



EMPLOYMENT TRIBUNALS

Claimant: Mr A Jeffers
Respondent: Building and Trades Limited
Heard at: Reading **On: 29 August 2018**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In person
For the Respondent: Not attending and not represented

JUDGMENT

The claimant's claim for notice pay is well founded and succeeds. The respondent is ordered to pay to the claimant the sum of £2,500.

REASONS

1. In a claim form presented on the 10 January 2018 the claimant made a complaint for breach of contract in respect of notice pay (3302873/2018). This case was listed for hearing on the 29 August 2018 at 12.00 pm. In error the claimant presented a duplicate of the same claim on 26 January 2018 (3303578/2018). This second case was listed for hearing on 3 December 2018 at 12.00 pm.
2. The response in the first case was required by the 27 February 2018 and the response in the second case was required by the 16 March 2018. The respondent defended the claims in a response received by the Tribunal on the 13 March 2018. The response was sent in respect of the second claim. There was no response sent in respect of the first claim.
3. On 23 March 2018 I made an order that the two cases be consolidated as they concern the same matter. The parties were informed in a letter dated 27 April 2018 that the claims were to be heard together on 29 August 2018 and that the hearing listed to take place on the 3 December 2018 was vacated.
4. On the 27 April 2018 the employment tribunal received an email from Andy Hayton stating that "I am unable to attend the revised date." There

appears to have been no action taken on the email. On the 11 June 2018 the employment tribunal received a further email from Andy Hayton which stated: "please see below my email dated 27th April, which has not received a response. I am unable to attend on that date."

5. On 15 June 2015 the employment tribunal replied in the following terms: "Before we put this before an Employment Judge we require further information as to why you cannot attend your hearing (holiday, medical reasons etc.) Please can you provide this information so we can request your hearing be relisted."
6. Andy Hayton replied on the 15 June as follows: "We are away for two weeks on a family holiday. There was a date set in December which I am happy to attend." There does not appear to have been any response to this email and on the 24 August 2018 a further email was sent by Andy Hayton stating: "Please see below email trail regarding this listing, which you have not replied to. To confirm once again I will not be attending this hearing. I have informed you twice."
7. The claimant was unaware of this correspondence between the respondent and the employment tribunal. He found out for the first time today that the respondent was not attending.
8. I considered whether the claim should be postponed to a future date bearing in mind the indication that the respondent first stated on 27 April 2018 that Andy Hayton could not attend because he was on a family holiday. For the reasons set out below I decided not to postpone or adjourn the hearing.
9. A minor consideration that I took into account but rejected as a basis for continuing the hearing today was because it was not made clear why it was necessary for Andy Hayton to attend to give evidence or why some other employee or office holder of the respondent could not attend to give evidence in support of the respondent's case.
10. My reason for not postponing the hearing or adjourning to a future date was because I was satisfied from my preliminary perusal of the papers that the respondent's purported defence to the claim for notice pay had no reasonable prospect of success and that in the circumstances it was not in the interests of justice for the case to be postponed or adjourned to a future date. In making this decision I also took into account the claimant's desire for the case to proceed today.
11. The parties agree that the claimant was dismissed without notice. The claimant is entitled to one month's notice, there is a term in his contract for payment in lieu of notice.
12. The respondent's defence to the claim for notice pay rests on the contention that the claimant was dismissed for gross misconduct. The documents in this case include an email dated 23 November 2017 from

Andy Hayton to the claimant. The content of that email purport to set out, among other matters the grounds for the dismissal of the claimant. In my view they fall short of establishing that the claimant was dismissed for gross misconduct. Taking this document as setting out the highwater mark of the case against the claimant I was satisfied that the claimant is bound to succeed in his claim and that the respondent's defence is bound to fail. In the circumstances I am satisfied that the respondent's case has no reasonable prospect of success.

13. The claimant is entitled to one month's notice. This is the gross sum of £2,500. This judgment will be satisfied if the respondent pays the tax and national insurance due to HMRC and the net amount to the claimant.

Employment Judge Gumbiti-Zimuto

Date: 29 August 2018

Sent to the parties on:

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For the Tribunals Office