



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Dixon

**Respondent:** S M Trucking Ltd

**Heard at:** Southampton **On:** 27 January 2020

**Before:** Employment Judge Reed sitting alone

**Representation**

**Claimant:** Ms G Dawson, Citizens Advice Bureau

**Respondent:** Mr S Moore, Director

## JUDGMENT

The Judgment of the Tribunal is that:

1. The respondent breached the contract of the claimant by failing to give notice of dismissal and the claimant is awarded damages of £2,220.
2. The respondent unfairly dismissed the claimant.
3. The claimant is awarded a basic award of £1,905.
4. There is no compensatory award.
5. The respondent failed to make a proper payment to the claimant representing holiday accrued and untaken and directed to pay the claimant £377.54.

# REASONS

1. In this case the claimant Mr Dixon claimed he had been unfairly dismissed by his former employer, S M Trucking Ltd (“the Company”). He also said that the Company had breached his contract by summarily dismissing him and had failed to make a proper payment to him representing holiday accrued and untaken. The claims were in all respects resisted by the Company.
2. I heard evidence from the owner Mr Moore on behalf of the Company and from Mr Dixon himself. My attention was directed to a number of documents and I reached the following findings.
3. The Company is in the business of haulage and Mr Dixon was its employee between 28 July 2013 until his summarily dismissal on 28 November 2018. He was a lorry driver and indeed the only employed lorry driver of the Company.
4. The event that led to his dismissal occurred on 27 November 2018. On that occasion the lorry he was driving collided into the rear of another lorry, effectively writing off the Company’s vehicle.
5. Mr Dixon reported that event to Mr Moore on the day in question and the following day Mr Moore spoke to his insurance brokers who told him that it was unlikely that his insurers would be prepared to cover Mr Dixon in future. Mr Moore also decided that he would not have the vehicle repaired and furthermore, that Mr Dixon would be dismissed.
6. On 29 November Mr Moore telephoned Mr Dixon to tell him that the vehicle was written off and to pass on the information from the insurance brokers. He told Mr Dixon his employment was being terminated. Mr Dixon was only paid up to 28 November.
7. In a subsequent letter dated 3 November Mr Dixon insisted that he was not to blame for the accident. He indicated that there was a fault with his vehicle and that there might have been oil on the road. Before me, Mr Moore simply denied that that was the case and said he held Mr Dixon fully responsible for the accident.

## Notice

8. Mr Dixon was summarily dismissed. He would only be disentitled to notice if he committed gross misconduct. That was not the case here.
9. Since he had five years’ service with the Company, he was entitled to five weeks notice. He was not working elsewhere during that period.

10. His net week's pay was £439 and he was also entitled to a payment of £5.00 per week by way of pension contributions, so that his loss during that five week period was £2,220. He is awarded compensation in that sum.

### Unfair Dismissal

11. Under Section 98 of the Employment Rights Act 1996 there are five potentially fair reasons for dismissal. The reason for dismissal in this case was the inability of Mr Dixon to continue to work for the Company as a combination of insurance issues and the non-availability of a vehicle for him to drive. I took the view that the dismissal was potentially fair on the basis of "some other substantial reason" of a kind such as to justify dismissal of someone in his position.
12. I must then go on and consider whether the Company acted reasonably in treating that reason as justifying Mr Dixon's dismissal. In the first instance, I addressed issues of procedure.
13. There was no meeting between Mr Moore and Mr Dixon before the former decided to dismiss. There will be situations where an employer acts reasonably in forgoing such a meeting but they will be rare. This was not a case in which Mr Moore could sensibly say that there was nothing Mr Dixon could possibly put forward that might conceivably change the situation. For example, Mr Dixon might have been able to bring to Mr Moore's attention something about his personal position that might affect the possibility of obtaining insurance. Or he might have been able to persuade Mr Moore to have the lorry repaired.
14. Mr Moore was entitled to believe that those were remote possibilities but in my view he owed Mr Dixon the opportunity to put his case before the decision to dismiss was taken. Mr Moore could not sensibly assert that the telephone call was such an opportunity, the relevant decision having already been taken. I therefore concluded that Mr Moore had acted unreasonably and that Mr Dixon had been unfairly dismissed.
15. Mr Dixon sought compensation.
16. Mr Dixon worked for the Company for five years and was aged 50 at the date of dismissal, so that his basic award was 7.5 weeks' pay. His week's pay was subject to the statutory maximum of £508, so that on a full liability basis his basic award was £3,810.
17. Under s122 of the 1996 Act, a basic award shall be reduced where the tribunal considers that the conduct of a claimant was such that it would be just and equitable to do so.
18. Mr Dixon insisted that the collision in his vehicle might have been due to oil on the road, that he had not been driving too close to the other lorry and he was not to blame. He also suggested that there was a technical problem with his vehicle such that it did not brake in the way it should.
19. In effect, both Mr Dixon and Mr Moore attempted to give expert evidence in relation to this matter. I was conscious of the necessity for proportionality in

litigation and decided I could take a view on Mr Dixon's responsibility on their evidence. Put shortly, I was not convinced by Mr Dixon. I concluded that the lorry was working satisfactorily and the overwhelming likelihood was that he was entirely to blame for the accident. In those circumstances I concluded that it was appropriate to reduce the basic award by 50%, to £1,905.

20. I then turn to the compensatory award.
21. It seemed to me that it was inevitable that Mr Dixon would be dismissed, whatever submissions he might have been able to make at a formal meeting. Having heard Mr Dixon put forward the case he might have made to Mr Moore, it seemed to me there was no reasonable prospect that he could have persuaded Mr Moore to have the vehicle repaired. Similarly, there appeared to be no grounds on which the problems with insurance could be overcome.
22. In short, I took the view that, whatever formal meeting might have taken place Mr Dixon would have been dismissed in any event. Furthermore, that meeting would have taken place at or around the time of the telephone conversation, such that there would have been no delay in the dismissal being implemented. It followed that his unfair dismissal had not occasioned Mr Dixon any loss and there is therefore no compensatory award.

#### Holiday Pay

23. I accepted evidence from Mr Dixon to the effect that he had taken six days holiday in October 2018. The holiday year of the Company commenced on 1 July so that by the date of his dismissal he had earned 11.3 days holiday, together with one day of bank holiday. Mr Dixon had taken a total of seven days holiday such that he was entitled to 4.3 days pay at the time of termination, or £377.54.

Employment Judge Reed

Date: 24 February 2020

Judgment and reasons sent to parties: 25 February 2020

FOR THE TRIBUNAL OFFICE