



EMPLOYMENT TRIBUNALS

Claimant: Mr S Green

Respondent: Leeds Warehousing Solutions Ltd

HELD AT: Leeds **ON:** 14 June 2018

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: No attendance and no representation

JUDGMENT

Judgment issued pursuant to Rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

The time for presenting a response having expired and no, or no valid, response having been presented and on the available material before the Employment Judge it is adjudged as follows:-

1. The complaint of unfair dismissal pursuant to section 111 of the Employment Rights Act 1996 is declared to be well founded and:
 - a. The Respondent is ordered to pay to the Claimant forthwith the sum of £5,080 as a basic award and the sum of £20,250 as a compensatory award, the compensatory award being immediate loss from the effective date of termination being 21 December 2017 to the date of the hearing being 14 June 2017, together with loss of statutory industrial rights in the sum of £500;
 - b. The Recoupment Regulations apply and for those purposes the Total Award is £25,830. The Prescribed Period is 21 December 2017 to 14 June 2017; the Prescribed Element is £20,250 and the Total Award exceeds the Prescribed Element by £5,580.

2. In accordance with the provisions of Section 13 of the Employment Rights Act 1996 the complaint of unauthorised deduction from wages succeeds (and in accordance with section 24 of the Act the Respondent is ordered to pay to the Claimant forthwith the amount so deducted being £160.28.
3. In accordance with the provisions of Regulations 13, 14 and 30 of the Working Time Regulations 1998 the complaint in respect of the Claimant's entitlement to payment for leave taken or in lieu of accrued but untaken leave succeeds (and the Respondent is ordered to pay to the Claimant forthwith the sum of £2,100.
4. Pursuant to Section 38 of the Employment Act 2002 an award of a higher amount in the sum of £3,000 is to be paid by the Respondent to the Claimant forthwith.
5. Pursuant to Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) and it appearing to the Employment Judge that the Respondent has failed to comply with a relevant part of the ACAS Code of Practice on Disability and Grievance Procedures (2009) and considering it just and equitable to do so the awards in paragraphs 1 and 3 above are increased by 25% being the sum of £6,982.50.

REASONS

Introduction

1. In this case Mr Green was employed by Leeds Warehousing Solutions Ltd as a warehouse and transport manager from 4 June 2007 until his resignation on 21 December 2017. The Claimant complains to this Tribunal that he was unfairly dismissed.

Issues

2. The issues in this case relate to:
 - Whether or not the Claimant was dismissed.
 - What was the reason for dismissal and whether the dismissal was fair, including whether fair procedures were followed by the Respondent in dismissing the Claimant.
 - Whether the Claimant is entitled to notice pay.
 - Whether the Claimant is entitled to holiday pay.
 - Whether the Claimant had his wages unlawfully deducted.
 - Whether absence of particulars of employment entitles the Claimant to an award pursuant to Section 38 of the Employment Act 2002.
 - Whether there should be an uplift in compensation by reason of a failure by the respondent to adhere to Codes of Practice.

Facts

3. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities).

4. The Claimant was a relatively long serving employee and ran into difficulties with the Respondent which resulted in his resignation.
5. There were two issues for running the main reason for the Claimant's departure.
6. The first one was that the Respondent had a member of staff called Adam Smith. He was working as a HGV driver. He was taken on in 2015 but walked out in 2016. In early 2017 Mr Adam Smith asked for his job back. The Claimant whose responsibility it was took him back but after six or seven months Mr Adam Smith walked out again. Whilst the Claimant was on leave on or about 16 July 2017 behind his back Mr Warren Smith managing director reinstated Mr Adam Smith. The Claimant was unhappy about this because being ignored by Mr Warren Smith in making this decision and when questioned about it Mr Warren Smith was unrepentant.
7. On 3 December 2017 the Claimant's vehicle, worth approximately £10,000 was vandalised at the Respondent's site in Castleford. The Tribunal finds that it was a term of the Claimant's employment that this vehicle was covered by the company by way of insurance. The vehicle was a right off. Mr Warren Smith refused to allow the Claimant to put an insurance claim through the company's insurers and said it was the Claimant's problem. This quite apart from the value of the vehicle posed a problem for the Claimant in getting to and from work as he lived in Bradford. When the Claimant questioned the Respondent about this the Respondent said "tough".
8. This was background leading to the resignation of the Claimant.
9. On 7 December 2017 there was a telephone call between the Claimant and Mr Warren Smith. The Claimant had gone to an ante natal meeting with his then partner. Mr Warren Smith was not happy and he asked the Claimant if he was coming back to work. The Claimant said it was late in the day and he would talk to him the next day to discuss the areas of disagreement. Mr Warren Smith said that he thought it was best to make the Claimant redundant. The Claimant agreed because he assessed that his position had then become untenable. The Claimant and Mr Warren Smith agreed to talk.
10. The Claimant never went to work again. On 10 December 2017 the Claimant and Mr Warren Smith spoke on the telephone about a termination package. The Claimant requested £10,000 and Mr Warren Smith offered £1,000 per week. The Claimant agreed and this the Claimant thought was settled amicably.
11. On 15 December 2017 the Claimant called Mr Warren Smith and asked for the first payment. Mr Warren Smith said that he had £1,000 in his pocket and offered that the Claimant should collect it on 16 December 2017. This would be on site.
12. On that date the Claimant met Mr Warren Smith who gave the Claimant £500 in cash and stated that the Claimant would receive £1500 on 19 December 2017, but only if the Claimant asked his then partner to drop a case that she had made against the Respondent. The Claimant was annoyed but did speak to his then partner.

13. In the meantime the Claimant heard rumours that Mr Warren Smith was spreading about the fact that the Claimant had been engaged in irregularities with the Respondent. The Claimant claimed that such rumours are untrue.
14. On 17 December 2017 the Claimant tried ringing Mr Warren Smith without success.
15. On 18 December 2017 the Claimant sent a text to Mr Warren Smith about the rumours making it clear that his then partner would not drop her case expressing his concern about Mr Warren Smith pulling out of the offer.
16. The Claimant sent emails on 18 and 19 December 2017 but did not get a reply and he therefore decided to resign by email on 21 December 2017 to which he received no reply till he received an email from Mr Warren Smith alleging that the Claimant had been sent a letter on 18 December 2017 ???? that there had been a disciplinary hearing as a result of which the Claimant had been dismissed.
17. The Claimant is clear that he resigned before he received that letter. The reason for resignation was because he was being forced to ??? his then partner without grounds and he had refused. Further Mr Warren Smith did not want to pay his then partner maternity leave she being pregnant at the time.

Determination of the issues

18. After listening to the factual submissions made by and on behalf of the Claimant the Tribunal finds that the Claimant was dismissed by reason of the Respondent's conduct. No reasons have been advanced by the Respondent for the Claimant's dismissal and the Tribunal finds that the dismissal was unfair.
19. Whilst the Claimant is entitled to his notice pay this will be succumbed in the compensation for unfair dismissal.
20. The Claimant's holiday year was 4 June to 3 June and between 4 June 2017 and 21 December 2017 the Claimant had taken six days holiday and was therefore entitled to 14 days.
21. The Respondent did not pay the Claimant for full day on 4 December 2017 nor half a day on 5 December 2017.
22. The Respondent never issued the Claimant with particulars of employment.

Remedy

23. The Claimant elected for compensation.
24. As the Judgment shows the Recoupment Regulations apply (see annexe for their explanation and effect).
25. The Tribunal has awarded compensation for unfair dismissal as shown in the Judgment but basic award has been calculated on the basis of a gross pay of £49,400 per annum or £950 per week. At the time of his dismissal the Claimant was 37 years of age and therefore the multiplier for the calculation of the basic award is 1 multiplied by the 10 years of service of the Claimant.
26. The Tribunal has awarded immediate loss but not future loss from 21 December 2017 to the day of the hearing. The period of immediate loss is six months and one week amounting to £20,250. There is no award for future loss but the Tribunal awards loss of statutory industrial rights of £500.

27. The Claimant gave evidence of his attempts to find alternative employment and went for a job with a similar salary but when a reference was taken up Mr Warren Smith actively discouraged the Claimant's prospective employer. The Claimant also sent curriculum vitae for 15 other job applications.
28. So far as the unlawful deduction from wages award is concerned the amount is calculated by reference to the Judgment and the issues.
29. This is similarly the case with regard to the holiday pay.
30. This is similarly the case with regard to the award for no particulars of employment.
31. Finally the Tribunal having found as expressed in the Judgment it has made the award for failure to adhere to the relevant ACAS Code. The 25% uplift applies to the compensation for unfair dismissal and the compensation for no holiday pay.

Employment Judge Shulman

Dated: 3 July 2018

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