fair procedure the dismissal must be unfair. At the end of the announcement of the decision I drew the attention of the parties to a legal principle known as '**Polkey**'. It may be relevant to the issue of compensation. I mention it because the Respondent may wish to consider it or seek advice for the forthcoming remedy hearing.

16. As the Claimant was dismissed without notice, or any pay in lieu of notice, the claim for breach of contract must also succeed.

17. There is one other complaint in these proceedings and that is in relation to alleged unpaid holiday pay. That has not been addressed by the Claimant at all in his ET1, in his witness statement or his evidence. It is ultimately up to the party who wishes to pursue any complaint to offer any evidence in support of it. Mr Campbell has merely ticked the box in the ET1 but done no more. Accordingly that complaint is dismissed for lack of evidence.

Employment Judge Ahmed

Date: 6 October 2017

REASONS SENT TO THE PARTIES ON

17 November 2017

FOR THE TRIBUNAL OFFICE