



Case Number: 3324101/2019 (V)

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr C Willis

and

Respondent

RAW Material
Handling Limited

Held by video conference on 19 August 2020

Representation

Claimant:

In Person

Respondent:

Mrs N Gilbert

Employment Judge Kurrein

JUDGMENT

1. The Claimant was not unfairly dismissed.
2. The Respondent has failed to pay the claim in full for his notice pay and is ordered to pay him the further sum of £1,999.51 without deduction.
3. The Claimant is entitled to a redundancy payment based on 30 weeks pay in the sum of £11,927.50.

REASONS

1. On 9 October 2019 the Claimant presented a claim to the tribunal alleging that he had been unfairly dismissed, and was entitled to notice pay and redundancy pay. On 18 November 2019, the Respondent presented a response, in which it denied those claims.
2. The case has come before me today. I have heard the evidence of the Claimant on his own behalf. I have heard the evidence of Mrs Nicola Gilbert, Director, on behalf of the Respondent. I found them both to be honest and straightforward witnesses. I have considered the documents contained in a total of 38 pdf files.
3. I make the following findings of fact,
4. The Claimant was born on 16 February 1956 and started working with Mrs Gilbert's father, Mr David Waldock in March 1998 as an engineer on fork lift trucks ("FLT") and associated equipment. He was on very good terms with Mt Waldock and was a director of some of the companies that Mr Waldock controlled.
5. In 2018 Mr Waldock was unfortunately diagnosed with serious cancer, which he is battling to this day. He took the decision to liquidate his business, ACF Group Solutions Limited ("ACF"), which primarily leased FLT and which then employed

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the Claimant. In the interim, however, he had formed another company, then known as Land Galleon Safety Devices Limited, which by September 2018 had become the Respondent.

6. On 1 November 2018 that company, which had been dormant since its incorporation, took the decision to purchase some of the assets of ACF. At that time, the decision was taken by Mrs Gilbert, and her brother and father to operate the Respondent as a lessor of forklift trucks.
7. ACF had about 45 trucks on its books at the time, but on advice from the Claimant and his colleague, Mr Dixon. only 13 of those machines were in a condition to be financed. The Respondent acquired those FLT's
8. Not only did the Respondent acquire those 13 FLT's, it also took on the Claimant and Mr Dixon, who had worked with the Claimant since 1991, to maintain them. The Claimant was specifically permitted under his contract, to carry out work for other business, and did so. This is why in some weeks he earned less than normal, sometimes nothing, from the Respondent.
9. Some of those machines the Respondent acquired were on lease at the time, and stayed with the lessee with the Respondent taking over the contract The Respondent also contacted other former lessees of machines from ACF to offer them FLT's on lease.
10. ACF started the winding up process, less than three weeks later on, 20 November 2018.
11. In the above circumstances. I have no hesitation in finding that the acquisition by the Respondent of those FLT's from ACF and the employing of the Claimant and Mr Dixon, was a transfer of a part of a business within the Transfer of Undertakings (Protection of Employment) Regulations. 2006. This was in reality the entirety of ACF's business, and it became the entirety of the Respondents business. The Respondent's only staff were Mrs. Gilbert, who carried out the administration, Mr Dixon, and the Claimant.
12. Unfortunately, things did not progress as well as the Respondent had hoped, and its finances became such that it decided it had to cut back on staff. It spoke to the Claimant about this on the 30th of April 2019, and discussed it with him. He did not return to work for the Respondent thereafter. He was given notice by letter of 3 May 2019. The Claimants effective date of termination was 10 May 2019.
13. Although the redundancy process was very brief I have concluded that in all the circumstances it was fair. This was a micro-business. Either Mr Dixon, who had slightly less service, or the Claimant, had to go. Mr Dixon still held an LGV license so he could drive a low loader to collect and deliver FLT's. The Claimant had forfeited his LGV license due to age. The decision to make the Claimant redundant was entirely fair and reasonable.
14. On 3 and 10 May, 2019, the Claimant was paid what was described as redundancy, pay in the total sum of £1,545.90. That was not in fact redundancy pay, but two weeks notice pay, which the Respondent paid gross on advice from its accountants. It seems to me that that may have been correct.

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15. I first have to consider the question of the Claimant's length of service. I have no doubt that pursuant to regulation 4 of the regulations, the Claimant's continuity of service extended back to his start with Mr Waldock on 3 March, 1998. He therefore had 21 years service at the date of his effective date of termination.
16. He was entitled to 12 weeks notice rather than the two weeks the contract provided for. I have to calculate the average net earnings that he enjoyed in the 12 weeks prior to his effective date of termination. I have the figures in the documents before me, and I calculate his average over that period to be £295.45, so that 12 weeks notice would entitle him to a payment of £3,545.40. However, he has received £1,545.90, which I must credit against the sum he was entitled to. I calculate that, as £1,999 pounds 50 pence.
17. I have also calculated that in light of his age on his redundancy after 21 years continuous service, the Claimant was entitled to 30 weeks of redundancy pay but based on his average gross pay of £397.58, which I calculate at £11,927.50.

Employment Judge Kurrein
19th August 2020

Sent to the parties and entered in the
Register on: 17.09.2020

.....GDJ.....

For the Tribunal

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