



EMPLOYMENT TRIBUNALS

Claimant:
Mr C Smith

v

Respondent:
Padbury Group Limited (in
creditors' voluntary liquidation)

Heard at: Reading

On: 11 February 2020

Before: Employment Judge Milner-Moore (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: No attendance or representation

JUDGMENT

1. The claimant was unfairly dismissed and is awarded a basic award in the amount of £2,540.00 and a compensatory award in the sum of £5,972.00.
2. The recoupment regulations do not apply to these awards.
3. The claimant is awarded compensation in the sum of £3,000.00 for injury to feelings suffered following detrimental treatment contrary to section 44C and 47(B) of the Employment Rights Act 1996.

REASONS

1. This matter was listed to consider complaints of:
 - 1.1. Unfair dismissal contrary to section 98 of the Employment Rights Act 1996 (ERA)
 - 1.2. Automatically unfair dismissal contrary to section 100(c) and /or section 103A ERA
 - 1.3. Detrimental treatment contrary to section 44(c) and or 47B ERA
2. The claimant has brought claims of ordinary and automatic unfair dismissal and detrimental treatment in relation to the events which led to his resigning from the respondent and alleging constructive dismissal after raising health and safety concerns regarding the respondent's working practices. No ET3 was filed by the respondent and the matter was listed for a hearing to consider issues of remedy.

3. After hearing evidence from the claimant, I made the following findings. The claimant was employed by the respondent between 22 July 2013 and 24 January 2019 working as a crew leader. The claimant had five years' service and was aged 28 at dismissal. He earned £600.00 per week gross working for the respondent which I have calculated to give rise to a net weekly salary of £445.00.
4. On or around 7 January 2019, he raised concerns with the respondent that the systems and equipment available for persons, including himself, who were required to work at height were insufficient and unsafe. As a result of his raising concerns, he was sent home by the respondent. He was then in a state of uncertainty about whether he had been dismissed or whether, as subsequently transpired, he had been suspended. He was invited to a meeting on 11 January 2019 to discuss these matters. The respondent was dismissive of the concerns which he had raised and was critical of his performance and behaviour in raising concerns. It failed to engage with the claimant constructively during the meeting this made the claimant feel insignificant and that his complaints were not being taken seriously. The claimant was told that he would be offered a revised contract in which he would have to state an agreed height to which he would be prepared to climb or would be given the status of a "basic groundsman". The respondent failed to engage properly with the concerns being raised by the claimant and the claimant was instructed to return to work without these matters being addressed.
5. On Wednesday 23 January, despite the concerns previously raised, the claimant was once again instructed to climb at height in circumstances where there were not safe arrangements in place for him to do so. As a result, he resigned and claimed constructive dismissal.
6. The claimant gave evidence about the impact which these matters had on him and the injury to feelings that had resulted. He said that he had been caused anxiety and stress by the pressure that he had been placed under by the respondent to work in a manner that he knew to be wrong and unsafe. He was upset that he had been accused of poor performance and subject to unfair criticism by the respondent and these matters had knocked his confidence and caused him to question his own judgement.
7. After raising concerns with the respondent, he had had a number of sleepless nights and had suffered anxiety replaying the conversations that he had had with the respondent over and over in his head. These matters had caused him strain in his home life and left him irritable with family members. He had eventually felt that he had no option but to resign from the respondent. Even now, following that resignation, he has continued to experience a loss of confidence and feels that he has less confidence in his own judgement than previously.
8. Since leaving the respondent, the claimant has obtained new employment and he has been working for a new employer since 26 February 2019. He earns slightly less in his new employment than he did with the respondent,

earning £510.00 per week gross, £402.00 per week net. Under his contract with the respondent, both he and the respondent paid 1% contributions towards pension and his new employer adopts a similar arrangement. The claimant anticipates that by September 2020 he will either have obtained a pay rise in his new employment or will have moved to better paid employment, such that there will be no continuing loss of earnings past this date.

9. In light of the evidence and facts that I have found, I made the following award of compensation to the claimant.

Basic Award

10. 5 x £508.00 (this is the maximum gross weekly pay figure as at the claimant's date of termination).

Total basic award = £2,540.00.

Compensatory Award

11. Prescribed element:
The claimant's net weekly wage of £445.00 x 55 weeks = £24,475.00 (this relates to the period between 24/1/2019 and 11/2/2020).

Less the claimant's net weekly wages in his new employment –
50 x £402.00 = £20,100.00 (this covers the period 26/2/2019 to 11/2/2020)

= £4,375.00

Plus future loss for the period 12/02/2020 to 1/09/2020: 29 weeks x £44.00 per week = £1,247.00.

Loss of statutory rights = £350.00

Total compensatory award = £5,972.00.

Injury to feelings

12. I have awarded the claimant £3,000.00 for injury to feeling arises from his detrimental treatment as a result of raising a health and safety concern.

13. I consider an award in the middle of the lower band of Vento to be appropriate. The claimant felt he had no option but to resign. He was caused stress and anxiety by the detrimental treatment that was accorded to him by the respondent in the run up to his resignation. In particular, being left in a state of uncertainty about whether he had been dismissed, being suspended for raising health and safety concerns and subject to criticism and the

respondent's failure to engage with his concerns, all of which have caused him stress and anxiety.

14. The period of detrimental treatment itself was fairly short – only 2 weeks – but the claimant has continued to suffer some loss of confidence thereafter and therefore I consider an award in the sum of £3,000.00 to be appropriate as reflecting the degree of injured feelings arising from the detrimental treatment complained of.

Creditors' voluntary liquidation

15. The respondent is now in creditors' voluntary liquidation and the claimant has provided to me a letter from the licenced insolvency practitioner, Gary S Pettit, of PBC Business Recovery and Insolvency Ltd of Northampton, 9/10 Scirocco Close, Moulton Park, Northampton NN3 6AP and a copy of the judgment in this case is being sent to the insolvency practitioner.
16. The claimant has been made aware that it may be possible for him to recover the basic award from the insolvency service.

Employment Judge Milner-Moore

Date: 16 March 2020.....

Judgment and Reasons

Sent to the parties on: ...27.03.20.....

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For the Tribunal Office

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