



EMPLOYMENT TRIBUNALS

Claimant: Mr C Chadbourne

Respondent: CFN Packaging Group Limited

Heard at: Lincoln **On:** Thursday 19 December 2019

Before: Employment Judge P Britton (sitting alone)

Representatives

Claimant: Did not attend and No explanation given

Respondent: Mr J Alexander, Finance Director

JUDGMENT

The judgment of the Employment Tribunal Judge is as follows:-

1. Albeit the dismissal was unfair, pursuant to section 122 and 123 of the Employment Rights Act 1996 I conclude in the absence of any appearance by the Claimant today to gainsay my finding, that he wholly contributed to his dismissal. I therefore make contributory reductions of one hundred per cent in terms of the basic award and the compensatory award, meaning that I award no compensation for the unfair dismissal.
2. Upon the same having been conceded as to liability by the Respondent, I do find that the Claimant is entitled to two weeks' net wages in lieu of notice and I accordingly order the Respondent to pay the Claimant the sum of £526.00.

REASONS

Introduction

1. The claim (ET1) was presented to the Tribunal on 23 May 2019. The Claimant had prepared it himself. Read in isolation it would clearly be an unfair dismissal in that he said that he was dismissed without any notice and he appeared to be suggesting there was no employment history so to speak that would justify the same.

2. However upon reading the response it became clear that in fact he had been on a final written warning imposed on 26 September 2018. This had been imposed for in effect misconduct as is clear from the warning letter placed before me today by the Respondent. The written warning was to last for 12 months which of course would take it to 25 September 2019.

3. Additional evidence from Mr Alexander today, including a photograph, is that on 16 November 2018 the Claimant was found asleep on the nightshift which he was working. The Respondent gave him the benefit of the doubt on the basis that he had just done two weeks' nights and changing from one shift to another might have caused him to be fatigued. On the other hand this of course fits, says Mr Alexander, with the kind of pattern one can see apropos the final written warning.

4. On 4 March 2019 he did not attend work. He made no contact with his employer, which obviously caused disruption. The following day the then supervisor dismissed him there and then.

5. Now of course if the Claimant had attended today then prima facie, this was at least a procedural unfair dismissal; but he has not attended. Mr Alexander concedes very fairly that the dismissal would be procedurally unfair but points out the history and that this was in effect a further act of misconduct within the currency of the warning. What he is in effect saying is that even if there had been a fair procedure, it would have made no difference because he would nevertheless have been dismissed. It is accepted by Mr Alexander that he should have been paid his notice entitlement which is two weeks. He has provided me with the necessary figures.

6. What it therefore means is that with his consent I have determined that this dismissal was procedurally unfair. However I have then engaged sections 122 and 123 of the Employment Rights Act 1996. Bearing in mind that the Claimant has not attended and has given no explanation and was not picking up his phone when at my behest the Clerk attempted to contact him this morning, I have proceeded with the case, as I am entitled to do under rule 47 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013. I factor in that the parties were sent written notice of this hearing on 26 October 2019. As to contributory conduct, under section 122(2) I can reduce the basic award where I consider that "any conduct of the complainant before the dismissal.. was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent...". And then under section 123(6) when it comes to calculating the compensatory element of the award, I can so reduce the same if I find that the dismissal was "to any extent of caused or contributed by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that failing".

7. I bear in mind that the Respondent actually gave the Claimant a second chance when it reemployed him shortly after the dismissal in March, but consequent upon him on 3 June 2019 verbally threatening his supervisor with violence, he was again dismissed on 17 July 2019. In effect what Mr Alexander says is that unfortunately shows the character of Mr Chadbourne.

8. There is no further claim for unfair dismissal in relation to the dismissal of him on that second occasion. He is of course now well out of time.

9. So when I come back to the dismissal in March 2019, clearly it was procedurally unfair and indeed the supervisor who dealt with it is no longer employed by the Respondent. But the Claimant was subject already to the final written warning. He had been given a further chance when found asleep on 16 November 2018; but then he had not turned up for work on the 4th March and given no explanation whatsoever as to why not.

11. In those circumstances I conclude that he has wholly contributed to his misfortune and therefore I am not going to make either a basic or a compensatory award.

12. However this was a case where he ought to have received his notice pay and Mr Alexander has conceded that. He would have been entitled to two weeks' statutory notice pay. The net weekly wage is £264.00 and therefore the entitlement is £526.00. I accordingly make judgment for that sum.

Employment Judge Britton

Date: 28 January 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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