



EMPLOYMENT TRIBUNALS

Claimant: Thomas Smith

Respondent: Highscore Scaffolding Ltd

Heard at: Ashford Employment Tribunal

On: 15 October 2019

Before: Employment Judge Martin

Representation
Claimant: Mr S Crawford – Counsel
Respondent: Mr Tapsell - Counsel

JUDGMENT ON RECONSIDERATION

1. The Claimant was not dismissed pursuant to s104 Employment Rights Act 1996 and his claim for automatic unfair dismissal is dismissed.
2. The Respondent breached the Claimant's contract of employment by not making a payment for notice. The Respondent shall pay to the Claimant one weeks' gross pay.

REASONS

1. This judgment on reconsideration is made following an application by the Claimant dated 18 November 2019. The Claimant rightly pointed out that the judgment dated 18 October 2019 ("the judgment") did not deal with the issue of whether the Claimant was dismissed for asserting a statutory right (namely for a statement of terms of employment pursuant to s1 Employment Rights Act 1996) and notice pay. The application was copied to the Respondent who as at the date of the reconsideration (5 December 2019) had not commented on it. In these circumstances the application was dealt with on the papers.

2. S1 Employment Rights Act 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee alleged that the employer had infringed a right of his, which includes the right to have a written statement of terms and conditions of employment as provided by s1 of the Employment Rights Act 1996.
3. This judgment is to be read in conjunction with the judgment dated 18 October 2019. The facts in that judgment are relevant to this judgment.
4. The Respondent accepts that it did not provide the Claimant with a contract or any statement of terms of employment which complies with s1 Employment Rights Act 1996. The statutory provision sets out terms which must be included and that the statement should be given within 8 weeks from the start of the Claimant's employment.
5. Paragraph 30 of the judgment sets out the content of messages passing between the Claimant and the Respondent. This includes the following: "**by law I should have been given my contract within the first two months**" and goes on to say: "**by law you cannot deduct a penny from my wages without it being in writing**". This clearly amounts to an assertion of a statutory right.
6. The question therefore is whether the principal reason for dismissal was because the Claimant asserted a statutory right. The judgment sets out the context in which the Claimant asserted this right. This was in the middle of what is described in the judgment as terse communications between the parties following the Claimant's removal from site and related primarily to the use of a van. This was clearly the focus of that communication.
7. In submissions the Claimant said, in relation to the claim of automatic unfair dismissal for asserting a statutory right, that the contract of employment claim was advanced on the basis that the Claimant was creating a nuisance by requesting it again and again and regardless of what the Respondent thinks, he is entitled to this. It was submitted that Mr Cook lost patience with the Claimant because he was asking too many questions about things he was perfectly entitled to ask about.
8. The Respondent's submissions on this point is that the references to breaches of statutory rights are part of the deluge of correspondence between 6 and 9 December 2018. It was submitted that the main thrust of the correspondence and communications was about the return of the van and that the Claimant adopted a trenchant approach saying he was keeping the van. The submission was that the situation is clear, and it was the return of van that that was the trigger. It was submitted that the Claimant was throwing everything at his employer as part of his argument about not having the van taken away.
9. Taking all these matters into account I find that the principal reason for dismissal was the Claimant's refusal to return the van. This argument had been ongoing before the references in the conversations referred to above. I find on balance that the Respondent, whilst it may not have liked the reference to a

failure to comply with statutory obligations was not motivated to dismiss for this reason primarily. The main concern was the issue relating to the van.

10. I do not consider that the Claimant was dismissed for asserting a statutory right and therefore this part of the Claimant's claim is dismissed.
11. As set out in the judgment my finding is that the Respondent dismissed the Claimant. The Respondent did not pay notice to the Claimant. The Claimant was not dismissed for gross misconduct and therefore notice pay is due. The Claimant was continuously employed from 1 May 2017 until 9 December 2018. The Claimant was therefore employed for one complete year and is entitled to one weeks' notice pay to be paid gross. The parties are to agree the amount of notice pay to be paid. There is no uplift applicable for breach of the ACAS code of practice.

Employment Judge Martin
Date: 05 December 2019