



# EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MISS S MANNINGS

V

MS S DEVINE

HELD AT: CARDIFF MAGISTRATES COURT

ON: 5TH OCTOBER 2017

EMPLOYMENT JUDGE R POWELL (SITTING ALONE)

## REPRESENTATION:

FOR THE CLAIMANT

- Mr Price, lay representative

FOR THE RESPONDENT

- Mr Beasley, business partner of the Respondent

## JUDGMENT

Upon hearing the Parties, with their consent and by the Respondent's express admissions:

1. The claim for breach of contract in respect of the failure to pay one week's notice pay is well founded.
2. The claim for breach of contract in respect of one week's accrued annual leave is well founded.
3. The Claimant was unfairly dismissed.
4. The Claim for a redundancy payment is dismissed upon withdrawal.

## REASONS

1. In the course of considering the Respondent's reconsideration application in respect of the Tribunal's earlier decision to reject the Response I had cause to examine the merits of the response and the degree of prejudice to the parties if the Response was not accepted. In the that hearing it was made clear by the parties that

the issues between them were restricted to matters of remedy. Both parties have received legal advice from solicitors who practice employment law in the period prior to that hearing.

2. Mr Beasley and Ms Devine, who are partners in their business and personal lives, confirmed that they accepted that the dismissal, on of the grounds of Ms Manning's conduct, had taken place without compliance with the ACAS code on discipline or other procedural step which might have allowed her an opportunity to be heard or to appeal the decision to dismiss. Mr Beasley stated that that they were aware that their conduct in that respect was procedurally unfair. The Respondent also accepted that one week's pay was due to the claimant in respect of accrued holiday and the balance of notice pay.

3. I found in favour of the respondent on the reconsideration application and thereafter addressed the parties' minds to the future management of the case. The Respondent then accepted it was liable in the manner noted in the Reconsideration Hearing and for these reasons I have given judgment in favour of the Claimant. In the same discussion Mr Price conceded that the claim for a redundancy payment was a misnomer; it should have been titled as a claim for the basic award. Accordingly, he withdrew that claim which I have dismissed.

4. Further discussion took place in respect of management of the Remedy Hearing and these are reflected in the separate orders.

## **Case Management of the Remedy Hearing**

1. After discussion, it was apparent that the Respondent wished to assert the following issues on remedy:
  - a. Whether the claimant, by her conduct prior to dismissal had contributed to her dismissal so that it was just and equitable to make any deduction from any basic or compensatory award.
  - b. Whether the claimant would, or was likely to, have been fairly dismissed had a fair procedure preceded the decision to dismiss.
  - c. Whether the Claimant had made reasonable efforts to mitigate her loss.
2. The Claimant wished to argue that the admitted failure to comply with the ACAS code warranted an uplift of 25% in respect of the unfair dismissal compensatory award.
3. The Claimant obtained permanent employment in August 2017 which paid her slightly more than her equivalent work with the Respondent. Accordingly, whilst these issues are very important to the parties, the totality of the quantum of loss is probably less than £7,000.00.
4. There is one further issue between the parties, which should be capable of resolution without dispute; whether the Respondent is correctly identified as Ms Devine in her personal capacity or through the Limited Company which she and Mr Beasley own and control; Devine Living Ltd I have made orders in respect of this to enable the Claimant to consider whether that assertion is contentious or material to the progress of the case.

## ORDER

1. The case is listed for a half day hearing to determine all issues of Remedy at 10:00am on the 3rd November 2017.
2. No later than 4 pm on the 19<sup>th</sup> October 2017 the parties shall exchange by way of copy all documentation relevant to the issues set out above.
3. The Claimant shall serve on the respondent a revised schedule of loss.
4. The Respondent shall serve on the Claimant any document which is relevant to the correct identity of the Claimant's employer; whether it is Ms Devine in her personal capacity or Devine Living Ltd; the company owned and operated by Ms Devine and Mr Beasley.
5. Any documents which the parties wish to present to the tribunal the Remedy Hearing shall be added to the existing bundle produced by the Respondent at the Reconsideration hearing with a revised index and additional tabulation. The Respondent will produce one copy of that bundle for use by the Tribunal on the 3<sup>rd</sup> November 2017.

### Further Orders and variation of existing orders

1. All applications for further orders or for variation of these orders are to be made immediately upon receipt of this Order or as soon as is practicable thereafter.

### The Overriding Objective

2. In accordance with the overriding objective, set out in Regulation 2 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, this case will be managed so as to ensure a fair hearing. This may include limiting the time for witnesses' evidence, cross-examination and the making of submissions.

### Failure to comply with this Order

**Failure to comply with any part of this Order may mean that the tribunal has insufficient time to hear the application on the hearing date and may give rise, upon application by a party who has incurred extra costs as a result, to an Order for Costs or preparation time against the offending party. Further, the tribunal may regard any failure to comply with this Order as unreasonable conduct of proceedings in the event of an application for costs or a preparation time order against the party who has failed so to comply.**

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Employment Judge  
Dated: 11 October 2017

### Notes

- 1 The parties or their representatives should ensure that all documentary

evidence and statements of the witnesses on whom they rely are supplied to the other party and the tribunal in accordance with this Order.

- 2 Only in exceptional circumstances will the tribunal consider:
  - (a) the evidence of witnesses whose statements have not been exchanged,  
and/or
  - (b) documents which are not included in the single bundle, in accordance with this Order.
- 3 It should also be noted that any correspondence between the parties endorsed "without prejudice" or correspondence between the parties and ACAS may not be admissible and should not be included in the agreed bundle of documents or disclosed to the tribunals until agreed by the parties, or ordered by the tribunal, to be included.
- 4 The parties' attention is also drawn to Regulation 3 (the overriding objective). The overriding objective is to enable tribunals to deal with cases justly. By Regulation 3(4), the parties shall assist the tribunal to further the overriding objective.
- 5 Failure to comply with this order may result in the striking out, before or at the Hearing, of the whole or part of your claim if you are the Claimant or the whole or part of your response if you are the Respondent.
- 6 Failure to comply with this order may also result in a fine being imposed upon you under the provisions of section 7(4) Employment Tribunals Act 1996

Judgment and Order sent to Parties on  
12 October 2017

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For the Tribunal Office