



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Wardell

**Respondent:** Dryfix Preservation Ltd

**HELD AT:** Leeds

**ON:** 16 October 2019

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr R Rafton, Director

# JUDGMENT

1. The claim of unfair dismissal is dismissed.
2. By consent the claim by the Respondent for £900 in respect of training is dismissed.
3. By consent the claim of £168.63 by the Respondent in respect of uniform charges is hereby dismissed.
4. The claim for notice pay is dismissed.
5. By consent the claim for wages in the sum of £160 shall be paid by the Respondent to the claimant.
6. By consent the claim for bonus is dismissed by consent.
7. By consent the claim for holiday pay in the sum of £78.60 shall be paid by the Respondent to the Claimant.

# REASONS

## 1. Introduction

Mr Wardell was employed by Dryfix Preservation Ltd from 1 March 2017 until his resignation on 2 April 2019 and he was ultimately working as a remedial technician for the Respondent.

## 2. Issues

- 2.1. Whether or not the Claimant was dismissed and if so whether he was unfairly dismissed.
- 2.2. Whether the Claimant was entitled to notice pay.

## 3. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 3.1. The facts which are contained in paragraph 1 in so far as they comprise matters of fact are facts.
- 3.2. The Respondent sometime into the employment of the Claimant agreed to provide training and support for the Claimant to achieve a qualification of domestic plumbing.
- 3.3. Towards the end of the Claimant's period of training the Respondent identified that the Respondent was unable to provide everything in-house that the Claimant needed for his training. The Respondent agreed with a local plumbing contractor, Paul Walker, to take the Claimant, in order that the Claimant could gain some appropriate experience.
- 3.4. This turned the Claimant's head and he became interested in working not for the Respondent but for Mr Walker permanently.
- 3.5. The experience led the Claimant to speak verbally to Mr Fraser Rafton, the Respondent's contract manager, that it was "most likely" that he the Claimant would be resigning from the Respondent.
- 3.6. On the same day Mr Russell Rafton, a director of the Respondent, who gave evidence before the Tribunal, spoke to the Claimant when the Claimant told Mr Russell Rafton that he the Claimant was indeed considering resigning.
- 3.7. On 2 April 2019 the Claimant sent a "WhatsApp" to Mr Russell Rafton. Amongst other things the WhatsApp stated "I said I was thinking of handing my notice in but my decision is definitely made". When the Tribunal asked the Claimant questions about this at no time did the Claimant deny that he had sent this message.
- 3.8. On 3 April 2019 Mr Russell Rafton met the Claimant. The Claimant was not in uniform at that meeting and he verbally advised Mr Russell Rafton that he the Claimant would be terminating his employment. The Tribunal finds that this in fact had already happened on 2 April 2019.
- 3.9. Mr Russell Rafton asked the Claimant to work his notice. The Claimant refused.

- 3.10. There has been evidence of a written warning issued to the Claimant on 8 December 2018. The Tribunal finds that although this was of 12 months duration it is not relevant to the Tribunal's decision.
- 3.11. To all intents and purposes what happened on 2 April 2019 requires no further findings of fact as that is when the contract between the Claimant and the Respondent collapsed.

**4. Determination of the issues**

- 4.1. The Claimant was not dismissed, he resigned, as the Tribunal has found, on 2 April 2019 in circumstances other than by reason of the Respondent's conduct and, therefore, there cannot be an unfair dismissal.
- 4.2. Because the Claimant resigned he should have given notice under his contract and not the Respondent.
- 4.3. Therefore, the Claimant's claims for unfair dismissal and notice pay are hereby dismissed.
- 4.4. All other claims are dealt with as per the judgement above.

Employment Judge Shulman  
Date 23 October 2019