



EMPLOYMENT TRIBUNALS

Claimant

Mr P Mitchell

v

Respondent

Ramos Seafoods Limited

Heard at: Leeds

On: 20 March 2020

Before: Employment Judge JM Wade

Appearances:

For the Claimant: In person

For the Respondent: No attendance

JUDGMENT

- 1 The claimant's complaint of unfair dismissal is well founded.
- 2 The respondent shall pay to him the following Compensatory Award: £984.40.
- 3 The Recoupment Regulations do not apply to this Award.

REASONS

Introduction

1. The claimant's claim of unfair dismissal was presented on 8 August 2019. He described his job with the respondent as a driver working 30 hours per week. He alleges he returned from his delivery round on Monday, 29 July 2019 to be told he was redundant with immediate effect.
2. The claimant alleges he was not provided with reduced hours or a letter confirming the reason for his dismissal, and was told that part-time drivers were to be used. The claimant was provided with a calculation of a statutory redundancy payment of 4.5 weeks', and, in a payslip dated 8 August 2019, the claimant received his hourly pay in respect of Monday 29 July, together with a sum described as "redundancy" of £1134.
3. The claim was listed for hearing on 9 December 2019. At that hearing neither of the parties attended. The claimant was invited to explain his absence. He did so on 11 December, indicating that if a new date was arranged he would attend. He had believed The tribunal could be concluded on the basis of the information he had provided on the file. He had provided a copy of the redundancy pay calculator,

entitlement of £1134, a payslip from the claimant's new employer, and an email describing his commencement of a new post on 19 August. He also described wishing to claim the maximum amount of £1000 as compensation for loss of earnings.

4. The last communication from the respondent business was its response form received on 16 September 2019, which accepted much of the underlying information from the claimant, further saying as follows:
“Ramos seafood Ltd has been trading at a loss for at least 3 years prior to June 2019, with the owners investing over £700,000 to sustain the losses and keep the business trading. In May 2019 a new management team was implemented to try and turn the business around into profit. This involved reductions in the workforce across all departments and Mr Mitchell was part of that process. Mr Mitchell was not the only driver to be made redundant during these changes. Mr Mitchell was paid the appropriate redundancy given his length of service.”
5. The response form indicated an intention to defend the claim. An email address only was provided for contact, but no telephone number. On the last occasion that the parties did not attend, a note recorded that the respondent's telephone number was unanswered. Today I directed a telephone call be made to the business premises telephone number, indicated in documents provided or publicly available. Again, no response could be obtained on that number. The claimant told me that the respondent may have moved its operations to Grimsby or the Harrogate showground.
6. In the circumstances I decided to proceed with the hearing in the respondent's absence in accordance with Rule 47. I consider that the respondent has had an opportunity to attend the hearing on both occasions and that in light of the limited factual dispute, there is very little prejudice to the claim being decided in the respondent's absence.

Issues

7. The issues in an unfair dismissal complaint typically include: what was the reason for the dismissal? This was not disputed by the claimant in this case; he accepted that the requirement for drivers had diminished. Did the respondent act reasonably or unreasonably in treating that reason, as sufficient reason to dismiss the claimant, taking into account all the circumstances including equity and the substantial merits of the case?

Findings of fact

8. I adopt the facts asserted both in the claim and response forms, as recorded above. The additional findings of fact I make are these based on sworn evidence from the claimant. This is a relatively small employer, which had recently experienced a change of management. As at 29 July 2019 there were a number of drivers (around 5 or 6), because there were 5 or 6 delivery rounds to cover. Drivers were delivering seafood to restaurants and other premises. The claimant delivered to Leeds. On 20 September 2019 the respondent was advertising for drivers at the same pay rate, undertaking the same roles.

The law

9. The statutory provisions are reflected in the issues above. Section 94 of the Employment Rights Act 1996 gives the right not to be unfairly dismissed. Section 98 describes how Tribunals determine allegations of a breach of that right. Case law and good industrial relations practice has established over the years that there is a band of what is reasonable in every case, but typically reasonable employers,

even very small ones, give as much warning as possible of potential job cuts, consult affected staff about ways of mitigating hardship, and if selection is required, adopt a reasonable selection process.

Conclusions and Decision

10. It was clear from the facts above that there had been no attempt to address any aspect of reasonable industrial relations practice in these circumstances. In particular, the claimant was not offered a reduction in hours, nor informed of the basis for him (and possibly others) being selected. Nor did there appear to be a reasonable selection process. I note that other drivers were made redundant, but not all. This appears outside the band of reasonable redundancy dismissals particularly when, by September, only a few weeks later, drivers were being sought by the respondent
11. In these circumstances, the complaint of unfair dismissal is well founded. The approach taken of summary dismissal, the handing of a government calculator redundancy payment, and a follow-up email, was outside the band of reasonable responses of a reasonable employer, even a small one to an apparently short term reduction in the need for drivers.

Remedy

12. The claimant did not seek reinstatement or re-engagement. It would not have been practicable in any event without the respondent present. The claimant has received his statutory redundancy payment and that is not in dispute. He is not entitled to a further basic award in the circumstances.
13. As to a compensatory award, I award £500 for loss of the claimant's statutory rights. I assess the lost earnings between dismissal and the claimant securing a new post on the same earnings as 59 hours at £8.21 or £484.40.

Employment Judge JM Wade

20 March 2020