



EMPLOYMENT TRIBUNALS

Claimant: Mr B Proctor

Respondent: V30 Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claim for unfair dismissal succeeds.
2. The claim for breach of contract succeeds.
3. The remedy to which the claimant is entitled will be determined at a Remedy Hearing.

REASONS

1. The claimant claims that he was unfairly dismissed on Friday 10 January 2020. The claimant also says that his dismissal was without notice and that this was a breach of contract. He claims compensation for unfair dismissal and notice pay entitlement of 12 weeks.
2. The claimant's claim was sent to the respondent by the Tribunal on 28 April 2020. On 26 May 2020 the respondent filed its response form. It confirmed that it agreed with the early conciliation details provided by the claimant and ticked the "no" box in response to the question "Do you defend the claim?". It left most of the rest of the response form unfilled but ticked the final box in response to the instruction, "Please re-read the form and check you have entered all the relevant information. Once you are satisfied please tick this box".
3. Rule 21 of the Employment Tribunal Rules 2013 says that where the respondent has stated that no part of the claim is contested an Employment Judge shall decide whether on the available material a determination can properly be made of the claim or part of it. To the extent that a determination can be made the Judge shall issue a Judgment (rule 21(2) and (3)).

4. In the case of **Limoine v Sharma UKEAT/0094/19/RN** the Employment Appeal Tribunal noted (at paragraph 25 of its Judgment) that rule 21(2) requires a Judge to decide whether on the available material a determination of the claim can properly be made. At paragraph 26 of its Judgment it said that the rule neither requires nor permits the Judge to enter judgment simply because the claim is undefended and without giving any further consideration to the matter. Instead, the Judge needs to be satisfied that a determination can properly be made. Otherwise there has to be a hearing. The EAT said that it seemed to it that the Judge needs to be satisfied “on the information contained in the claim form and any other documents or materials before them, and, in view of the claim being undefended, treating what the party advancing the claim says as undisputed fact, that the factual elements necessary to make good the claim in law are made out”.

5. Applying that approach to this case, and treating what the claimant says in his claim form as undisputed fact, I find that on 10 January 2020 Mr Michael Miller of the respondent told the claimant, “that’s enough, stop what you’re doing and go home” and then told the claimant to put the claimant’s keys for the workplace through the letterbox at Mr Miller’s home. This happened after Mr Miller and the claimant had had an argument about a piece of work that the claimant had done at Mr Miller’s request.

6. The claimant was not paid notice pay and there was no suggestion of any procedure leading up to Mr Miller telling him to go home and return his keys.

7. In an unfair dismissal claim, the burden is on the claimant to prove that there was a dismissal. Where there is ambiguity, the test of whether ostensibly ambiguous words amount to dismissal is an objective one which needs to take into account all the surrounding circumstances.

8. In this case, taking what the claimant says in his claim form as undisputed fact, he was told by his employer to “stop what you’re doing and go home” and then told to return his keys. The claimant had never been asked to return his keys before. When the claimant tried to contact Mr Miller on 12 January 2020 to discuss matters by text Mr Miller did not reply nor did he when the claimant tried to ring on 13 January 2020. When the claimant contacted Mr Miller’s son, Richard Miller who was a director of the respondent company at the time, he suggested that the claimant had resigned. The claimant insisted he had not resigned and Mr Richard Miller responded to say that while he appreciated the claimant might be having second thoughts his resignation was accepted and “that brings the matter to an end”.

9. Treating the claimant’s claim form as undisputed fact, it seems to me the surrounding circumstances do support his claim that he was dismissed on 10 January 2020. Having been told to stop and go home and hand in his keys, the only other contact he had from the respondent was an assertion that matters were at an end. The claimant’s claim form very fairly reports what Richard Miller said but since I am taking what is in the claim form as undisputed fact, I proceed on the basis that it was Mr Michael Miller who told the claimant to go home and return his keys rather than the claimant who resigned.

10. Based on the material before me, therefore, I accept that the claimant was dismissed on 10 January 2020. For the unfair dismissal claim, the burden would then pass to the respondent to show a potentially fair reason for dismissal. Its response does not suggest such a fair reason. Neither does the response suggest that any fair procedure was followed prior to the decision to dismiss. Again, taking the claimant's claim form as undisputed fact, there is nothing in that which suggests there was any kind of fair procedure leading up to the dismissal.

11. On the basis that the respondent has failed to discharge the burden on it to show a potentially fair reason for dismissal, and that there is no evidence of a fair procedure prior to dismissal, I conclude that the claimant's claim of unfair dismissal succeeds.

12. Based on the information in the claim form, I also conclude that there was no reason entitling the respondent to terminate the claimant's employment without notice. The claimant had worked for the respondent since 1 May 1997. In those circumstances, he would be entitled to 12 weeks' statutory notice by virtue of section 86(c) of the Employment Rights Act 1996. That notice was not given and I find that the respondent was in breach of contract in dismissing without notice.

13. This Judgment deals only with liability and the matter will now be listed for a remedy hearing.

Employment Judge McDonald

Date: 16 July 2020

JUDGMENT AND REASONS SENT
TO THE PARTIES ON

31 July 2020
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE