

EMPLOYMENT TRIBUNALS

Claimant Mr D Moore Respondent
United British Caravans Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON 31st May 2018

EMPLOYMENT JUDGE GARNON (sitting alone)

Appearances

For Claimant: in person

For Respondent: Mr A Levington Director

JUDGMENT

The Judgment of the Tribunal is:

1. The name of the respondent is amended to that shown above

2. The claim is not well founded and is dismissed

REASONS

- 1. Written reasons must explain to the parties why they have won or lost and show any Tribunal or Court on appeal the relevant law has been identified and applied. I will set out the facts first, then the law, in non technical terms, then my conclusions.
- 2. I heard evidence from the claimant and, on behalf of the respondent, Mr Alexander Lloyd Levington, who produced a bundle of documents.
- 3. The claimant was born on 23 May 1968. He was employed as a sales executive. He began work for the respondent in February 2017. In late March 2018 he and some colleagues were told by Mr Sean Almond, Sales Manager, their contracts would be changed. Once a contract it made, one party cannot unilaterally change it unless the other agrees. The changes caused claimant difficulties so he resigned in writing on 23 March giving a months notice which he volunteered to work. Other employees who objected to the changes also resigned
- 4. On 24 March the respondent dismissed him with a weeks notice, so dismissal was effective on 31st March. His colleagues were allowed to work out the notice they had given but he was not required to work. The claimant was dismissed, so the respondent says, due to performance issues.
- 5. His contract says he should be given a months notice in writing of any changes to his contract. However, it expressly provides the employer may terminate the employment of a person with his length of service with one week's notice. The response accepts he was not permitted to work that week but was paid for it and some commission under a discretionary scheme, though he was not contractually entitled to be paid.

- 6. Section 108 of the Employment Rights Act 1996 (the Act) says an employee with less than two years continuous employment does not have the right not to be unfairly dismissed unless one of more of several exceptions set out in subsection 3 apply and none do in this case. I cannot decide whether what the respondent did was fair only whether it had the contractual right to do it. The statutory minimum period of notice in section 86 of the Act is, in this case, 1 week
- 7. The Employment Tribunals (Extension of Jurisdiction) Order 1994 provides proceedings may be brought before an employment tribunal in respect of most claims of an employee for the recovery of damages or any other sum if the claim arises or is outstanding on the termination of the employee's employment.
- 8. A contract of employment may be brought to an end only by reasonable notice unless the claimant is guilty of "gross misconduct" which it is not suggested the claimant was. . An employee is dismissed if he terminates the contract (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct if the employer has committed breach of contract of such gravity as to discharge the employee from the obligation to continue to perform the contract, Western Excavating (ECC) Ltd v Sharpe [1978] IRLR 27. This is called a constructive dismissal . Although the claimant has not put his case on that basis , because he is unrepresented, I have considered the possibility.
- 9. The better view is that the respondent terminated the contract giving the contractual notice it was obliged to give. That would mean there is no breach of contract. If I took the other view and held that the failure to give written notice of the change was a breach of contract entitling the claimant to resign the case of Addis-v- The Gramophone Company is authority for the proposition the only damages are net pay for the notice period, which is what the claimant received. Whichever way I view this case, the claim of unfair dismissal must fail because the claimant does not have the qualifying service and the claim breach of contract must also fail on the basis either there was no breach or in the alternative that there are no damages I can award over and above that which has already been paid to him. The result would be no different at the claimant brought a claim of unlawful deduction from wages under Part Two of the Act.

T M Garnon EMPLOYMENT JUDGE JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 31st May 2018