EMPLOYMENT TRIBUNALS

Claimants: **Mr M Beltramo**
Respondent: **Rendell and Rittner Ltd**

Heard at: **London South** **On:** **13 August 2019**

Before: **Employment Judge Martin**

Representation
Claimant: **In person**
Respondent: **Ms Omotosho - Solicitor**

REASONS

Full reasons were given at the conclusion of the hearing. These written reasons are given at the request of the Claimant.

1. The Claimant was employed by the Respondent for about six weeks and is therefore not able to bring a claim of 'ordinary' unfair dismissal where a reasonable investigation is required and reasonable grounds for belief in conduct or performance issues and warnings given. The reason given by the Respondent for terminating the Claimant's employment is that he did not complete his probationary period to its satisfaction.

2. The purpose of a probationary period is to establish from the employers perspective whether an employee is suitable and from the employee's perspective whether the employment is suitable for him or her. There are limited grounds for complaint to an Employment Tribunal where employment is terminated during the first two years of employment.

3. The Tribunal initially believed the Claimant was bringing a claim of whistle-blowing (which does not require two years continuous employment) however at the preliminary hearing it was established he was not bringing such a claim and this was recorded in the case management order. At the start of this hearing the Respondent's representative raised this again and indicated she would be willing to deal with a whistle-blowing claim if that was what the Claimant wanted to do. The Claimant confirmed he was not bringing a whistle-blowing claim and therefore the only claims brought were

brought pursuant to s44(1)C (detriment on health and safety grounds) and 100(1)C ERA 1996 (dismissal on health and safety grounds).

4. The Tribunal stated by looking at the statutory provisions to establish whether the Claimant's claims fell to be afforded the protection these sections offer against dismissal and detriment on health and safety grounds.

5. The relevant parts of these sections state:

44 Health and safety cases.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

…….

(c) being an employee at a place where –

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety

100 Health and safety cases.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that –

…..

(c) being an employee at a place where –

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety

6. The protection afforded by these sections is limited and specific. The Respondent has a Health and Safety committee and representative and therefore in order to bring these claims the Claimant must show that it was not reasonably practicable for him to have notified the Health and Safety representative of his concerns.

7. The Respondent's evidence is that the information about who the Health and Safety representative are is on the Health and Safety notices which are placed prominently around the premises including the kitchen/canteen and

changing room. The Claimant confirmed that he used those rooms. The Claimant first said he did not see the notices then said that he was so busy at work he did not have time to read notices. In submissions he reverted to his argument they were not there as he did not see them. The Tribunal accepts the Respondent's evidence and finds on the balance of probabilities that the notices were there, (they are a legal requirement) and that the information about Health and Safety representatives was adequately displayed as required.

8. The Claimant says it was not reasonably practicable to contact the Health and Safety representative during his employment as he did not know who that person was. No other reason has been given as to why he says it was not reasonably practicable. 'Not reasonably practicable' means that there must have been something stopping the Claimant from making the complaint. This was discussed and determined in **Asda Stores Limited v Kauser EAT 0165/07** where Lady Smith held that '**the relevant test' is not simply a matter of looking at what was possible but to ask whether on the facts of the case as found, it was reasonable to expect that which was possible to have been done".**

9. On the facts of this case, a reasonably practicable action would be to read the notices which said who the representatives were, asking someone or using the extranet (the Claimant says is very computer literate, used to researching matters and that he has postgraduate qualifications) using the computer at work which he had access to.

10. The Tribunal finds on the balance of probabilities that it was reasonably practicable for the Claimant to have known there was a Health and Safety representative and for him to have contacted them about any Health and Safety concerns. The Claimant wrote to the representative after his dismissal. He says a colleague (who he did not want to name) provided him with that information. This was therefore another route the Claimant could have explored during his employment to find out who the Health and Safety representative was making it even more reasonably practicable for him to have known this information.

11. This means that the Claimant's claims fail as the facts to do not fall with the relevant sections ie there was a Health and Safety representative and it was reasonably practicable for him to have found out who that person was and contacted them.

12. Even if the facts did fall within these sections the Tribunal would have found that the Claimant was dismissed because he did not meet the standards required by the Respondent during his probationary period. This part of the reasons is limited to those matters which are relevant and necessary to explain this decision and does not set out all the evidence heard.

13. The dismissal letter refers to him having **"not made satisfactory progress in your probationary period, in particular you are not a good team player".** The Claimant's contract of employment provides that the Respondent can

terminate his contract during or at the end of a probationary period if the required standards have not been met.

14. The Claimant suggests that the reason he was dismissed is that he complained about not receiving comprehensive fire training. The evidence is that he did receive training, but he says not enough. The evidence is that on 16 July 2018, there were issues with the Claimant with his line manager saying he was not dealing with people at the reception desk when needed and he was aggressive towards a work colleague. An argument ensued and the Claimant admits raising his voice and told his line manager to shut up on more than one occasion, called his manager 'an incompetent', and admits to refusing to carry out his work as instructed which resulted in him being asked to leave the premises especially as residents were present and could hear what was being said. His covert recordings (which are discussed later) corroborate this. The Claimant helpfully provided transcripts of parts of the conversations.

15. In his submissions the Claimant denies that he was aggressive, defining aggression as physical violence. The Tribunal does not accept that aggression is limited to physical violence and finds the acting of telling his line manager to shut up, calling him **'an incompetent'** and raising his voice was aggressive behaviour.

16. The Claimant covertly recorded conversations saying he did so for his own training purposes. However, the conversations he recorded do not relate to training issues (e.g. use of computer, how to log parcels in and out, etc) but to general conversations with colleagues. The only reference we were taken to about training is where he was asking his manager about fire training and he was told to read the standard operating practice documents which he said he had done. His evidence indicated that there was a substantial number of recordings, many more than the transcripts before the Tribunal. He said that he had to spend hours and hours listening to them to prepare for this hearing. If they had been for training, then the Claimant would no doubt have notified the individuals that he was recording them as a training aid. He did not do so. This goes to his credibility.

17. There is nothing in the emails that the Claimant sent Mr Ellis who was the dismissing manager which would have caused Mr Ellis to take against the Claimant. When the Claimant said he needed comprehensive fire training, Mr Ellis quite properly referred the matter to the Claimant's line manager who was responsible for this and all day to day matters relating to the Claimant. There was no evidence that the Claimant's line manager was told off about this, simply that the email was forwarded.
18. After the incident on 16 July 2018 was reported to him, Mr Ellis quite properly asked for an incident report and for statements to be made by those concerned. These statements dealt with the incident on 16 July 2018 and also raised concerns about the Claimant's 6 weeks employment with the Respondent, reporting that he was not a team player, was not interested in general training, not following the Respondent's reasonable management instructions and that he was was generally not suitable. Mr Ellis trusts the Claimant's line manager who is a long serving employee and based on this,

decided to terminate the Claimant's employment on the basis that he had not satisfactorily completed his probationary period.

19. The Tribunal is satisfied this decision related to his performance and was not because he had repeatedly asked (as he says) for comprehensive fire training. Mr Leach who heard the Claimant's appeal against dismissal in the Claimant's absence, went further and spoke to the individuals concerned before upholding the decision to dismiss the Claimant. The Claimant did not attend the appeal hearing.

20. There is no requirement for a process such as would be required had the Claimant had two years employment. There was no requirement for a reasonable investigation. The Respondent had reasonable grounds to say that the Claimant had not satisfactorily completed his probationary period and terminate his employment.

21. In the circumstance, the Claimant's claims are dismissed.

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Employment Judge Anne Martin

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Date: 16 August 2019