



EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant
MR T AUSTIN-LOMAS**

AND

**Respondent
CLIMATE LIGHT LTD**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 13TH AUGUST 2019

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- MR S DOHERTY (COUNSEL)

FOR THE RESPONDENT:- MR T WHITCOMBE (DIRECTOR)

JUDGMENT

The judgment of the tribunal is that the following claims are well founded and judgment is entered for the claimant in respect of them:-

1. Unfair dismissal;
2. Unpaid holiday pay
3. Unpaid wages;
4. Unpaid expenses
5. The claimant is awarded the total sum of £8642.25 (the breakdown of which is asset out in the Schedule of Loss and the reasons below).

The respondent's counter claim is dismissed.

Reasons

1. By a claim form submitted on 21st January 2019 the claimant brings claims of unfair dismissal, unpaid holiday pay and other payments. The claimant worked for the respondent from 13th August 2018 to 8 October 2018. Ordinarily he would have insufficient service to claim unfair dismissal. However, he claims that the reason for his dismissal was his assertion of a statutory right, that is the right to receive his pay on time. If correct that would mean his dismissal was automatically unfair.
2. The respondent defended the claim, and in respect of the claim for unfair dismissal asserted that he had been dismissed for gross misconduct in that he had a medical operation which he had assured them would only require one day off work. However, it transpired that it was a much more significant operation and accordingly he was unable to work for a period after the operation. As a result the respondent dismissed him. However fair or unfair, if this is the true dismissal then the claimant's claim for unfair dismissal must fail as he does not have the requisite length of service.
3. The claim was listed for hearing on 13th and 14th August 2019 and directions given. Those directions included directions as to identifying the remedy sought together with supporting evidence and information as to the mitigation of loss.
4. On 26th February 2019 the respondent applied for the claim to be struck out as the claimant had not complied with the first direction and had not provided a schedule of loss. It was subsequently supplied on 6 March 2019. As is set out below the respondent complains and maintains that even the schedule that was subsequently provided does not set out in full the information he was obliged to supply. Also and more specifically that the Employment Tribunal did not specifically consider its application for a strike out either immediately on the application or after the claimant had supplied the schedule, following the respondent's application being sent to the claimant by the tribunal.
5. On 14th June 2019 the claimant applied for a strike out order against the respondent on the basis that it had not yet provided a list of documents and was itself in breach of the case management directions. The directions provided for disclosure by way of list on 11th March 2019, which the claimant asserted he had complied with, but the respondent still had not by that stage, despite reminders from the claimant in March and on a number of occasions in May. On 18th June EJ Midgley sent a strike out warning. On 25th June 2019 the respondent replied objecting to the order and reiterating its request that the claim be struck out. On 28th June 2019 REJ Pirani wrote asking both parties to identify which orders remained outstanding and why they had not been complied with. The claimant replied the same day repeating its assertion that the respondent remained in breach of the direction to supply a list of documents. The respondent did not reply and was on 5th July written to

asking for a reply by 12th July 2019. The respondent did not reply to that email and on 19th July EJ Harper struck out the response, on the basis that the respondent had not complied with the case management orders, and its defence of the claim was not being actively pursued. The notice that accompanied the Judgment set out the respondent's rights in respect of appeal and reconsideration.

6. The two day listing of the hearing was varied to the three hour listing before me today. Mr Whitcombe has attended on behalf of the respondent. He does not appear to dispute that the respondent had not, and still has not complied with the case management direction set out above which led to the strike out judgment being entered. However, he tells me that the respondent's position is, as I understand it, that the tribunal's failure specifically either to grant or refuse the respondent's application for a strike out order following its application on 26th February 2019 renders all further steps in the litigation unlawful; and that the Judgment striking out the response was necessarily unlawfully entered. He tells me that the respondent either has or will "complain" to the High Court. However, he also told me that the respondent had not sought and was not seeking to apply for a reconsideration of the strike out Judgment, and had not and was not intending to appeal the Judgment. In terms of today's hearing I told Mr Whitcombe that the extent to which the respondent could participate in the hearing depended on my granting permission, and asked him what he was asking me to do. He stated for the reasons given above, that he was not seeking to make an oral application for reconsideration, or asking for the case to be adjourned to allow for a reconsideration application or an appeal against the Judgment. He had not disclosed or brought with him any documents on which he sought to rely and was not, therefore, seeking my permission to rely on any documents. He had not produced or disclosed a witness statement, and was not asking to be permitted to rely on any witness statement or to give oral evidence. I asked whether he wanted to be permitted to cross examine the claimant, in the absence of calling any evidence himself, and said that he did not, and invited me simply to enter judgment. In the end, as I understand it, the respondent is of the view that the proceedings are, and have been since the end of February, a nullity and that despite attending today has not applied to, and does not wish to, participate in any way in today's hearing.
7. As a result I heard evidence from the claimant who confirmed the accuracy of his witness statement and the Schedule of Loss. In the absence of any challenge to that evidence I have given Judgment for the claimant in respect of the claims advanced and in the sums claimed as are set out below.
8. Unfair Dismissal – Compensatory Award;
 - i) Past Loss – £5440.88
 - ii) Future Loss - £1351.22
9. Unpaid Holiday Pay - £548.76

10. Unpaid wages - £1263.39

11. Unpaid expenses - £38

EMPLOYMENT JUDGE CADNEY

Judgment entered into Register on

Dated: 13th August 2019