



EMPLOYMENT TRIBUNALS

Claimant: Mr D Almond

Respondent: Wekanhire Ltd

HELD AT: Sheffield

ON: 2 August 2019

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person

Respondent: No attendance or representation – appearance not entered

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The Judgment of 17 July 2019 is revoked.
2. The respondent is removed as a party to the proceedings as it has no legal interest in them.
3. Wekanhire (Leasing, Sales and Service) Ltd and Duane Smith are joined into the proceedings upon the basis that there are issues between them and the claimant falling within the jurisdiction of the Employment Tribunal.

REASONS

1. After going through a period of mandatory early conciliation with ACAS between 16 May and 3 June 2019 the claimant presented his claim to the Employment Tribunal by a claim form dated 10 June 2019. The claimant pursues complaints of:
 - a. Unfair dismissal.
 - b. Disability discrimination.

- c. Money claims including claims for a redundancy payment, notice pay, holiday pay and arrears of pay.
2. The claimant brought his claim against Wekanhire Ltd.
3. No response was received from Wekanhire Ltd. Therefore, on 17 July 2019 Employment Judge Rostant issued a Judgment. As no response had been received this was issued pursuant to Rule 21 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. A liability Judgment was issued. The remedy hearing was listed for today.
4. Today, the claimant produced a number of documents including his wage slip and a P45. The latter gave a leaving date of 25 April 2019 and was sent to the claimant's home arriving there on 30 April 2019. The employer was named upon these documents as Wekanhire (Leasing, Sales and Service) Ltd.
5. According to the publicly available records at Companies House, Wekanhire Ltd is dormant. Amongst the documents filed at Companies House are a set of dormant accounts dated 28 February 2018 showing only nominal assets in the value of £1. Plainly, as Wekanhire Ltd is dormant it cannot have been the juridical body that employed the claimant. It was carrying out no activities (commercial or otherwise).
6. The claimant said that his dealings were with Duane Smith who, along with his wife Rebekah Smith, he believed to be a director of Wekanhire (Leasing, Sales and Service) Ltd. Companies House records confirmed this to be the case.
7. On any view therefore, there are issues between the claimant on the one hand and Wekanhire (Leasing, Sales and Service) Ltd and Duane Smith on the other that lie within the Tribunal's jurisdiction. The claimant said that he had had no dealings with Rebekah Smith.
8. In the Tribunal's judgment, it is in the interests of justice in the circumstances for the Judgment of 17 July 2019 to be revoked. Mr and Mrs Smith are not directors of Wekanhire Ltd. The claimant said he had had no dealings with those who are named at Companies House as directors of Wekanhire Ltd. As a dormant company Wekanhire Ltd has not carried out any of the activities which form the basis of the claimant's claim. On the other hand, the claimant's claim is based upon the activities of Wekanhire (Leasing, Sales and Service) Ltd and Duane Smith. As those are matters falling within the Tribunal's jurisdiction it is appropriate for them to be added into the proceedings as first and second respondent respectively.
9. I now set out the basis of the claimant's claim. I record here what the claimant told me. These are not findings of fact arrived at after hearing evidence from all of the parties. The respondents will therefore have the opportunity of presenting their account at a subsequent hearing.
10. The claimant worked for the respondent in the capacity as manager. He worked between 15 August 2001 and around 30 April 2019. The respondent has around 11 employees. The claimant was the only manager.
11. The claimant says that he felt overworked and overloaded with his duties. He was working excessive hours of around 60 hours per week. Around two years ago he approached Mr Smith to say that he felt under significant strain and needed to reduce his workload. Mr Smith was unsympathetic and said that the respondent was too busy to accommodate this request.

12. The matters culminated in the claimant suffering from psychosis. This led to a mental breakdown. The claimant was hospitalised and was detained at Mill Brook Mental Health Hospital pursuant to an order made under section 2 of the Mental Health Act 1983.
13. The claimant was in hospital between 4 April and 29 April 2019. On 30 April 2019 the P45 arrived giving the claimant's date of leaving as 25 April 2019. The claimant telephoned Mr Smith to be informed that Mr Smith had taken the view that the claimant had "*sacked himself*".
14. The claimant was re-admitted to hospital on 2 July 2019 after receiving a threatening telephone call from Mr Smith. The telephone call was received around the middle of May 2019 and caused the claimant paranoia.
15. I repeat that at this stage these are untested allegations from the claimant. They are not findings of fact. The respondents will have the opportunity of having their say in due course.
16. The claimant wishes to pursue complaints of unfair dismissal and disability discrimination (as well as the money claims identified at paragraph 1.c above).
17. For the unfair dismissal complaint the first issue will be whether the claimant was dismissed by Wekanhire (Leasing, Sales and Service) Ltd. The unfair dismissal claim may only be brought against the employing entity. If the Tribunal finds that the claimant was dismissed then it will be for the employer to demonstrate a potentially fair reason for dismissal. Presumably in this case the fair reason will be the claimant's capacity to carry out the role that he was employed to undertake.
18. Upon the basis of what the claimant told me, the employer carried out no investigation into the claimant's fitness for work and carried out no consultation with the claimant. If the Tribunal finds the dismissal to be unfair then the question of remedy will arise. Assuming re-employment not to be something that the claimant would consider, the monetary remedy will consist of a basic award and a compensatory award. The basic award is calculated by reference to a mathematical formula similar to a redundancy payment. The compensatory award will be in such amount as the Tribunal considers it just and equitable to award in regard to the losses sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The claimant fairly said that he was not yet fit to return to work and it was anticipated that he would not be so fit for some months. Therefore, if the Tribunal finds the dismissal to be unfair the question will arise as to what would have happened had a fair procedure been followed and that procedure resulted in a determination that the claimant would not be fit to return to work for some time.
19. Upon the factors presented by the claimant, there are two disability discrimination claims that he wishes to pursue. The first of these is for unfavourable treatment for something arising as a consequence of disability. The unfavourable treatment is his dismissal. The dismissal was because of his absence from work which arose as a consequence of his mental impairment. If the Tribunal determines that the claimant was unfavourably treated for something arising in consequence of disability, and that he is disabled for the purposes of the Equality Act 2010, then the respondents may seek to defend the claim upon the basis that they did not know or could not reasonably be expected to know that the claimant had a mental impairment. They also seek to defend the claim upon the basis that the dismissal of the claimant was a proportionate means of achieving the legitimate aim of the smooth running of the business.

20. The other disability discrimination claim that the claimant wishes to pursue is that of a failure to make reasonable adjustments. The claimant's case is that a requirement (or "*provision criterion or practice*" to use the statutory language) of the respondents was for him to carry out the duties of manager which entailed him working around 60 hours per week. His case is that this placed him at a substantial disadvantage because of his mental impairment in comparison to those without a disability who would have been better able to cope with those demands. The claimant says that a duty to make reasonable adjustments therefore arose. It would have been reasonable to allow the claimant to work fewer hours or to take breaks from work and that those are adjustments which came with a reasonable chance of reducing or ameliorating the disadvantage.
21. It is open to the respondents to argue that the proposed adjustment of allowing the claimant to work fewer hours or take breaks was not reasonable in the circumstances. The respondents may also be able to argue that they did not know and could not reasonably be expected to have known both of the disability and the disadvantage caused to the claimant because of it by reason of the application to him of the disadvantaging requirement to work that number of hours.
22. The claimant also wishes to pursue a claim of victimisation. This is upon the basis that he received threats after he presented his claim.
23. In contrast to the unfair dismissal claim, Mr Smith may have a personal liability for which Wekanhire (Leasing, Sales and Service) Ltd is vicariously liable were the Tribunal to find that Mr Smith discriminated against the claimant by failing to make reasonable adjustments and/or treating the claimant unfavourably for something arising in consequence of disability and/or victimising him.
24. Should the claimant's complaints of discrimination succeed then the Tribunal will consider remedy. The remedy is to put the claimant in the position he would have been had the discrimination not occurred. This may include an award of financial compensation and also compensation for injury to the claimant's feelings and any personal injury (if the claimant's condition has been caused by or exacerbated by the discriminatory treatment).
25. I direct that the Employment Tribunal's administration shall serve the claimant's claim form, the Judgment of 17 July 2019 and this Judgment upon: Wekanhire Ltd; Wekanhire (Leasing, Sales and Service) Ltd at 1 Kelham Street, Balby, Doncaster DN1 3QZ; and Duane Smith at The Laurels, Thorpe Lane, Thorpe-in-Balne, Doncaster DN6 0DZ. The service of these papers should be accompanied by notice of a case management preliminary hearing and the notice of the claim with a date by which the respondents need to respond to the claims.

Employment Judge Brain
Date 9 August 2019