



EMPLOYMENT TRIBUNALS

Claimant: Mr A Rowland

Respondent: Bristol Street Fourth Investments Ltd

Heard at: Nottingham

On: 17 January 2020

Before: Employment Judge Brewer

Representation

Claimant: In person

Respondent: Ms L Gould, Counsel

JUDGMENT having been sent to the parties on 25 January 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. In this claim the claimant claimed that he suffered a detriment under s.47C, Employment Rights Act 1996 (ERA) for taking time off pursuant to his rights under section 57A ERA, and that he was automatically unfairly dismissed pursuant to section 99(3)(d) ERA for exercising the same right. The detriment amounted to being required to provide evidence of sickness absence unrelated to the purported section 57A leave.
2. At the hearing the claimant represented himself, the respondent was represented by Ms Gould of Counsel.
3. There were witness statements from the claimant and the respondent, and we had an agreed bundle running to some 111 pages.

Issues

4. The issues to be determined in this case were identified at a case management hearing on 14 October 2019 which the claimant attended. Four questions were identified as follows:

- a. Did the claimant take time off on 10 and 11 December 2018?
 - b. If so, did the claimant comply with the notice requirements under s.57A(2)?
 - c. Was the time off leave within the meaning of s.57A, that is it was for one or more of the 5 reasons under s.57A(12) and the time off was reasonable? I note that the claimant relies on s.57A(1)(a) and/or (b).
 - d. If so:
 - i. Was the reason or principal reason for the dismissal that he had taken the time off?
 - ii. Was the claimant required to produce evidence of subsequent sickness absence (in 2019), if so, was this because of his absence on 10 and 11 December 2018, and if so, was this a detriment?
5. Given that the burden of proof is on the claimant, he gave his evidence first.

Law

6. The relevant legislative provisions are as follows”

47C Leave for family and domestic reasons.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to...

(d) time off under section 57A.

57A Time off for dependants.

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—

(a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,

(b) to make arrangements for the provision of care for a dependant who is ill or injured...

(2) Subsection (1) does not apply unless the employee—

(a) tells his employer the reason for his absence as soon as reasonably practicable, and

(b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

99 Leave for family reasons.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this section “ prescribed ” means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to...

(d) time off under section 57A...

7. As well as the above statutory provisions, I had regard to the case of **Qua v John Ford Morrison [2003] ICR 482.**

Findings of fact

8. Given how the hearing unfolded, it is necessary only to make short findings of fact.
9. The claimant said that on 10 December 2018 he found his mother suffering with respiratory problems. He took her to his local Accident and Emergency department arriving at around 9.00 or 9.15 am.
10. The claimant's mother was seen by staff and admitted to hospital at around 3.00 pm. She remained in hospital until 13 December when she was discharged.
11. The claimant said that he remained with his mother in hospital on both 10 and 11 December.
12. For reasons which follow, those are the material facts.

Discussion

13. At this point in the claimant's evidence Ms Gould asserted that, given what the claimant's evidence had been and given the way he had put his case – that he was treated detrimentally and dismissed because of the totality of the leave upon which he relies - cannot have been leave within the meaning of s.57A and thus the claimant's claims could not succeed.
14. In **Qua** (above), a case involving care for a sick child, the EAT made a number of important observations about s.57A leave:

15. At paragraph 15 the EAT said:

By way of general observation, and having regard to the Directive and in particular the use of the words "force majeure" when referring to time off from work during working hours, we agree with the Tribunal's conclusions at paragraph 22 as to the nature of the absences contemplated in this section. The statutory right is, in our view, a right given to all employees to be permitted to take a reasonable amount of time off work during working hours in order to deal with a variety of unexpected or sudden events affecting their dependants, as defined, and in order to make any necessary longer-term arrangements for their care

16. And at paragraph 16 the EAT said:

The right to time off to "...provide assistance" etc. in subsection (1)(a) does not in our view enable employees to take time off in order themselves to provide care for a sick child, beyond the reasonable amount necessary to enable them to deal with the immediate crisis... Under subsection (1)(b) time off is to be permitted to enable an employee to make longer-term arrangements for the care of a dependant, for example by employing a temporary carer or making appropriate arrangements with friends or relatives.

17. In this case, as the claimant said in evidence, some time around 9.00 to 9.15 am he handed his mother over to A&E staff who provided immediate care and who in turn admitted her and handed her over to a ward where she was cared for from around 3.00 pm until her discharge.

18. Thus, on one view, taking s.57A(1)(a) first, when the claimant handed his mother over to A&E staff, he had at that stage dealt with the immediate crisis, to use the wording in **Qua**. Even if that is wrong, if for example it is argued that he continued to deal with the crisis by staying with his mother, it is entirely clear that once the patient had been admitted and thus handed over to ward staff she was under their care, and at that stage the claimant's absence ceased being under s.57A(1)(a). That was, by his evidence, around 3.00 pm on 10 December. In my judgment that is the very latest the claimant could assert that he was taking leave under s.57A(1)(a) although as I have stated, in my judgment the earlier time is preferred. The claimant pleaded s.57(1)(b) in the alternative but there was no evidence of the need for any long-term provision of care in this case. Even if there was such care, that care was not put in place on either 10 or 11 December 2018 as the claimant's mother was being looked after in hospital. I reject the claimant's submission that merely remaining, as it were, by his mother's bedside, he was within s.57A.

19. As I have set out above, the claimant puts his case thus: because he took 10 and 11 December 2018 off under s.57A, the requirement for him to provide evidence of his need for sick leave in 2019 and his subsequent dismissal were both because he took the original two days s.57A leave. But in my judgment, the claimant did not take 2 days leave under s.57A. At best his s.57A leave ceased when his mother was handed over to A&E which on

20. his evidence was 9.00 or 9.15 am on 10 December. Even if that is wrong, it certainly ceased when she was admitted to hospital at around 3 o'clock in the afternoon of 10 December. Thus, much of the time off the claimant took on 10 December, and none of the time off on 11 December 2018 fell within s.57A and the claimant cannot make out his case which must therefore fail.

Employment Judge Brewer
Date 3 February 2020

REASONS SENT TO THE PARTIES ON

.....
.....

FOR THE TRIBUNAL OFFICE