



EMPLOYMENT TRIBUNALS

Claimant: Mr R Bartlam

Respondent: Roxane (UK) Limited

JUDGMENT ON A PRELIMINARY HEARING

Held At: Birmingham by CVP
Before: EJ Connolly (sitting alone)

On: 8 September 2020

Appearances

Claimant: In person
Respondent: Mr M Naiden (solicitor)

JUDGMENT

1. A deposit order is made in the terms set out in the formal deposit order below in respect of the claimant's claim of unfair dismissal.
2. A case management order accompanies this Judgment.

DEPOSIT ORDER

The Employment Judge considers that the claimant's claim that he was unfairly dismissed has little reasonable prospect of success. The claimant is **ORDERED** to pay a deposit of **£300.00** in respect of the above claim no later than **2 October 2020** as a condition of being permitted to continue to advance his claim of unfair dismissal. The Judge has had regard to the information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

Unless the claimant pays the said deposit by **2 October 2020**, the claimant's claim will stand dismissed without further order

REASONS

1. The claimant brings a single claim of unfair dismissal. It was not in dispute between the claimant and the respondent that:
 - 1.1 At all relevant times, the respondent had a disciplinary policy which identified being under the influence of illegal drugs during working hours as an example of gross misconduct.
 - 1.2 The respondent had a Substance Misuse Policy which stated that it carried out a rolling program of random drug testing and took a zero tolerance approach where drugs were found as a result of testing.
 - 1.3 On a random drug test, the claimant tested positive for a metabolite of cocaine. On the basis of the test result, the claimant accepted he had cocaine in his system.
 - 1.4 The claimant was dismissed because of this test result.
 - 1.5 It would be fair to dismiss an employee with such a positive test if they had knowingly taken the drug in question.
 - 1.6 The process followed by the respondent up to and including the decision to dismiss was fair.
2. During the disciplinary process the claimant alleged that his drink must have been adulterated with cocaine by or on behalf of a manager or other employee who had a grudge against him.
3. The issues in the case are:
 - 3.1 whether the respondent had reasonable grounds to reject the claimant's explanation / find that the claimant had taken the drugs knowingly based on a reasonable investigation and/or
 - 3.2 whether the appeal manager made adverse comment at the outset of the appeal hearing about the fact the claimant had presented a claim to Tribunal and, if so, whether this rendered the decision to dismiss unfair
4. The respondent maintained that the claimant's explanation for the positive drug test was inherently implausible nonetheless it investigated the possibility he was the victim of drugging at work. It had a signed statement from a manager who viewed CCTV of the forklift truck where the claimant kept his drink (and other CCTV) on the dates requested by the claimant and stated that he had seen no suspicious activities.
5. The respondent found that neither the manager nor other employee knew the date on which the random drug test was to be carried out in order to adulterate the claimant's drink within the relevant period.
6. The appeal manager sent the claimant a detailed letter after the appeal hearing setting out the reasoned basis of his decision.

7. In the above circumstances, the claimant has little reasonable prospect of establishing that the respondent did not have reasonable grounds for its belief he had knowingly taken drugs, had not carried out a reasonable investigation and/or had not followed an overall fair process in coming to the decision to dismiss him.

Employment Judge Connolly

8 September 2020

Note: Reasons for the judgment were given orally at the hearing and are summarised above, there was no request for written reasons. Accordingly, full written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.