



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

AND

RESPONDENT

Mr Srisainaveen Burugupalli

Delphi Services Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: BRISTOL

On Wednesday, the 11th April 2018

Employment Judge: Mr David Harris

Representation:

For the Claimant: In person

For the Respondent: Mr Paul Clarke (Employment Tribunal Consultant)

JUDGMENT

- 1. The Claimant was dismissed by the Respondent on the 29th March 2017.**

- 2. The Respondent did not show that the reason for the dismissal fell within Section 98(2) of the Employment Rights Act 1996 or was for some other substantial reason of a kind such as to justify the dismissal of the Claimant.**

- 3. The Claimant's dismissal was accordingly unfair.**

- 4. There shall be judgment for the Claimant in the total sum of £13,241.81 comprising:**
 - 4.1 a basic award in the sum of £1,437.00;**
 - 4.2 loss of earnings from the date of the dismissal to the 19th June 2017 in the sum of £5,541.51;**
 - 4.3 the cost of an expedited application for a Home Office work permit in the sum of £1,267.00;**
 - 4.4 the sum of £200.00 paid by the Claimant as an NHS surcharge when applying for his expedited work permit following his dismissal;**
 - 4.5 loss of statutory rights in the sum of £400.00;**
 - 4.6 10% uplift for failure to comply with the ACAS Code of Practice in the sum of £740.85**
 - 4.7 holiday pay in the sum of £481.87;**
 - 4.8 unpaid wages for the months of February and March 2017 in the sum of £3,173.58.**

5. **The judgment sum of £13,241.81 shall be paid by the Respondent to the Claimant.**

REASONS

1. These full written reasons of the decision taken by the Tribunal at the final hearing on the 11th April 2018 are provided to the parties pursuant to the request made by Mr Clarke on behalf of the Respondent at the conclusion of the hearing following an oral ex tempore judgment being delivered.
2. At the start of the final hearing on the 11th April 2018, Mr Clarke had made an application on behalf of the Respondent to postpone the final hearing because he was without any witnesses for the Respondent. That application was refused. The Respondent had been given notice of the date of the final hearing, which was accepted by Mr Clarke, and no adequate explanation was given by Mr Clarke for the absence of any witnesses for the Respondent.
3. By his Claim Form presented to the Tribunal on the 11th July 2017, the Claimant brought a claim of unfair dismissal against the Respondent.
4. In support of his claim of unfair dismissal, the Tribunal heard oral evidence from the Claimant. His witness statement stood as his evidence-in-chief and by way of clarification he provided some supplementary oral evidence.
5. It was the Claimant's evidence that he began the relevant period of employment with which the Tribunal was concerned on the 6th January 2014. His employer at that stage was a company called Software Test Labs and his job title was Senior Test Engineer. That company went into administration in June 2016 and all of its employees, including the Claimant, were transferred over to a second company called SWTLabs Limited. That

company subsequently went into administration in February 2017 and all employees, including the Claimant, were transferred over to the Respondent. Both transfers, according to the Claimant (and not disputed by the Respondent), were subject to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

6. The Claimant gave the following evidence as to the background to the transfer of his contract of employment from SWTLabs Limited to the Respondent.
7. On the 3rd January 2017 the Claimant, along with other employees, received a message from SWTLabs Limited on a WhatsApp messenger group stating that all employees were to work from home until further notice.
8. On the 22nd February 2017, the Claimant received a letter (sent by email) from an HR Manager, Urvi Shah Shukla, employed by the Respondent. The letter, which was addressed to the Claimant, stated as follows:

I am writing to inform you that as from 23rd February 2017 the name of your new Company will be Delphi Services Ltd, and the address is Alexander House, Fleming Way, Swindon, Wiltshire, SN1 2NG.

Other than the changes to the name and address of your employer I would like to assure you that all your terms and conditions as set out in your contract of employment remain the same. Your continuity of employment for statutory and contractual purposes is also preserved.

Finally, I would like to take this opportunity to thank you for your continued support. Should you have any queries please do not hesitate to bring it to our attention.

9. On the 8th March 2017 the Claimant received an email from the Respondent's HR department welcoming all former employees of SWTLabs Limited to the employment of the Respondent. The email stated that "**joining formalities**" were to be completed over the period from the 13th to the 17th March 2017 at the Respondent's premises at 19 Fleming Way, Alexander House, Swindon, SN1 2NG.

10. On the same day, the 8th March 2017, the Claimant received a further email stating that his email account with SWTLabs Limited would be deactivated shortly and he was given details of his username and password for his new email account with the Respondent. On the following day, the 9th March 2017, the Claimant received an email from the Respondent's HR Manager asking the Claimant to confirm the date when he would be attending the Respondent's premises to complete the "*joining formalities*". The Claimant responded that he would be able to attend the Respondent's premises on the 17th March 2017.

11. On the 17th March 2017 the Claimant duly attended the Respondent's premises for the induction process. Unfortunately he had forgotten his passport, which the Respondent required, and so he was asked to scan a copy of the passport over to the Respondent. On the 20th March 2017 the Claimant received a reminder text message from the Respondent's HR Manager, asking for his passport. The Claimant responded by emailing a copy of his passport to the Respondent that same day, the 20th March 2017.

12. Later on that day, the 20th March 2017, the Claimant received a telephone call from Sagar Vattikuti, on behalf of the Respondent, asking the Claimant to attend the Respondent's offices for a meeting with Arif Shaik. It is a matter of public record that Mr Shaik had been a Director of the Respondent from the 28th November 2016 to the 1st December 2016. He had also been a Director of SWTLabs Limited.

13. In a subsequent text message from Sagar Vattikuti, the Claimant was asked to bring a photograph when he attended the meeting with Arif Shaik.

14. On the 21st March 2017 the Claimant had a meeting with Arif Shaik at the Respondent's premises where he was asked to pay Mr Shaik 75% of the redundancy pay that the Claimant had received at the time of leaving SWTLabs Limited and to find contract jobs for himself, using the Respondent as some sort of umbrella company. The Claimant could not believe what he was hearing. He took the view that the latter arrangement would have been a breach of the immigration rules under which he was

permitted to live and work in the UK. Mr Shaik informed the Claimant that if he was not prepared to hand over 75% of his redundancy pay and find contract jobs, then his employment with the Respondent would be terminated. The Claimant did not accept those terms at the meeting on the 21st March 2017 but Mr Shaik did not give up. He repeated his demands at a further meeting with the Claimant on the 31st March 2017. That meeting took place in a park. The Claimant decided not to accept Mr Shaik's demands and told him so at the meeting on the 31st March 2017.

15. On the 30th March 2017, the day before the meeting in the park with Mr Shaik, the Claimant had tried to use his email address with the Respondent but discovered that it was not working.
16. Following the meeting with Mr Shaik on the 31st March 2017 the Claimant telephoned the Home Office to check on his status and he was informed that his "Certificate of Sponsorship", which he required in order to live and work in the UK, had been cancelled by the Respondent. The Claimant took that to mean that he had been dismissed from his employment with the Respondent.
17. The Claimant then sought advice from ACAS, which led him to raising a formal grievance with the Respondent on the 3rd May 2017. In his grievance, the Claimant complained of (i) having been dismissed without notice and without a dismissal letter, (ii) being owed unpaid salary for February and March 2017, (iii) not having received any notice period following his dismissal and (iv) not receiving the holiday pay to which he was entitled.
18. The Claimant's grievance was considered by the Respondent at a meeting on the 12th May 2017. Present at the meeting were Urvi Shah Shukla and Tavishi Vaishnav on behalf of the Respondent. According to their minute of the meeting, they decided that the Claimant had not been dismissed by the Respondent but that he had resigned on the 16th March 2017. They also decided that he had, at his own request, been on unpaid leave in February 2017 and that he had been paid in full for March 2017 up until the date of his resignation. They decided that he was not entitled to any notice pay following his resignation and that there was no outstanding holiday pay.

19. The Claimant subsequently appealed against the decision made on behalf of the Respondent at the meeting on the 12th May 2017 and the appeal was heard on the 18th May 2017. The appeal was heard by Urvi Shah Shukla, Tavishi Vaishnav and Vidya Sagar Vattikuti on behalf of the Respondent. According to their minutes of the appeal hearing, they made the same findings as had been made at the hearing on the 12th May 2017. That finding was, perhaps, not too surprising given that two members of the appeal panel had been the ones that had made the original decision at the grievance hearing.

20. Following the realisation that his contract of employment with the Respondent had been terminated without notice, the Claimant stated that he made efforts to find new employment. It was a time consuming process for him because of the restrictions placed upon him by the immigration rules that applied to him. He eventually started a new job on the 19th June 2017.

21. The Claimant was cross-examined by Mr Clarke. It was put to the Claimant that there had been a lack of contact between him and the company between the date of his resignation on the 16th March 2017 and his grievance letter dated the 3rd May 2017. The Claimant replied that he had had meetings with Arif Shaik in March 2017. He said that Arif Shaik had informed him that he, Arif Shaik, was no longer part of the Respondent's organisation but had made it clear to the Claimant that he would not be allowed in to the Respondent's office unless he paid up 75% of his redundancy pay and agreed to arrange his own contract jobs.

22. The Claimant called no other witnesses and Mr Clarke called no witnesses on behalf of the Respondent.

23. In addition to hearing oral evidence from the Claimant, the Tribunal read and considered a hearing bundle consisting of 78 pages that had been agreed between the parties.

24. In his closing submissions, Mr Clarke submitted that it was the Respondent's case that the Claimant had resigned on the 16th March 2017. It was the Respondent's case that the Claimant had given a verbal resignation to Vidya Sagar Vattikuti on the 16th March 2017, which the Respondent had accepted in writing on the same date (see page 25 in the hearing bundle). In support of the case he was advancing, Mr Clarke relied on an email in the bundle (page 26) from Vidya Sagar Vattikuti to the Respondent's HR Department dated the 16th March 2017, which stated:

I met Sai and as we assumed/understood he confirmed me that he don't want to continue Job and requested me to get him relieved immediately by waiving his notice periods if any.

As I do not have much dependency on him, I agreed with same & he mentioned he will post email to you in few days to confirm the same.

25. Mr Clarke submitted that the Claimant had made little attempt to contact the Respondent between the 16th March 2017 and the 3rd May 2017, which supported the case that he had resigned on the 16th March 2017. The Respondent also relied on an email from the Claimant dated the 3rd April 2017 (page 27 in the hearing bundle) confirming his resignation on the 16th March 2017. Mr Clarke submitted that the Respondent had reasonable grounds to believe that the Claimant had resigned on the 16th March 2017 and that the Respondent properly accepted the resignation on the 16th March 2017. Mr Clarke submitted that the Claimant did not dispute that he had resigned at the grievance hearing and subsequent appeal on the 12th May 2017 and the 18th May 2017 respectively. In respect of remedy, Mr Clarke submitted that the Claimant had not mitigated his losses and had provided no evidence of job search activity. He further submitted that if there had been any procedural error on the part of the Respondent, then it was open for the Tribunal, relying on the principle of law derived from the case of *Polkey v. A.E. Dayton Services* [1987] IRLR 503, to find that the Claimant would have been fairly dismissed in any event.

26. In his closing submissions, the Claimant submitted that he had not resigned as alleged by the Respondent. That was his fundamental point. It was his case that the allegation that he had resigned was false. He said that he had not received the Respondent's letter accepting his resignation. It was his case that he had been dismissed by the Respondent, without the dismissal being communicated to him, and that it was likely that the dismissal had occurred

on the 29th March 2017 because when he tried to access his work email the following day, the 30th March 2017, his access was denied.

27. On the evidence that it heard, the Tribunal had no difficulty whatsoever in accepting the evidence given by the Claimant as truthful and accurate. The Tribunal rejected the submission made on behalf of the Respondent that the Claimant had verbally resigned on the 16th March 2017. It was evident from the Claimant's evidence and the written documents at page 72 of the hearing bundle, that the Claimant was still in the employment of the Respondent on the 20th March 2017. The Tribunal found as a fact that the Claimant attended the Respondent's offices on the 17th March 2017 as part of an induction process. The Tribunal further found as a fact that the Claimant emailed the Respondent on the 20th March 2017 with a copy of his passport. Neither of those events would have occurred if the Claimant, as alleged by the Respondent, had resigned on the 16th March 2017.

28. The Tribunal found that the email at page 27 of the hearing bundle was not an email that had been sent by the Claimant to the Respondent. The provenance of that email was not clear to the Tribunal but it was clear that it had not been sent by the Claimant.

29. The Tribunal further found that the Claimant had had meetings with Arif Shaik on the 21st March 2017 and the 31st March 2017. The first of those meetings had been on the Respondent's premises and the second was in a park. Though it was not clear that Mr Shaik was an employee of the Respondent or whether what he said to the Claimant was known, or had been authorised, by the Respondent, the Tribunal found that Mr Shaik made it clear to the Claimant that it was a condition of his continued employment with the Respondent that he should pay 75% of his redundancy pay to Mr Shaik and make arrangements for finding his own contract jobs whilst notionally employed by the Respondent. When the Claimant refused to accept those terms, it was natural for him to have concluded that his employment with the Respondent was going to end. The realisation that his contract of employment had ended came when the Claimant discovered that the Respondent had contacted the Home Office to cancel his "Certificate of Sponsorship". The Tribunal took the date of termination of the Claimant's contract of employment with the Respondent to be the 29th March 2017. The

reason why that date was taken to be the effective date of termination was because of the Claimant's discovery on the 30th March 2017 that access to his work email address had been denied. It therefore appeared that the Respondent had decided, by the 29th March 2017, that the Claimant was not going to work for the Respondent any longer and effectively terminated his contract of employment on that date but without communicating the termination to the Claimant.

30. Having found that the Claimant had been dismissed by the Respondent and that the effective date of termination was the 29th March 2017, the Tribunal had no difficulty in finding that the Claimant had been unfairly dismissed within the meaning of section 98 of the Employment Rights Act 1996. No fair reason for the dismissal was advanced by the Respondent. Instead, the Respondent had advanced a plainly fallacious case, which was rejected by the Tribunal, that the Claimant had resigned on the 16th March 2017.

31. In the absence of a prima facie fair reason for the dismissal, the Tribunal found that the Claimant's dismissal was unfair within the meaning of section 98(4) of the 1996 Act. The Tribunal was not persuaded at all that a fair and proper basis existed for terminating the Claimant's contract of employment and it rejected the Respondent's case that the dismissal could have been achieved by way of a fair process had the Respondent gone about things differently. The overwhelming impression that the Tribunal was left with was that the real reason for the Respondent's dismissal of the Claimant was connected in some way with the Claimant's rejection of the terms presented to him by Mr Shaik in the Respondent's offices on the 21st March 2017 shortly after the Claimant had completed his induction process with the Respondent.

32. Having found that the Claimant had been unfairly dismissed by the Respondent, the Tribunal turned to the question of remedy. It did so against the background finding that the Claimant had not failed to mitigate his loss as alleged by the Respondent. The Tribunal was satisfied that the Claimant had done what he reasonably could to find alternative employment when it eventually became clear to him that he had been dismissed by the Respondent. Given the Respondent's conduct in failing to be clear that it had dismissed the Claimant and the process that he had to go through in order to

secure fresh employment, and in particular, the granting of a new work visa, the Tribunal was satisfied that the delay between the date of dismissal and the starting of his new employment could not be regarded as unreasonable.

33. The Tribunal was also satisfied on the evidence from the Claimant that he had not agreed to unpaid leave in February 2017. The Tribunal found as a fact that he had not been paid for the month of February 2017 and that he was entitled to his pay for that month together with his pay for the month of March 2017, giving credit for a payment of £1,000 that he did receive from the Respondent during that month.

34. In his Schedule of Loss, the Claimant had set out his claim for compensation. With some minor adjustments (agreed by Mr Clarke) to the sums claimed for past loss of earnings from the date of dismissal to the 19th June 2017 and for the unpaid wages for February and March 2017, Mr Clarke did not challenge the figures claimed by the Claimant. The Tribunal made the following award of compensation:

- 34.1 a basic award in the sum of £1,437.00;
- 34.2 loss of earnings from the date of the dismissal to the 19th June 2017 in the sum of £5,541.51;
- 34.3 the cost of an expedited application for a Home Office work permit in the sum of £1,267.00;
- 34.4 the sum of £200.00 paid by the Claimant as an NHS surcharge when applying for his expedited work permit following his dismissal;
- 34.5 loss of statutory rights in the sum of £400.00;
- 34.6 10% uplift for failure to comply with the ACAS Code of Practice in the sum of £740.85
- 34.7 holiday pay in the sum of £481.87;
- 34.8 unpaid wages for the months of February and March 2017 in the sum of £3,173.58.

35. The total award made to the Claimant for unfair dismissal is the sum of £13,241.81.

Employment Judge David Harris

Bristol

Dated the 10th June 2018

Judgment entered in Register
and copies sent to parties on

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for Secretary of the Tribunals