



EMPLOYMENT TRIBUNALS

Claimant: Mr R Henry-Donahue
Respondent: Delex Logistics Ltd

Heard at: Exeter **On:** 6 July 2018

Before: Employment Judge Goraj

Representation
Claimant: Mr P Parsons, Step Father In Law
Respondent: No representation

JUDGMENT having been sent to the parties on 18 July 2018 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. By a claim form which was presented to the Tribunals on 21 February 2018 the claimant pursued a claim for unfair dismissal (which was brought on the basis of an automatically unfair dismissal for asserting a statutory right not to suffer unlawful deductions from wages), disability discrimination and unlawful deductions from pay. The only references in the claim form to disability was at paragraph 8.1 and the claimant's reference to dyslexia at paragraph 12.1.
2. The claimant obtained an ACAS early conciliation certificate. The claimant's ACAS certificate records that ACAS received the early conciliation notification on 16 January 2018 and that the ACAS certificate was issued on the same day.
3. Prior to the commencement of this hearing, the Employment Judge undertook a search at Companies House which shows that the claim form

was served on the respondent's registered office and further that the respondent is continuing to trade and is not insolvent.

4. No response has been entered by the respondent. The Tribunal accordingly issued a Default Judgment under Rule 21 on 11 April 2018. The Judgment held that the claimant was unfairly dismissed, that the claimant was discriminated against on the grounds of his disability and also that the claimant's claim for unlawful deductions from wages succeeded.
5. The Tribunal has heard evidence from the claimant. Unfortunately, the claimant has not brought any documentation with him. The claimant says that he/ his representative did not receive a copy of the Default Judgment or of the letter requiring him to provide information/ a schedule of loss and that they attended today because they contacted the Tribunal to see what was going on in the case and found out about the hearing.
6. The claimant told the Tribunal that he is disabled, and was so at the relevant times, by reason of a number of conditions namely dyslexia, dyspraxia, ADHD, emotional unstable personality disorder, PTSD and psychosis. The Claimant says that he has had most of those conditions for a long period of time. Unfortunately, the Tribunal has no medical evidence of such conditions albeit that none has been requested of the claimant. Further the Tribunal has no particulars of the allegations of disability discrimination.
7. In all the circumstances it was agreed that (a) the Tribunal would deal today with remedy in respect of the unfair dismissal and the unlawful deductions from pay claims and (b) that the Tribunal would thereafter adjourn the remedy hearing in respect of the remaining issues of disability discrimination to enable the claimant to provide the Tribunal with medical evidence of his conditions as of 27 October 2017 together with a statement of the impact of them on his day-to-day activities and also particulars of the disability discrimination claims which he seeks to pursue as part of his claim for compensation.
8. The following therefore relates to the claimant's claims for unfair dismissal for asserting a statutory right and also in respect of unlawful deductions of wages. The claimant is seeking compensation in respect of the unlawful deductions from pay and for any unfair dismissal compensation on the basis of the hours which he actually worked for the respondent which he contends was 25 hours a week.

The Facts

9. Briefly the facts which the Tribunal has found in respect of the claimant's claim for compensation are as set out below.
10. The claimant was employed by the respondent as a Loader between 19 December 2016 and 27 October 2017 when he was summarily dismissed without notice or any disciplinary hearing including without any compliance with the ACAS Code of Practice¹: Disciplinary and grievance procedures (2015) ("the ACAS Code").

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11. The claimant worked for the respondent for 25 hours per week. The claimant was however only ever paid by the respondent for 16 hours per week. The claimant was paid £120 per week £480 per month as he was paid at the minimum wage £7.50 per hour. The claimant's salary was not subject to any tax or National Insurance.
12. The claimant's date of birth is 18 July 1990 he was aged 27 at the time of the events in question he was therefore entitled to a minimum wage of £7.50 per hour in respect of any hours worked.
13. The claimant contends that he has the following outstanding wages in respect of the period from July 2017 onwards.
 - (1) Firstly, there is outstanding wages for the last two weeks in July 2017 which is 25 hours at £7.50 an hour which is $£187.50 \times 2 = £375$. The Tribunal accepted that the claimant had outstanding wages in respect of that period as contended.
 - (2) The claimant also contends that there was a four week period in August 2017 for which he was not paid and he is seeking payment for that period in the sum of $£187.50 \times 4 = £750$. The Tribunal accepted the claimant's evidence as contended.
 - (3) The claimant was suspended from employment without payment from 7 September 2017 until he was summarily dismissed on 27 October 2017. The Claimant has not received any payment for that period and asked the Tribunal to award him the wages that he should have received during that period which is 8 weeks \times £187.50 = £1,500. The Tribunal accepted the claimant's evidence as contended.
14. The claimant was summarily dismissed on 27 October 2017 by the respondent. This date is the effective date of termination for the purposes of the Employment Rights Act 1996 ("the Act").
15. The claimant was not able to obtain alternative employment until 8 March 2018. The claimant did not claim any statutory benefits or undertake any work during such period and he was supported by friends and family.
16. The Tribunal is further satisfied that the claimant made reasonable attempts to mitigate his loss during that period and accepted his account of the attempts which he made to find alternative work.
17. The claimant confirmed that the alternative employment which he obtained on 8 March 2018 is at a more than comparable level to the wages which he received at the respondent and that he therefore has no continuing loss after 8 March 2018. The claimant's claim for compensation is therefore limited to a nineteen week period at £187.50 per week which gives a figure of £3,562.50. The Tribunal accepts that claimant's evidence regarding such losses.
18. Finally, the Tribunal accepts the claimant's evidence that he was not issued with any statement of terms and conditions of employment by the respondent as required pursuant to Sections 1/ 4 of the Act.

The Law

19. The Tribunal has had regard to the relevant provisions of the Act relating to remedies and in particular section 123 of the Act relating to compensatory awards. The Tribunal also had regard to Section 1 of the Act relating to the issue of statement of terms and conditions and to sections 13 onwards of the Act relating to unlawful deductions. The Tribunal has also had regard to Section 207A of the Trade Union and Labour Relations Consolidation Act 1992 in respect of failures to to comply with the ACAS Code and Section 38 of the Employment Act 2002 which relates to the award of compensation to successful claimants who have not been issued with a statement of terms and conditions as required by the Act.

The claimant's claim for unlawful deductions

20. Having given careful consideration to the findings of fact and to the law the Tribunal is satisfied that the respondent has made unlawful deductions from the claimant's pay in respect of (a) two weeks in July 2017 referred to above in the sum of £375 (b) four weeks in August 2017 in the sum of £750 and (c) also in respect of the period of suspension eight weeks between 1 September 2017 and 27 October 2017 in the sum of £1,500 as explained above which, together gives a total figure of £2,625.
21. The Tribunal therefore declares that there have been unlawful deductions in respect of the claimant's wages in breach of section 13 of the Act in respect of those periods and the respondent is therefore ordered to repay those monies to the claimant.

The claimant's unfair dismissal claim

22. The Tribunal has gone on to consider the award of compensation for the claimant's unfair dismissal for the assertion of a statutory right.
23. Firstly, the claimant is not entitled to any basic award as he did not accrue one year's service.
24. It is however just and equitable to award the claimant a compensatory award. The claimant is awarded compensation for the period of 19 weeks between 27 October 2017 and 8 March 2018 -19 weeks at £187.50 per week = £3,562.50.
25. The Tribunal has uplifted that sum by 25% as there was no disciplinary procedure and a complete failure by the respondent to adhere to the ACAS Code which gives a further sum of £890.63 (£3562.50 x 25%) pursuant to Section 207A of the Trade Union and Labour Relations Consolidation Act.
26. Finally, the Tribunal has awarded the claimant a further two weeks' pay in respect of the failure to issue him with terms and conditions of employment which is £187.50 x 2 = £375 which gives a total award of compensation in respect of the claimant's unfair dismissal claim of £4,828.13.

27. The claimant is therefore awarded and the respondent is ordered to pay to him a total award of £7,453.13 (£2,625 to £4,228.13)
28. On the basis the claimant has told the Tribunal that he did not receive any state benefits during his period of unemployment following his dismissal the Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award.

Other matters

29. The remaining claim of disability discrimination is now adjourned to a date to be fixed in order that the claimant can provide the Tribunal within 28 days with a copy of any medical evidence to support his contention that he was disabled at the relevant times together with a brief statement confirming the effect of such alleged disabilities on his normal day-to-day activities. The claimant will also provide the Tribunal with a statement of any acts of disability discrimination upon which he relies including in particular the dates, what he says happens, how he says it was connected with his disability and the alleged perpetrators.
30. The claimant will also be asked to produce a schedule of loss in respect of any claim for injury to feelings.
31. The Tribunal has given verbal reasons today. Written reasons will not be provided unless they are requested today or within fourteen days of the issue of the summary Judgment.

Employment Judge Goraj

Date 31 August 2018

REASONS SENT TO THE PARTIES ON

5 September 2018

FOR THE TRIBUNAL OFFICE