



EMPLOYMENT TRIBUNALS

Claimant: Mr M Eyre
Respondent: Basfords Ltd
Heard at: Nottingham **On:** Tuesday 6 February 2018
Before: Employment Judge P Britton (sitting alone)

Representation

Claimant: In person
Respondent: Mr C Deaton, Owner

JUDGMENT

1. The Respondent will pay the Claimant the sum of £200 by way of underpayment of wages for the 4 week period of the promotion.
2. The Respondent will pay the Claimant outstanding holiday pay of £16.66.
3. This makes a total award payable by the Respondent to the Claimant of £216.66.

REASONS

Introduction

1. The claim was presented to the tribunal by the Claimant on 15 August 2017. It is a claim for: 1. underpayment of redundancy pay; 2. A shortfall in the payment of wages; 3. outstanding holiday pay.

2. To determine the issues I have heard under oath from the Claimant and thence from David Coveney, the Manager within the Respondent business who is at the heart of the issues that I have to deal with. I have also heard further explanation from Craig Deaton, although a lot of that really is not controversial as he accepts there were shortcomings in the way this matter was handled. There was no bundle before me as such but I have been able to piece together various documents submitted. I find everyone in this case to be honest people. In my decision I will address them by their Christian names which reflects the civilized hearing before me.

Findings of fact

3. The Respondent is a small business essentially selling and installing conservatories and associated equipment. Craig is the majority shareholder and until eighteen months or so ago was very hands on. The Claimant was employed from 5 March 1990 to 19 May 2017. At the termination of the employment he was aged 54. His job had become over the years a bit of a jack of all trades because he had so much knowledge of the practical side of the business. For some years prior to the end of the employment, he had not driven. He had given up his driving license. So primarily he was employed doing such things as stores; unloading materials coming in and assisting to load up items going out. He did not perform a managerial role. He was clearly highly regarded.

4. Towards the latter part of 2016, Craig had taken his eye off the business. The reason was that he was having to care for his mother following the loss of his father who passed away the previous year. His father had been the founder of the business. Mother needed a lot of support from Craig. In that respect, the day to day reins had been handed to David Coveney and Jeanette Williams. Frankie Clifford who controlled the building part of the business was not involved in what I come to.

5. David and Jeanette had realised that the business was becoming inefficient including such as quality control. They decided that they would divide up the management functions (other than of course engaging Frankie) and in the process thereof they would want more hours from Tara Bryans (who performs administrative and receptionist roles and also deals with customer queries on the telephone) and they thought that perhaps they could use Mark Eyre in this small management team and thus bring him "upstairs".

6. There was a meeting some time very shortly before the Christmas holidays 2016. The core issue is this. Did David say to the Claimant by way of what I would describe as a contractual offer "*If you come upstairs and play a part in the roles which we are now envisaging, you can have an extra wage of £50 per week.*" An issue had been in this case that even if David had said that, he would have no authority because no pay increases would ever be agreed other than by Craig. But bearing in mind that I do not think Craig is a legal scholar (with great respect to him), the situation is that I find as a matter of law that David would have had what is described as ostensible authority, as would Jeanette. After all, they would be seen within the business as being the management whilst Craig had to take time off to care for his mother.

7. What did David say to the Claimant with Tara present? I only have two versions. I have the Claimant saying he was clearly told he would be paid an extra £50 per week. He has made plain to me that if he had been told that he might get £50 per week, he would never have agreed to the move. He was actually quite happy where he was already. David says that he thought he said "*I think I can get £50 out of Craig if you agree.*"

8. I have concluded on that issue, with great respect to David who is clearly embarrassed about things and accepts that he did not handle matters well, that he did not make that clear to Mark. Therefore, on that issue, I conclude that there was an offer to do the work at £50 a week, an acceptance by Mark and

performance by the latter in thus undertaking the work. Therefore the existing contract was varied so that Mark assumed an administrative managerial role for an extra £50 per week.

9. However, I have also have no doubt that this was a fluid situation and it became clear within weeks that it was not working out. David had always thought that the business ought to be focusing more in terms of manpower on getting in someone who could drive the van (unlike the Claimant) and who would concentrate on deliveries to an increasingly online customer base whereby customers would buy a conservatory but not the relatively costly installation service as to which they would go elsewhere. He could also load up and the stores etc could be shared out within the remaining team plus of course the driver. Thus the new structure would be for Tara to head up administration and David concentrate on his core function of sales. I factor in that Mark accepts that the move upstairs had not worked for him. Thus at this stage he reverted to his old role.

10. But of course he could not perform the role to which I have now referred and because he did not drive. Thus in a streamlined business to be able to afford the driver as I have explained there was a need for a redundancy as the needs of the business were now changed. Of course what then shines out like a beacon is that the casualty would be the redundancy of Mark and which is what happened. I am not dealing with the undoubted shortcomings in the redundancy process, and because the Claimant has not brought a claim for unfair dismissal and thus it is irrelevant.

11. In relation to the redundancy situation, on 26 February 2017 Craig (Mr Deaton) saw the Claimant. They had a short but amicable meeting when it was explained that this meant that Mark would have to be made redundant. Although Mark tells me that at 55 he was not planning to go, I would accept that the Respondent had heard him sound off from time to time that if he got a payment, he would be on his way; albeit I do not think otherwise it is relevant to the issue that I have to decide.

12. The core issue then becomes that the Claimant was expecting, and he is entitled to have it, to receive via Jeanette a statement of his redundancy entitlement. I have seen text messages when he was requesting that. But it never emerged before the notice period ended. I know that the Respondent says he was sent something but I do not have any such document before me.

13. On 7 June, the Claimant submitted what I would describe as a grievance, and which I have read, inter alia requesting paperwork relating to his redundancy and asking as to what was happening about the wage increase of £50 per week as "*did not occur in my new role*".

14. The simple issue before me, and it is regrettable that Mr Deaton never replied to that email, is as to what therefore is the true factual and legal position. I conclude that the pay rise was in order to perform the management role. Thus the true position is that:

- (a) This was a pay rise by reason of promotion.
- (b) When the role did not work out, the promotion ended.
- (c) Thus, the pay should have reverted back to that which it was before.
- (d) Thus the Claimant was paid his correct redundancy entitlement, but

(e) The Claimant should have been paid at the extra rate of £50 per week for the weeks worked in the promoted role before that occurred. This is a period of approximately 4 weeks.

(e) In that period, he would of course have continued to accrue holiday entitlement but increased pro rata the rate. Agreed is that the shortfall is £16.66.

Conclusion

15. It follows that the Claimant is owed a total of £216.66

Employment Judge P Britton

Date: 29 March 2018

JUDGMENT SENT TO THE PARTIES ON

03 April 2018

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