



EMPLOYMENT TRIBUNALS

Claimant: Mr P Coss

Respondent: Bennington Foods Ltd

PRELIMINARY HEARING

Heard at: Nottingham (in public)

On: 16 December 2019

Before: Employment Judge Camp (sitting alone)

Appearances

For the claimant: in person

For the respondent: Mr D Bansal, solicitor

JUDGMENT & DEPOSIT ORDER

- (1) The Tribunal is not satisfied that the claim has no reasonable prospects of success.
- (2) The claim has little reasonable prospects of success. The claimant is **ORDERED** to pay a deposit of **£100** not later than 28 days (4 weeks) from the date this Order is sent as a condition of being permitted to continue to advance those complaints. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.
- (3) Full reasons for the above decision were given orally at the hearing. Written reasons will not be provided unless they are asked for by any party by a written request made within 14 days of the sending of the written record of the decision.
- (4) In accordance with rule 39(3), these are, in summary, the reasons for making the deposit order.
 - a. There is only one complaint: unfair dismissal. The claimant was dismissed with notice from his job as a Production Operator at a plant producing pet food for misconduct. The effective date of termination was 29 August 2019.

- b. In January 2019, the claimant had been given a final written warning, for doing something he, essentially, admits he did. The warning was 'live' when he was dismissed. Based on what he told the Tribunal at this hearing: he was fortunate not to have been dismissed in January 2019; there is no chance of him being able to argue successfully at the final hearing that the final written warning was invalid and/or ought not to have been taken into account when deciding to dismiss.
- c. The alleged misconduct the respondent relied on when dismissing the claimant was: he had asked one or more colleagues to clock out for him in order to falsify his time sheet; secondly, he failed to ensure that there was 'powder' that the plant needed in order to operate and it had to be shut down for a time; thirdly, he verbally abused a manager.
- d. The claimant's case is: in relation to the clocking-out allegation, that two of his colleagues made it up to get him into trouble; in relation to the second allegation, that although it is true that the plant shut down because of lack of powder and although it was his job to prepare the powder, what happened was not his fault because a manager and five or six of his colleagues conspired together and deliberately chose not to tell him what type of powder he needed to prepare, because they wanted to get him into trouble; that although he did tell a manager to "fuck off", he was provoked – deliberately – by the manager calling him a "fucking idiot".
- e. Again based on what he told the Tribunal at this hearing, the claimant accepts: that the people who decided to dismiss and to uphold the decision to dismiss on appeal acted in good faith and genuinely believed he was guilty of the alleged misconduct on reasonable grounds, after a reasonable investigation; that the procedure followed was reasonable; that, based on the information they had, it was reasonable for the decision-makers to decide to dismiss and to uphold that decision on appeal.
- f. The only way in which the claimant could win this case would be if the Tribunal at the final hearing decided both of the following things, and the chances of that are very small indeed:
 - (i) that the claimant had been 'set up' by a manager who wanted to 'get rid' of him;
 - (ii) that, following the recent decision in Royal Mail Group Ltd v Jhuti [2019] UKSC 55, if the claimant was set up by a manager, this means that the principal reason for his dismissal was not a reason relating to his conduct or any other potentially fair reason, and/or that the dismissal was unfair under section 98(4) of the Employment Rights Act 1996.

CASE MANAGEMENT ORDERS

1. Although the Tribunal decided not to strike out the claimant's claim for unreasonable conduct, because the claimant was not warned that this might happen and because a fair trial remains possible, he has been conducting these proceedings unreasonably, in that he has verbally abused Tribunal staff over the telephone, has written abusively to the Tribunal and to the respondent, and behaved inappropriately during this hearing. **The claimant is warned that if he continues to behave in this kind of way, his claim may well be struck out, pursuant to rule 37(1)(b) of the Employment Tribunals Rules of Procedure.**
2. The case management orders set out in the second page of the "*Notice of a Claim*" dated 25 September 2019 are set aside.
3. The following case management orders will take effect if the claimant pays the deposit on time.
4. There will be a 3 day final hearing in Nottingham on the first available dates after 27 March 2020. The claimant and the respondent are providing to the tribunal with a list of any dates they are not available between the end of March and the end of September 2020 by 23 December 2019. A formal notice of hearing will be sent out in due course.

Schedule of Loss

5. The claimant must by **20 January 2020** send to the respondent [care of its representatives] and the Tribunal a document setting out how much compensation for lost earnings or other losses he is claiming and how the amount has been calculated. This is called a Schedule of Loss.
6. If the claimant has been dismissed and wants to be reinstated or re-engaged, the Schedule of Loss must say so.

Documents

7. By **3 February 2020** the respondent must send the claimant copies of all documents relevant to all issues in the case.
8. By **17 February 2020** the claimant must send the respondent copies of any other documents relevant to those issues. This includes documents relevant to financial losses.
9. Documents includes recordings, emails, text messages, social media and other electronic information. You must send all relevant documents you have in your possession or control even if they do not support your case.

File of documents

10. By **24 February 2020**, the claimant and the respondent must agree which documents are going to be used at the hearing.
11. The respondent must prepare a file of those documents with an index and page numbers. They must send a hard copy to the claimant/respondent by **2 March 2020**.
12. The file should contain:
 - 12.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
 - 12.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order, unless there is a good reason to do something different.
13. The claimant and the respondent must both bring a copy of the file to the hearing for their own use.
14. The respondent must bring two more copies of the file to the hearing for the Tribunal to use by 9.30 am on the first morning.

Witness statements

15. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.
16. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
17. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
18. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
19. The claimant and the respondent must send each other copies of all their witness statements by **no later than 1 month before the hearing**.
20. The claimant and the respondent must both bring copies of all the witness statements to the hearing for their own use.

21. The respondent must bring two more copies of the witness statements to the hearing for the Tribunal to use by 9.30 am on the first morning.

About these orders

22. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
23. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

24. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

25. All judgments and any written reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.
26. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
27. The Employment Tribunals Rules of Procedure are here:
www.gov.uk/government/publications/employment-tribunal-procedure-rules
28. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:
www.gov.uk/appeal-employment-appeal-tribunal

Employment Judge Camp

19 December 2019

SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

NOTE ACCOMPANYING DEPOSIT ORDER
Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.
2. If that party persists in advancing that/those allegation(s) or argument(s), a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the allegation(s) or argument(s) to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.
5. If the deposit is not paid within that time, the allegation(s) or argument(s) to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation(s) or argument(s) against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.
8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.
9. Payment must be made to the address on the tear-off slip below.
10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.
12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 9763096. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you

are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

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DEPOSIT ORDER

**To: HMCTS Finance Centre
 The Law Library
 Law Courts
 Small Street
 Bristol
 BS1 1DA**

Case Number _____

Name of party _____

I enclose a cheque/postal order (*delete as appropriate*) for £_____

Please write the Case Number on the back of the cheque or postal order