



EMPLOYMENT TRIBUNALS

Claimant: Mr R Smith

Respondent: RDP Metalwork Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The Claimant's claim that he was automatically unfairly dismissed contrary to section 103A Employment Rights Act 1996 is well founded.
2. The Respondent is ordered to pay the Claimant the sum of **£3,445**.

REASONS

1. The Claimant's Claim Form was served and sent to the Respondent. A response was due by 12 November 2019. No response was received. I am required by Rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made on the claim and, if so, obliged to issue a judgment which may determine liability and remedy.
2. The Respondent's principal place of business is at Moorland Way, Cramlington, Northumberland NE23 1 WE, where the Claimant works. The Respondent's directors, Mr and Mrs Kirkpatrick also work there. The Respondents have not responded to the proceedings. I was informed by the Claimant and I accept that Mr Kirkpatrick has not responded to emails sent by the Claimant and/or his mother either. The proceedings were served on the company's principal place of business.

3. At a preliminary hearing held on 11 December 2019 I was provided with further information by the Claimant, who was accompanied at the hearing by his mother, Mrs Leanne Lodge-Smith.
4. I have in the claim form and as a result of the information obtained at the preliminary hearing sufficient material to find the claim of automatically unfair dismissal proved on a balance of probabilities. I also have sufficient material to determine the award.
5. The Claimant was employed as an apprentice metal worker. He had completed level 2 of his apprenticeship and was aiming to complete his apprenticeship by September 2019 following which he hoped to be taken on full time by the Respondent. The Claimant had had a number of concerns about health and safety at the Respondent's factory. Towards the end of 2018 he contacted his training provider to disclose his concerns. His training provider contacted the HSE and about 2 weeks after that, an HSE inspector attended the factory. However, he continued to have concerns which are set out in his details of complaint.
6. The Claimant had occasion to work with acid during the course of his employment. He was not given protective gloves or suitable clothing when undertaking this exercise. He had experienced the direct effect of acid coming into contact with his skin which resulted in an unpleasant discoloration of the skin and temporary scarring. The day before his employment was terminated he raised his concern again regarding protective equipment with the foreman. He asked about suitable protective gear. The foreman could have been under no misapprehension that the Claimant was effectively saying that there was no suitable safety equipment available to enable him to carry out his work safely. The Claimant reasonably believed that the information he gave the foreman (absence of safety gear) tended to show that the health and safety of an individual was likely to be endangered and that the respondent was failing to comply with a legal obligation to provide a safe system of work. The Claimant was concerned not only about his own welfare but that of other workers and reasonably believed that in making his disclosure he was doing so in the public interest. When the foreman said 'good luck with that' (implying that the gear would not be provided) the Claimant said that he was going to report the company to the HSE again. The very next day he was dismissed, the purported reason being his poor performance and that his college had refused to take him to level 3, something which the Claimant has evidence to contradict.
7. The Claimant had never had any kind of warning about his performance during his employment and no procedure or any attempt to follow a fair procedure was followed by the Respondent. I have more than enough material to enable me to infer that the purported reason was in fact a false reason and that the principal reason for his dismissal was that he had made a protected disclosure to the foreman on 06 June 2019, that this information was passed on to Mr Kirkpatrick, who decided to terminate the Claimant's employment because he had made the protected disclosure and was to report the company to the HSE. His dismissal was automatically unfair as being contrary to section 103A Employment Rights Act 1996. If I were wrong about that, I would have concluded from the material available that the principal reason for the Claimant's dismissal was that

- there being circumstances of danger (unprotected contact with acid) which the Claimant reasonably believed to be serious and imminent - he proposed to take appropriate steps (namely report the company to the HSE) to protect himself and other persons from that danger. Therefore, had I not found from the material before me that the dismissal was automatically unfair as being contrary to section 103A, I would have concluded that it was unfair as being contrary to section 100 Employment Rights Act 1996.
8. The Claimant's employment was terminated without notice on 07 June 2019. He earned £212 a week. He was unemployed for 3 months. Since 09 September 2019 he has managed to mitigate his loss. His losses come to £2,756.
 9. The Respondent followed no procedure prior to terminating the Claimant's employment. It unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and in particular (although not limited to) paragraphs 4, 7, 9, 10, 11 and 26. I increase the award of £2,756 by 25% resulting in a total award of **£3,445**.
 10. The recoupment provisions apply to the award of immediate loss of earnings – which is all of the award in this case. The Claimant had claimed universal credit from about 13 June 2019. The Prescribed Element is **£3,445**. The Prescribed Period is 08 June 2019 to the 11 December 2019. The total amount under the above awards is **£3,445**.

Employment Judge **Sweeney**

Date: 11 December 2019