



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Copley  
Bus Shelters Limited

**Respondent:** Bus Shelters Limited  
Mr J Copley

**HELD AT:** Sheffield Magistrates Court **ON:** 5 and 6 February 2018

**BEFORE:** Employment Judge Hargrove

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Miss J Connolly of Counsel

# JUDGMENT

The Judgment of the Tribunal is as follows:

1. The claimant was not dismissed by the respondent unfairly or otherwise. His claim of unfair dismissal is accordingly not well founded.
2. The claimant's claim of an unlawful deduction from wages in respect of holiday pay and part payment for the training courses is not well founded.
3. The claimant was not wrongfully dismissed.
4. The respondent's claim of a breach of contract by the claimant is well founded. The parties having agreed the sum owed in respect of the breach, it is ordered that the claimant pay to the respondent the sum of £1795.99.
5. The respondent has until 20 February to confirm in writing that it will not seek to make a claim for costs against the claimant.

# REASONS

1. The claimant was employed initially as a site engineer from 9 February 2015 working from the Barnsley depot. He was engaged in the installation and repair of bus shelters and other street furniture. He reported to Adrian Preddy who is referred to as AP throughout this Judgment. As from June 2017 he was moved to the Leeds depot. Technically there his line manager was a Mr Brannan the depot manager but he continued to report to and receive instruction from AP. AP's line manager was Stuart Preston (SP), general manager who reported to Mr Thomas a director. They were both based in Wales but SP travelled and visited Leeds frequently.
2. Some time shortly after he commenced his employment. The claimant formed and still has a relationship with a Miss Judy Gallagher who I will refer to as Miss G. She has four children and was the next door neighbour of AP who originally travelled from Wales to work but was assigned accommodation in Barnsley. The claimant has a daughter and lived fairly nearby. He socialised with AP and it may be through AP got to know Miss G. Following the claimant's resignation which took place on 2 October 2017 a whole series of texts were downloaded from AP's telephone system as a result of an email which the claimant had sent following his resignation on 3 October. There are two sets of texts, the first was a set of texts between the claimant and AP which are at pages 116 to 190 of the bundle between June 2016 and October 2017. The second set were a series of texts between AP and Miss G between April 2017 and the end of September 2017.
3. The claimant raised issues with SP directly concerning his relationship with AP. There were also other issues which arose as between the claimant and SP which are relevant to the Tribunal's consideration. The claimant says he raised issues with SP about AP much more frequently than SP identifies in his witness statement but the claimant is very unclear as to the dates. The following matters are established:
  - a. Some time in early December 2015 there was a meeting in Leeds with SP attended by the claimant and AP. The claimant said that AP's attitude towards him had changed.
  - b. Around Christmas 2016 the claimant copied certain texts to SP between AP and the claimant's girlfriend Miss G in the course of which apparently AP had invited her out for a drink. The claimant took offence. SP, who was aware of the claimant's relationship, spoke to the managing director about it but it appears that no investigation of any kind took place at that stage. These communications were treated as and were in fact outside working hours. I haven't seen them. Apparently they are no longer available.
  - c. There is what can be described as the photograph incident which took place on 5 February 2017. The background to that was that the claimant had taken a photograph of AP sitting at his desk with a sign attached to the front of the desk stating "disabled manager". The photograph was circulated and got back to AP who took offence. That offence becomes very clear when one reads the texts that went between AP and the claimant during that period and afterwards for a period of a few days, but

it has to be said that prior to that the texts were reasonably polite as between them and demonstrated a friendship. The nature of this altercation about the photograph came to SP's attention and he spoke to both of them together and told them that they should in future act professionally. Nothing further seems to have arisen thereafter as between the claimant and AP about those photographs although AP clearly took the view that the photograph of him had been distributed by the claimant which the claimant denies. I am unable to make any finding as to where the truth lies about this. AP has not been called to give evidence and I will deal with that later.

4. On 6 February 2017 the claimant commenced an electrician's training course and was away from work for 18 working days or thereabouts. He was paid for that period by the respondent as holiday pay. The respondent paid for the course under the terms of a training costs agreement signed by the claimant which is at pages 55 to 56. The respondent's case is that the claimant agreed to take the time off as holiday and relies upon an exchange of emails or texts at page 65 of the bundle. The respondent denies having agreed any such thing. That is the background to the claimant's claim of an unlawful deduction from wages.
5. It was arranged that after his move to Leeds in June 2017 the claimant was to be promoted to supervisor and it appears that AP was involved in that decision and did not take any steps to prevent it in any way. However there was installation work still to be completed before he was formally placed as a supervisor.
6. In July 2017 the claimant asked for an off the record chat with SP regarding AP. He complained that AP was not treating him as a supervisor and also that AP was speaking to him differently from other stuff. According to SP the claimant didn't want that matter taken any further and there was no further investigation into that matter. SP says that he mentioned the relationship with Miss G and whether the claimant had any concerns in that respect in respect of AP.
7. On 16 August 2017 the claimant asked for another off the record chat. He told SP that he was getting "all sorts of shit off Ady," (That is a reference to AP), and was not being included as a supervisor and that AP "wanted him out". According to SP the claimant said that he still classed AP as a mate and things were good outside of work but they didn't see eye to eye in work. At this meeting the claimant also raised that AP on a day off work had taken Miss G out for coffee with her children whilst the claimant was at work. SP had a discussion with AP that evening. According to SP, AP described some personal messages that AP had reported as having received from Miss G concerning the claimant's relationship with Miss G. Again according to SP, he spoke to the claimant in the depot the following day and according to him the claimant agreed that he did not want to take these matters any further. SP did not mention to the claimant anything about the texts between AP and Miss G, There are substantial disputes about these matters which I have just described.
8. On 5 September 2017 there was a further meeting between SP, the claimant and AP on completion of the claimant's initial three month probationary period as supervisor. Issues were raised concerning the claimant's performance and in particular it was asserted that two employees had reported that the claimant was spending a lot of time on his telephone engaged in online gambling which the claimant then and has ever since denied. On any view the respondent did not

treat this matter seriously because the claimant was notified towards the end of that meeting that he would receive a pay rise of £1 per hour and from three months thereafter his position would be confirmed as supervisor if there were no further performance issues.

9. The claimant went off on holiday for a week from 22 September and it appears that it was agreed between AP and the claimant at that time that on his return the claimant would go off to work for 2 days and a night in Scotland. However, at the end of the week of holiday the claimant was contacted by AP and notified that plans had changed and that he was to work away in Birmingham the whole of the next week, which was a particular inconvenience for the claimant because he had arranged to have his daughter to stay on the Wednesday and Thursday. This matter was raised in the course of texts by the claimant with AP as complaint. SP was involved in subsequent discussions and the respondent was prepared to move to the extent that the claimant could travel to Birmingham but return home on the Wednesday and Thursday nights. On 2 October the claimant telephoned SP with a work query. According to SP the claimant seemed discontented. Earlier that morning SP had checked the claimant's work sheet for the previous week against his vehicle tracker which revealed, and this is not in dispute, that the claimant had stopped for a period of about an hour during the last working day of the week on his way back to the Depot. SP ascertained the name of the Company where the claimant had stopped, and that it was advertising a vacancy for a job similar to that done by the claimant. This was revealed by the tracker. After his return to the Depot the claimant claimed for a full working day including the hour when he had detoured when he filled in the worksheet on the following Monday. The claimant says that that was a simple error. The respondent says that it was more sinister than that.
- 10.2 October SP did not raise the issue about the discrepancy between the two documents during the telephone call on 2 October. The claimant claims that he asked SP what he was going to do about his complaints about AP, and SP replied nothing. This is denied by SP. 1-2 hours later the claimant handed in a resignation letter to the Leeds depot manager. The letter which is handwritten reads:

"I James Copley give one weeks' notice to leave the company due to personal reasons with Adrian Preddy after my complaints about him nothing has been done regarding this. I feel forced to leave due to his behaviour towards me".
11. There were subsequently two conversations with SP. In one of them an issue was raised by the claimant about the payment for his holiday which he had taken when he was undertaking the course back in February. As to that the respondent's case was that he had agreed to take it as paid holiday and had been paid for it and was not entitled to any further pay.
12. The next issue raised was whether or not the respondent would seek to recover the training costs and it was confirmed that they would be seeking to recover the training costs.
13. The next matter that arose was that the claimant left and declined to work the remainder of the weeks' notice.
14. Those are the background facts or issues and as I have said there are fundamental issues arising from the evidence given to the Tribunal between the

claimant and SP on the one hand, and on the other hand between the Claimant and AP, who has not been called to give evidence apparently for reasons which are set out in paragraphs 51 to 54 of Mr Preston's witness statement, which asserts that it came to light after the resignation that the claimant had been issuing threats to AP which the claimant adamantly denies. The matter had apparently been reported to the South Yorkshire police but the claimant says that there has been no approach to him about any such threats. AP did subsequently give a written statement in the investigation following the claimant's resignation about his relationship with the claimant.

15. The issues which arise in this case are essentially as follows:

- 1.1. Has the claimant proved that the respondent was guilty of a breach of the implied term of trust and confidence. and that he resigned in part at least because of such breach.
- 1.2. If the answer to that question is yes. was the dismissal unfair? If so, Was the claimant guilty of any misconduct with the result that the claimant would either have been dismissed in any event or whereby the compensatory awards should be reduced or extinguished altogether?
- 1.3. If the claimant was dismissed did the claimant resign on notice. What was the period of notice which the claimant was required to give and to work? The answer to that is provided by section 86 of the Employment Rights Act but not expressly in the contract. He was required to work one weeks' notice.
- 1.4. Was the claimant in breach of contract for failing to work his notice period or alternatively was the respondent in breach for failing to pay notice pay?
- 1.5. To what holiday pay if any was the claimant entitled on termination of his employment?
- 1.6. Did the respondent make an unlawful deduction of wages/holiday pay in respect of:
  - 1.1.1. Any holiday pay which was due to him and/or
  - 1.1.2. Training costs of £479.67 in respect of part of the cost of his attendance at the training course from 6 February 2017. Were such deductions authorised under the claimant's contract of employment or otherwise in writing pursuant to section 13(2) of the Employment Rights Act?
- 1.7. Has the respondent proved a contractual entitlement to the balance of training costs, said to amount to £2,003.99, due on termination of his employment and/or to damages for the claimant's failure to work any notice period if there was any such failure.

## **Conclusions**

16. I have serious doubts about the credibility of the claimant generally and in particular concerning the central feature of his claim of unfair constructive dismissal; that is to say his claim that he was consistently bullied and threatened by AP who wanted him out of the business. There are two particular reasons why I am not satisfied that any conduct of AP, or of SP (allegedly in failing to

investigate the claimant's complaints} amounted to a breach of trust and confidence.

- 1.1. I found that SP was a generally credible witness. He describes in some detail a number of specific occasions when the claimant approached him about his treatment by SP. But at no stage did he indicate, as I accept, that he was raising any formal complaint or grievance despite the fact, as I find, that SP asked him several times if he wanted to raise the matters formally but the claimant declined. In addition the complaints he did make were not consistent with the complaints he now makes in particular of a persistent cause of bullying by AP at work and of undermining him in front of colleagues. The matters he did raise particularly after the claimant's promotion to supervisor was that he was not being allowed to supervise by SP. The furthest that it went was in the telephone call on 16 July when he suggested Ady wanted him out of the business and he was getting "all sorts of shit from Ady". It was also at that time that the claimant raised a concern that AP had asked his girlfriend/partner out for a coffee whilst he was at work. SP in no way supports the claimant's claims of bullying and, reasonably, he refers to the fact that AP supported the claimant's promotion to supervisor both in June 2017 and at the meeting in September when there were allegations being made against the claimant received, not from SP, but from other employees. If AP had been out to get the claimant he would surely have intervened at that stage. I strongly suspect that what is particularly behind the claimant's complaint is that he resented AP's friendship with Miss G which, although it has been shown contained one or two suggestive comments in their texts, there is no evidence that it ever went any further than that and what is also abundantly clear from reading the texts is that at no stage did Miss G object to the format of any communication which she received from AP. Nor did she complain about it during her evidence to the Tribunal.
- 1.2. Secondly I have read the passages to which I have been directed by the parties from the lengthy text exchanges between the claimant and AP from 2016. These show a clear picture of friendship between them with a considerable amount of banter. It also includes some levels of name calling on both sides. It is to be noted that this record was obtained from AP's telephone after the claimant's resignation and the claimant would not have had access to it or known that the respondent had gained access to it from AP's telephone until the exchange of documents in this case. It is true that there are instances of some sharp exchanges particularly after the incident of the disability photo in early February 2017, but the tone of the texts became more friendly thereafter. There are also many instances of the claimant complaining to AP about topics such as his low pay and allocation of work. But the tone of those texts is not consistent with the existence of a course of conduct of bullying by AP of the claimant of the type which the claimant now describes. I do not accept the claimant's explanation that AP was being careful to reserve his abuse to face to face contact at work and avoid it deliberately in the course of the text exchanges. I note and have taken into account that AP has not been called to deny the allegations against him allegedly for fear of threats of violence against AP by the claimant as I have described above. As I have said, this is adamantly denied by the claimant, and in the absence of any

direct evidence from the third parties, I decline to make any finding as to the allegations of threats made by the claimant. I do not accept on the other hand that AP threatened to stab the claimant. There are other reasons to doubt the claimant's credibility on the central issue and I do not regard AP's absence from giving evidence as being of any assistance in indicating that the claimant was in fact subjected to bullying or threats of violence. I do however accept that there was a culture of bad language in communications by AP with his staff including the claimant and between staff generally. Even if I had found that the claimant had been subjected to any bullying by AP, I would not have been satisfied that it played any material part in the claimant's decision to resign. There were far more cogent reasons. These were the claimant's stated dissatisfaction by text with his pay situation and his work generally, and his perception that AP was interfering with, or even threatening, his relationship with Miss G. I find that in some respects Miss G had confided in AP about sensitive aspects of her relationship with the claimant. For these reasons the claimant's claims of being unfairly dismissed fail and that applies also to the wrongful dismissal claim.

17. There is no doubt that the claimant originally resigned on notice which was in the circumstances, correctly, one week and that he did not work his full notice period having had it confirmed by SP in the telephone call that he would not be paid holiday pay in respect of the period when he was absent on the course for three weeks from 6 February, and in a later call to the effect that the respondent was seeking reimbursement of the training costs. The essential issues here are whether the indicated refusal to pay his holiday pay, and the notification of the claim for training costs, collectively amounted to a breach of contract by the respondent which justified the claimant in refusing to work his notice. To put it another way, if the respondent was in these respects acting unlawfully, it would have been a wrongful dismissal. He would have been entitled to notice pay. I am clearly of the view that at the time the claimant signed the training agreement (page 55) it indicates that the respondent company was entitled to claim reimbursement of the costs of the claimant attending the course were the claimant to resign or be dismissed from the employment of the employer within 24 months after the end of the course which was towards the end of February 2017, now a year ago.
18. As to the holiday pay issue I conclude that this is equally clear. I do not believe the claimant's adamant denial that he sent the email on Friday January 13<sup>th</sup> when he thanks SP for the contents of his email sent about half an hour earlier which confirmed that the course had been booked directly by the company and asked for confirmation of an earlier discussion where it was agreed that the course duration was to be 18 days and that the claimant was to use annual leave to cover those days. The claimant's denial, and allegation that his supposed reply was a forgery by the respondent, was absurd and seriously damaged his credibility generally.
19. It follows therefore that there has been no unlawful deduction from his wages. There is no holiday pay due to the claimant and the deduction of a part of the wages to reflect part of the costs of the training costs was justified. It follows also that the respondent's claim for the rest of the costs of attending the course is well founded. The parties agreed following the oral giving of judgment that the

amount owed by the claimant for the balance of the training costs was £1795.99, which included any failure to work the notice period.

Employment Judge Hargrove

Date 27 February 2018

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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