



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Ian Eldridge

**Respondent:** Dangate Limited, Trading as Pass & Co

**Heard at:** East London Hearing Centre

**On:** 16 October 2019

**Before:** Employment Judge C Lewis

## Representation

Claimant: Ms S Hayes – trainee Solicitor

Respondent: Mr G Ridgeway - Consultant

# RESERVED JUDGMENT

- 1. The Claimant's claim for a redundancy payment succeeds, in the amount claimed, being the sum of £11,430.00 (statutory maximum week's pay £508.00 x 15 x 1.5 = £11.430).*
- 2. The Claimant is entitled to 12 weeks' notice pay, the gross sum before deductions for tax and national insurance being £7056.00 (the statutory maximum of 12 weeks' notice pay x £588.00 gross per week).*
- 3. Both amounts are payable forthwith.*

# REASONS

- The Claimant brought claims for:
  - (1) Failure to pay redundancy payment contrary to section 135 of the Employment Rights Act 1996, and
  - (2) Failure to pay notice pay contrary to section 86 of the Employment Rights Act.
- The Respondent denies that the Claimant is entitled to redundancy payment or to the amount of notice pay that he has claimed relying on a break in continuous service in February 2017. Absent the break in continuous service the Respondent does not deny that the Claimant would otherwise be entitled to a redundancy payment and statutory notice pay.

3. It was not in dispute that Mr Eldridge started working for Dangate Ltd on 1 September 2003 and that he was made redundant on 8 January 2019. The dispute between the parties centred around the events of February 2017 and whether there was a break in his continuous service as a result. The Respondent contends that the Claimant resigned his employment on 7 February 2017 although in its ET3 it gives the date as 7 August 2017.
4. The Tribunal had to decide whether the Claimant's continuous service dates from his original employment with the Respondent commencing on 1 September 2003 or whether his continuous service started on 1 March 2017.
5. It was accepted by the parties that there is a presumption of continuity within the Employment Rights Act 1996 (s 210(5)) and that the Respondent would need to establish that there was a break in his continuous service.

### **The evidence before the tribunal**

6. I heard evidence from the Claimant and from Mr Steven Lester on behalf of the Respondent.
7. It was not disputed that on 7 February 2017 the Claimant left a client's property without completing the work he had been sent there to carry out, following a heated discussion with the Respondent's office manager.
8. Mr Lester's evidence in his written statement was to the effect that as result of a voicemail message left for him by the Claimant on 7 February 2017 he understood that the Claimant no longer wanted his job; he then rang and spoke to the office manager Vivian Brock and was informed that there had been a dispute between her and Mr Eldridge who appeared to have walked off the site.
9. Mr Lester stated that he was expecting Mr Eldridge to come in to work the following day but Mr Eldridge did not turn up at the office. Over the weekend Mr Eldridge left a message for him on his answerphone informing him that he could keep pick up the company van from his home. Upon picking up the van the following Monday, 13 February 2017, he found the shelving inside the van had been removed and a printed sticker on the outside been scratched out. He did not consider the actions of Mr Eldridge to be those of someone who wished to continue with their employment. On receiving no further communication from Mr Eldridge he spoke to, or emailed, the bookkeeper advising her that Mr Eldridge had terminated his employment and asking for his P45. After posting Mr Eldridge his P45 he received a letter dated 20 February 2017 from Mr Eldridge stating that he had not terminated his employment. Mr Lester believed that at some point following the posting of the P45 the office was contacted by Mr or Mrs Eldridge by phone requesting a face-to-face meeting. Mr Lester visited Mr Eldridge at home where Mr Eldridge was contrite and apologetic and requested to continue his employment with Pass and Co (the trading name of the respondent).
10. After discussions with both his office manager Mrs Brock and his plasterer Thomas Lester it was agreed that as a gesture of kindness and due to the pressures of the workload at the time he would offer Mr Eldridge

employment on a part-time basis three days a week only; during a conversation with Mr Eldridge it was agreed it would be four days a week on a fixed term until 1 September 2017. Mr Lester states that he made it clear to Mr Eldridge in this new contract that this was not continuation of the old employment but was rather new employment and that Mr Eldridge accepted employment on a new fixed term contract until 1 September 2017.

11. It was not disputed that the term did not come to an end on 1 September 2017 and that after a few months Mr Eldridge increased his hours back to 5 days and carried on working for the Respondent until he was made redundant in January 2019.
12. In his oral evidence the timeline of events and indeed some of the events themselves were somewhat differently described.
13. Mr Lester confirmed that during the period of some from 7 February to 1 March 2017 the Claimant did not undertake any work the Respondent and that the only payment that he believes was paid was the two days for the week of 7th February 2017. He told the tribunal that his understanding was the Claimant had resigned because he didn't hear from him when he had walked off the site and because of the damage to the shelving the van and the sticker on the van and the fact that the brass fittings on the hoses in the van had been cut off. He believed that the Claimant contacted him on the Sunday (12<sup>th</sup> February 2017) leaving a message for him to come and pick up the van and Mr Lester inferred from the request that he pick up the van that the Claimant was signalling that was the end of his employment, that taken together with the message had been left on his answer machine on Tuesday 7 February.
14. Mr Lester told the tribunal that he did not recall having any contact with the Claimant between 7 February and 16 February although he believed that the Claimant's wife came into the office to try to arrange a meeting, he could not recall when that was.
15. Mr Lester acknowledged that sometimes things happen in the workplace due to stress and that he would never suggest that something done one day in the heat of the moment could not be undone, but he pointed out that he did not hear from the Claimant for a number of days. He denied leaving the Claimant a message asking him to arrange for the van to be collected and he didn't recall sending the Claimant a letter saying he needed to let him know if he was giving notice, although he accepted he may have referred to the four weeks' notice in a conversation and accepted there may have been a letter.
16. Mr Lester accepted that there was a four-week notice period under the contract [bundle p.20] and the four weeks' notice applied to either side to terminate the agreement.
17. When asked about the letter dated 10 February 2017 which the Claimant recalls receiving from him, Mr Lester accepted that if there was a letter that it may have referred to the notice period. When asked what the purpose of sending that letter would have been he told the tribunal that the purpose would be to bring it to the Claimant's attention that he did not work his notice and had just walked off site. He acknowledged just walking off site was not

enough on its own to indicate that the Claimant had resigned but he considered it was enough in conjunction with the damage to the van, and that the Claimant couldn't work without the van. Mr Lester said that he tried to give a few days cooling off period between the call on 7<sup>th</sup> February and contacting him but the Claimant did not take the opportunity.

18. He recalled that he had a meeting on 16 February with the Claimant at his home and it was more than two days after that that he agreed to take the Claimant back as he was still reluctant to do so. He told the tribunal that if the Claimant had damaged the van maliciously then he would not want him back at work. He had been adamant he wasn't taking the Claimant back but there were two members of staff who felt sorry for the Claimant and they persuaded him to take him back.
19. Mr Lester accepted that at that meeting on 16 February the Claimant had told him that he did not intend to resign on the 7<sup>th</sup> February, but told the tribunal that in his own view it was clear the Claimant did. Mr Lester received a letter from the Claimant dated 20 February 2017 repeating that he did not intend to resign [bundle pages 23 and 24] and that there was a response dated the 21<sup>st</sup> February 2017 [p.25] in which he 'accepted' the Claimant's resignation. When it was suggested that that letter may not have been sent to the Claimant he could not be one hundred percent sure that it had. He acknowledged that the Claimant's letter referred back to a letter from him on 10 February which pointed to there having been a letter sent by him, he also acknowledged that his letter dated 21 February refers to enclosing the Claimant's P 45 which would be inconsistent with it having already been sent by him as he stated in his witness statement. He vaguely recalled a conversation with the Claimant in which the Claimant stated he wanted to return to work but he didn't recall the Claimant saying that he had not said he was resigning. It was pointed out to Mr Lester that part of his letter [page 25] was crossed out which suggested that it was a draft and had not been sent which would explain why the Claimant had never received the letter nor the P45. Mr Lester believed it would have been sent in the normal post with the P45 but again could not be one hundred per cent sure. Mr Lester recalled that the Claimant had given or shown him a copy of his sick certificate at the meeting on the 16<sup>th</sup> which had covered the period up to that date, he believed he had returned the certificate to the Claimant because it was of no importance to him.
20. In his evidence the Claimant accepted that he walked out of the client's property on 7 February. He had been upset and frustrated at the time because of the way he had been spoken to by Mrs Brock . He had left a message about stuffing the job or leaving the job, by which he was referring to the job at the client's property and not his employment with the Respondent. He left because he felt he needed time to calm down and believed that if he spoken to Mrs Brock again that things could have escalated.
21. The Claimant recalled receiving a letter from Mr Lester dated 10 February, which referred to his four-week notice period. He did not respond because he was upset and very stressed out and at that point he had yet to calm down. The Claimant also recalled Mr Lester leaving him a voicemail message on 8<sup>th</sup> February asking him to return his van and in response he contacted Mrs Brock and told her the van was ready to be picked up. The

first time he spoke directly to Mr Lester was on 16 February he didn't accept that his actions in between times were consistent with having resigned. He accepted that he removed the shelving which he had installed in the van at his own cost but denies removing the brass fixings from the hoses as an act of spite. He explained he had been asking for replacements for those and had to remove one fitting from one of the hoses in order to use it on another hose when he needed a longer hose for a particular job. He could understand how Mr Lester could see that the connection had been removed from the hose and think that he done it out of spite but that was not what had happened. He did not accept that removing the shelving from the van suggested he was not going to use the van again ever, but he accepted that he was being petty and stupid. He thought that Mr Lester was being petty in asking for the van because the Claimant was not working and he thought he would be petty as well.

22. There are no minutes of the meeting on 16 February between Mr Lester and the Claimant. Both Mr Lester and the Claimant recalled a discussion about the Claimant's wish to return to work The Claimant recalled Mr Lester saying ""give me a few days to think about it ". When he had not heard from him after a few days he sent the letter dated 20 February 2017, which he described as a grievance.
23. Mr Lester told the tribunal that on receipt of the Claimant's letter he considered that the Claimant had not taken responsibility for his actions and decided to terminate his employment, he drafted the letter dated 21 February 2017 and believes he posted it that day, enclosing the Claimant's P45.
24. The Claimant denies receiving that letter or his P45, although he accepted the letter was probably drafted at the time.
25. The new contract was signed on 28 February 2017 with a start date of 1 March 2017. The Claimant recalled that after he sent his letter on 20 February, Mr Lester rang him on the Thursday, which was the 23<sup>rd</sup> February, telling him that he could return to work part-time. He was told he would be part-time due to the stress levels he was showing and that he could start back on 1 March. He accepted that his hours were cut but he wanted the job and wanted to carry on: he had never wanted to resign. He believed the reason he was asked to sign a new contract was because his hours had gone down but as far as he was aware it was not true that it was a completely separate and new contract. He recalled that he went in on the Monday morning and Mr Lester gave him the contract to sign and said that he needed it back as soon as possible. The Claimant read it and signed it but didn't register the part about no continuous employment.
26. He did not query the fact that the new contract was fixed term, he thought that was just in respect of the part-time hours and eventually he would return to full-time hours; which he in fact did, he thinks probably about two months later. He was never issued with a new full-time contract.
27. The Claimant accepted that he was not paid in the period between 8 February and 1 March 2017. He thought he had not been paid in the intervening weeks because he had not complied with the correct protocol for reporting his absence. He did not expect to be paid in the circumstances

as he had not turned up for work, however he had then provided sick certificates. The Claimant was able to produce a sick certificate dated 22 February 2017, which lasted until 8 March 2017, this was handed up to the Tribunal.

### **Findings**

28. I am satisfied that when the Claimant walked off the job at the client's house he did so in the heat of the moment. The reference to the 'job' in his voicemail to Mr Lester was potentially capable of interpretation as being his employment and not just the particular job in question. However I find that the Claimant intended to refer to the particular job in question and having calmed down somewhat did not intend, or wish, to resign from his employment.
29. I am satisfied that at the time Mr Lester considered that Mr Eldridge had acted in the heat of the moment and did not necessarily intend to resign. I find this is consistent with his evidence that he expected the Claimant to be at work the following day, Wednesday, (8<sup>th</sup>) and then again on Thursday (9<sup>th</sup> of February).
30. I accept the Claimant's evidence that he received a letter from Mr Lester dated 10 February 2017, in which he asked the Claimant to clarify his intentions and whether he intended to work his four-week notice period. This is consistent with the Claimant referring to that correspondence in his subsequent letter dated 20 February 2017.
31. I am satisfied that at the time he sent that letter Mr Lester considered the Claimant still to be bound by the employment contract and the provision within it in respect of notice.
32. I accept the Claimant's evidence that he received a message from Mr Lester asking when he could collect the van and that it was in response to this message that he removed the shelving. I also accept that he did not remove the brass fittings from the hoses at this time, or as an act of spite.
33. I find that the Claimant's wife Mrs Eldridge attended the Respondent's office in the week commencing 13 February and asked Mr Lester to meet with her husband to try to sort things out and a meeting was arranged for 16 February (which was the Thursday of that week). I find that Mr Eldridge told Mr Lester at that meeting that he did not intend to resign, that he provided Mr Lester with a copy of a sick certificate which covered his absence, and that Mr Eldridge referred to the letter of 10 February and his four-week notice period and told Mr Lester that he did not intend to give notice but wished to return to work when he was fit to do so. I find that Mr Lester told the Claimant that he wished to consider the position before agreeing to the Claimant returning to work and he told the Claimant that he would get back to him in a couple of days. When he did not do so the Claimant sent him the letter of 20 February 2017 which reiterated the Claimant's position, confirming that he had not intended to resign.
34. If the letter was posted as suggested by Mr Lester on 21 February then in the normal course of the post it could be expected to be received within two days of posting, which would have been 23 February, the Thursday of the same week.

35. It is clear on the evidence before me that whatever he had decided, or intended to communicate on 21 February, Mr Lester had a change of heart and by 28 February 2017 (the following Tuesday) he had agreed to take the Claimant back. A contract was signed for the Claimant to work four days a week starting on (Wednesday) 1 March 2017.

### Continuous employment

36. The relevant provisions of the Employment Rights Act 1996 are as follows;  
**Section 210**

(1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In any provision of this Act which refers to a period of continuous employment expressed in months or years—

- (a) a month means a calendar month, and
- (b) a year means a year of twelve calendar months.

(3) In computing an employee's period of continuous employment for the purposes of any provision of this Act, any question—

- (a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
- (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with section 211.

(4) Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

(5) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

### Section 212 Weeks counting in computing period

(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) ...

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—

- (a) incapable of work in consequence of sickness or injury,
  - (b) absent from work on account of a temporary cessation of work, or
  - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, or
  - (d) ...
- counts in computing the employee's period of employment.

### Conclusions

37. I am satisfied that each of the weeks between 7th February and the 28<sup>th</sup> February 2017 count towards computing the Claimant's period of

employment. On the evidence before me I find that in each of those weeks at least part of that week is covered by a period in which the contract of employment existed between the Claimant and the Respondent.

38. I have found that in the week commencing Sunday, 5 February the Claimant worked on the 6th and 7th of February and was expected by the Respondent to attend work on the 8th and 9th of February, when he did not do so was asked on 10th February whether he intended to give notice.
39. During the week commencing 12 February 2017 the Claimant and the Respondent met on 16 February and the Claimant informed the Respondent that he had not intended to resign, that he did not intend to give four weeks' notice, and that he intended to return to work; he also provided a sick note covering his absence.
40. In the week commencing 19 February 2017 the Claimant wrote to the Respondent confirming that he did not intend to resign and asking to return to work when he was fit to do so enclosing a sick certificate. Mr Lester's letter dated 21 February accepting the Claimant's conduct as his resignation and terminating the Claimant's employment would not have been received by the Claimant until Wednesday the 22<sup>nd</sup> at the earliest which means that at least part of that week was governed by the contract of employment.
41. The next week was the week beginning 26 February, it is common ground that the new contract was in place from 28th February 2017 and was stated to commence on 1 March 2017, the Wednesday of that week, so again, at least part of that week was governed by a contract of employment.
42. I find therefore that there is no gap in weeks during which the whole or part of the week are governed by a contract of employment between the Claimant and the Respondent.
43. Further, the Claimant and Respondent were each required to give four weeks' notice to terminate the contract, even if either party had sought to terminate the employment in that period I'm satisfied neither party intended to do so without providing the required notice.
44. Further I am also satisfied on the evidence before me that the Claimant was covered by sick certificates from the week commencing 12 February 2017 to the week commencing the 19<sup>th</sup> February 2017 and that he also submitted a further certificate commencing on 22 February 2017 which covered him up to 8 March 2017 incapable of work in consequence of sickness during that time.
45. I find that the Claimant has continuous service from 1 September 2003 until the termination of his employment on 8 January 2019.
46. The Claimant is entitled to a statutory redundancy payment and statutory notice pay to reflect his 15 years' service, calculated as follows:

***Redundancy payment***

- 46.1 The Claimant is entitled to the sum of £11,430.00. His date of birth is 27 February 1962, at the date of termination he had 15 complete years' service, for each of which he is over the age of 41 and is entitled to 1.5



week's pay; the applicable statutory maximum week's pay is £508.00 . The redundancy payment is calculated as follows, £508.00 x 15 x 1.5 = £11.430.00.

***Notice pay***

46.2 The Claimant is entitled to 12 weeks' notice pay, the gross sum before deductions for tax and national insurance being £7056.00 (the statutory maximum of 12 weeks' notice pay x £588.00 gross per week). The Claimant is entitled to the sum after deduction of any applicable tax and national insurance payments.

46.3 The sums set out at 46.1 and 46.2 above are payable by the Respondent forthwith.

Employment Judge C Lewis

Date 14 November 2019