



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr J Pardon

v

**Respondent**

Strongbar Limited

**Heard at:** Norwich

**On:** 31 July 2019

**Before:** Employment Judge Postle

**Appearances:**

**For the Claimant:** Mr Gidney, Counsel.

**For the Respondent:** Mr Joshi, Solicitor.

**JUDGMENT** having been sent to the parties on 15 August 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant brings claims to the tribunal of unfair dismissal, unpaid wages, holiday pay and failure to provide written reasons of the claimant's dismissal. Originally the question for the tribunal to determine was whether the claimant's employment was fairly terminated upon the expiration of notice to terminate given by the claimant on 6 June 2018 to take effect on 20 July, and in the alternative, was the claimant dismissed on 5 November 2018 and if so was the dismissal unfair.
2. The respondent's grounds for resistance pleaded case was that the claimant resigned on 6 June 2018 with an effective date of termination on 20 July 2018, not that the claimant resigned on 5 November 2018 and for the first time it is now advanced in closing submissions by the respondent that the claimant left of his own accord on 5 November 2018.
3. The respondent's having conceded in their closing that the claimant did remain employed following his resignation after 20 July 2018 or at least that is the expiration of the notice period, in other words it was agreed that the notice would be rescinded and he would work normally.

4. In this tribunal we have heard evidence from the claimant through a prepared witness statement, from Mr Andrew Jordan and Mr Mervyn Jordan on behalf of the respondent both giving their evidence through prepared witness statements. The tribunal have had the benefit of a bundle of documents consisting of 140 pages.

### **Findings of Fact**

5. It is perhaps important to go back and recite the facts as to how we get from A to B. The claimant commenced his employment with the respondent on 27 January 1997 in an hourly paid role originally as a machine setter. In or about 2013 the claimant was promoted to a salaried role of workshop supervisor and on a salary certainly in March 2017 of £37,500.
6. On 6 June 2018 the claimant handed in written notice of his resignation to take effect on 20 July 2018 and we see that at page 69. During the claimant's notice period on 16 July 2018, Mr Andrew Jordan met the claimant at the Bawburgh King's Head Public House, a note of that meeting is at page 74 and it appears it was agreed that the claimant would withdraw his resignation, continue to work as indeed he had done before and there was some promise at that stage about becoming a shareholder and perhaps having a profit share.
7. On 21 July 2018 perhaps out of the blue at that stage Mr Andrew Jordan asked the claimant if he would consider reverting back from a salaried role to an hourly paid role, but the claimant said no. Clearly that was not the case because the payslips that followed thereafter show that the claimant clearly was paid on the basis of an annualised salary of one twelfth each month.
8. Between the 21 July 2018 and 26 September 2018, the claimant continued in exactly the same role as he had done before, and I repeat paid in the same way as he had been before.
9. On 26 September 2018 the claimant was unfortunately involved in a motorcycle accident which involved time off from work. The claimant was informed by his consultant that he should be fit to return around 5 November 2018 and he informed the respondent of that intention.
10. On 23 October 2018 during the claimant being off work Mr Andrew Jordan inexplicably wrote to the claimant stating, "in view of your incapacity I feel we should extend the current probationary period" which came as somewhat of a surprise to the claimant as he knew nothing about any form of probationary period and we see that at page 82.
11. On 29 October 2018 the claimant wrote to Mr Andrew Jordan not surprisingly querying the reference to a probationary period stating that there had been as far as he was concerned no break in his continuity of employment and we see that at page 87

12. On 2 November 2018 the claimant was asked to attend a meeting with Mr Andrew Jordan who informed the claimant that he would be demoted thereafter to a machine setter role, he would be paid hourly and he was then provided with a contract which was dated 5 November 2018, to think about it and effectively told that if he did not sign it he would not be coming back to work. That contract at page 89 amongst other things suggested that the claimant's employment began on 5 November 2018 and that no previous employment counts as part of his continuous employment despite the fact that there clearly had been no break in the claimant's continuity.
13. On 5 November 2018 the claimant returned to work.
14. The claimant was told after a meeting with Mr Andrew Jordan and Mr Mervyn Jordan that in effect if he did not sign the new contract his job was coming to an end.
15. It appears thereafter the respondent has tried during either the course of these proceedings or at the time to manufacture evidence, particularly new contracts which we see at page 77 and create what can best be described as evidence to try and support their position that the claimant in some way either left at the end of originally July 2018 or the end of October 2018, or had agreed new terms and conditions of employment.
16. It is all very confusing because the P45 suggests the claimant left at the end of October 2018, there is then the attempt to insert in the P45 about a probationary period and this is all despite the claimant clearly attending work on 5 November 2018 and clearly being told in no uncertain terms effectively by Mr Mervyn Jordan:

"Sign a new contract if you don't you haven't got a job."
17. Clearly the claimant was advised not to sign the contract. He was told to go home. He then having spoken to his solicitors (page 98B) emails Mr Jordan and says:

"I spoke to my solicitor today she has told me that she has not received a reply to correspondence that she took up with the respondent."

He also says:

"That he was keen to return to work as soon as possible but he is not prepared to sign the new contract that was issued to him and can you please let me know when the issue can be resolved so I can return to work."
18. That is evidence that he has not resigned.
19. The response from Mr Mervyn Jordan (page 99) is:

"You can ignore the fact your client gave us notice in writing to break his contract and refused to consider when asked from the tenure of your correspondence it seems unlikely John is going to accept our generous offer of 2 November of alternative employment. I therefore withdraw our offer if not accepted by 23 November, after that date I request that you deal with our solicitors on this matter."

20. There is a further exchange of emails and of particular reference is the email from Mr Mervyn Jordan dated 19 November 2018 (page 101) which reads:-

“Dear Sally

It is frustrating that your arguments not based on facts. For absolute clarity and as advised to you again on 13 November 2018 and contained in the formal meeting dated 24 July 2018.

To summarise.

John gave notice to resign his contract and was paid all outstanding monies when he left our employment on 20 June 2018.

He refused to reconsider when given the opportunity.

He was offered a 12 week probationary contract to start on 23 June 2018.

The terms were changed from salaried to hourly pay and prove the performance of his duties.

For further clarification we have been dissatisfied with many aspects of your client’s performance of his duties for some time.

...

As advised our offer of alternative employment will be withdrawn from 23 November 2018.”

21. In further subsequent correspondence between the claimant’s solicitor and the respondent, the claimant had said he was prepared to revert to being hourly paid but any new contract of employment must preserve his continuity of employment. The respondent emailed on 22 November 2018 confirming the claimant’s continuity of employment would not be agreed and indicating that the respondent could not terminate the claimant’s employment as he was not employed in any event.
22. It is clear the claimant’s employment was terminated on 5 November 2018 when the claimant was sent home from work.
23. On 28 November 2018 the claimant’s solicitor asked the respondent to provide the claimant with written reasons for his dismissal. The respondent failed to provide any such written reasons.

### **The Law**

24. Under the Employment Rights Act 1996, s.98 deals with fairness of dismissal.

25. In particular:

- “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
  - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
  - (b) relates to the conduct of the employee,
  - (c) is that the employee was redundant, or
  - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) .....
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - (b) shall be determined in accordance with equity and the substantial merits of the case.”

**Conclusions**

26. On the facts of this case it is clear that the claimant originally gave notice to terminate his employment on 6 June 2018 to take effect on 20 July 2018, it is clear on 16 July 2018 Mr Andrew Jordan met the claimant at a public house and a note of that meeting is at page 74 and it was agreed that the claimant would withdraw his resignation and continue to work for the company, with some promise in the future that he would become a shareholder and perhaps profit share.

- 27. Sometime in July 2018, Mr Andrew Jordan suggests that the claimant might go back from a salaried position to hourly paid. The claimant said no and thereafter the claimant was paid a monthly salary not an hourly rate as his payslips show. From that date until 26 September 2018 the claimant continued in exactly the same role as he had done before. On 26 September 2018 the claimant was involved in an accident and was off work. It would appear after that date the respondent decided to get rid of the claimant one way or another, and effectively dismissed the claimant following the meeting on 5 November 2018 where the claimant was told at a meeting with Mr Andrew Jordan and Mr Mervyn Jordan that if he did not a new contract his job was at an end. The claimant was sent home. Clearly the claimant was dismissed and it is difficult to see where any potentially fair reason to dismiss falls within the legislation.
- 28. Clearly that dismissal was both substantively and procedurally unfair.
- 29. The respondent has conceded the claimant is entitled to holiday pay of 14 days and that sum was agreed at £1,555.23. It was also accepted that the claimant was due wages up and to the first week in November 2018, and that was £333.26.
- 30. As for compensation, the parties were then given 20 minutes to see whether it was possible to agree terms, on the parties returning it was clearly agreed by consent that the respondent would pay compensation in the total sum of £25,000.
- 31. The Judge's note records that quite clearly, it was never intends a global sum.

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Employment Judge Postle

Date: .....01.11.2019  
Judgment sent to the parties on

.....01.11.2019.....

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For the Tribunal office