



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr S Merville

Respondent
Sainsbury's Supermarkets Limited

REASONS OF THE EMPLOYMENT TRIBUNAL

HELD AT Liverpool on 10 April 2018

EMPLOYMENT JUDGE Warren

Representation

Claimant: Mr Lassey, Counsel

Respondent: Ms S Chan, Counsel

REASONS

Written reasons were requested by the respondent.

Background and Issues

1..By an ET1 presented to the Tribunal on 20 August 2018 alleged that the respondent had breached the claimant's contract of employment by failing to offer him £10,000 in severance pay. The respondent argued that it was not in breach of contract. There was a requirement that the claimant prove that the DVLA had revoked his vocational licence, which he had failed to comply with and therefore the clause was not triggered.

The Evidence

2. The Tribunal heard evidence from the claimant in his own regard, and Mr C Ghosh, transport manager, for the respondent. There was an agreed bundle of documents, to which page numbers herein refer. Both the claimant and Mr

Ghosh were entirely credible, and there was very little issue on the facts between them. Where there were, it was clear that the claimant simply could not remember what had happened and said so. I have decided the case under the evidential test 'the balance of probabilities'. I have only made findings in so far as was necessary to decide the primary issues in the case. Where others have fallen away as a result of my findings, they are not now recorded.

The Facts

3. The claimant was employed as a HGV driver at one of the respondent's distribution centres from 17 November 1996. He suffered serious injuries in an accident involving a malfunctioning lift at work in 2011. Following the onset of severe dizzy spells in November 2014 his doctor advised him not to drive. The claimant was signed off as too sick to work, and remained so until his subsequent dismissal in June 2017.
4. The claimant was invited to welfare meetings on 15 January 2015, 25 February 2015, 27 March 2015 and 2 April. The claimant did not attend the first two on union advice. Others were ineffective due to miscommunication between the parties. On 28 April 2015 there was an effective meeting and Mr Ghosh was able to discuss the claimant's licence status. He still however saw nothing about the licence in writing and was unclear what the position was.
5. On 30 June 2015, the claimant's vocational licence was revoked, preventing him from working further as an HGV driver. Mr Cowley did not see a copy of this revocation. The claimant was invited to attend welfare meetings in August and September, he did not attend and cannot remember why. He did attend on 8 October and agreed to an occupational health referral, the result of which was made available to the respondent on 26 January 2016. The report made it clear that the claimant was unlikely to be able to work at heights, drive or work with dangerous machinery.
6. There was an effective redeployment meeting on 8 July 2016. Unfortunately the claimant did not feel able to accept any of the alternative jobs suggested. Further meetings in September were ineffective, and a meeting was held in the claimant's absence on 17 October 2016. The claimant was unable to attend. At a further capability meeting in November 2016 the claimant failed to clarify whether he was unable to drive HGVs because his licence had been revoked, or because he had surrendered his licence. It was always thus. Mr Cowley and Mr Ghosh were desperate to see exactly why the claimant said he could not drive – they wanted to know if he had surrendered his licence or it had been revoked. The claimant, whether deliberately or otherwise simply did not tell them.
7. The claimant was aware of a clause which offered any driver whose licence was revoked for ill health reasons the right to a severance payment of £10,000.

8. Eventually in a meeting with his union representative present on 8 March 2017, the claimant was told, and it was recorded in the minutes, (page 156) that the company were prepared to pay him £10,000 provided he supplied the evidence that his licence had been revoked. There is no mention of any 'ifs or buts', it was 'show me the revocation and the company will pay you'. Mr Cowley went on to say that the claimant needed to get the evidence within 14 days, otherwise he was planning on taking the claimant down the capability procedure with a view to dismissing him. Mr Cowley made it very clear – 'I will not get back to you, 14 days and I will send the capability letter out'.

9. The claimant did not provide the evidence required (although he had been advised his licence was revoked some 2 years earlier, so he must have had the evidence), and the inevitable followed, he was dismissed on capability grounds, on 12 weeks notice with an effective date of termination of 14 June 2017.

10. The claimant was subject to terms and conditions agreed between the respondent and the Transport and General Workers Union (Unite) (his union)

11. Should an HGV driver lose his licence there is a specific set of terms and conditions.

12. Paragraph 6.16 (page 25 – 27) states that:- *'if a colleague suffers permanent cancellation of or a refusal to renew their large goods vehicle licence, within two years of accidental injury or illness, then application can be made for compensation of £10,000 to be paid from the company. This is intended to compensate the individual for loss of employment and in those circumstances no other payment will be made by the Company other than outstanding pay and outstanding holiday pay. No notice will be paid'*.

Conclusions

13. Throughout the period between November 2014 and the claimant's dismissal in June 2017 the respondent made numerous attempts to hold meetings with him – welfare meetings, some to discuss the status of his licence and others to consider occupational health referrals. The claimant attended very few. There were attempts to look for alternative roles, but by late 2016 it was becoming obvious that the claimant either considered himself not qualified for the roles offered, or had concerns about his dizzy spells with others. In the meetings he had attended he was generally represented by his union (who had negotiated and agreed clause 6.16). Numerous requests were made to ask for proof of the status of his licence, and he did not respond to any.

14. He accepts that he was aware of clause 6.16, but did not realise that it may apply to him. He was represented by his union throughout. His union had entered into this agreement.

15. Mr Cowley could not have made it clearer. Give me evidence of your licence revocation and I will give you the £10,000, otherwise you will be dismissed for capability reasons.

16. There was no breach of contract by the respondent. The claimant failed to engage in the very limited process required before he could be given the £10,000 the company were anxious to offer him. This is not a case which requires me to look behind the conditions written into the contract of employment. The only prerequisite to receiving the severance payment in this case was the requirement to show the respondent that the HGV licence had been revoked. Had the claimant done so he would have received it. He had nearly 2 years in which to comply with the respondent's repeated requests to provide evidence of the revocation.

Employment Judge Warren

Signed on 23 June 2018

Reasons sent to Parties on

10 July 2018
