



Case Number: 3304683/2018 (V)

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr A Szendro

and

Respondent

Norse Commercial
Services Ltd

Held on 23 November 2020 by CVP

Representation

Claimant:

Ms K Makai, Partner

Respondent:

Mr N Ashley,
Counsel

Employment Judge Kurrein

JUDGMENT

The Claimant's claim is struck out pursuant to Rule 37 Employment Tribunal Rules of Procedure 2013 because it has no reasonable prospect of success.

REASONS

- 1 On 12 March 2018 the Claimant presented a claim to the tribunal in which he had ticked the box to indicate his claim was for unfair dismissal. On 4 May 2018 the Respondent presented a response in which it asserted that the Claimant had been fairly dismissed for some other substantial reason, the breakdown of the relationship of trust and confidence.
- 2 A preliminary hearing took place before EJ Cassel on 1 May 2019 at which he listed the case to be heard over a seven days starting on 25 November 2019. He defined the issues as follows a colon dash
 - “ unfair dismissal
 - (i) what was the principle reason for dismissal and was it a potentially fair one in accordance with s.98(1) and s.98(2) Employment Rights Act

1996? That Respondent asserts that it was by reason of the Claimants conduct or for some other substantial reason.

(ii) If so, was the dismissal fair or unfair in accordance with employment rights act 1996 s.98 (4) and, in particular, did the Respondent in all respects act within the so called "band of reasonable responses"?

- 3 That hearing was postponed because there were insufficient judicial resources for it. As a consequence of the backlog and Covid-19 it was not possible to relist it until it was intended to start today.
- 4 However, in the interim, the Respondent wrote to the Claimant on 14 November 2019, shortly after witness statements had been exchanged, to express the view that the Claimant's claim was hopeless, and that his and his witnesses statements did not raise any grounds to support the assertion that he had been unfairly dismissed and, more than that, did not call into question the reasonableness or otherwise of the acts of those that dismissed him and heard his appeal.
- 5 On 20 October 2020, very belatedly in my view, the Respondent's wrote to the tribunal to ask that the matter be listed urgently to consider an application that the claim be struck out because it was not being actively pursued (because the Claimant had not given full disclosure of his mitigation documents) and cause it had no reasonable prospect of success.
- 6 The Claimant wrote the same day to assert that that application should not be heard.
- 7 Although I had not received the bundle, which I now have, and which totals over 1000 pages, I did receive all the witness statements by and on behalf of the Claimant, and a scan of relevant documents from the tribunal file. Later this morning I was able to read all four of the statements prepared for the Respondent's witnesses. All those witness statements had been exchanged in 2019.
- 8 As I read-in to hear the case I became increasingly concerned at my inability to discern what the Claimant's case was.
- 9 The principal events that I discerned from my reading , and which do not appear to be in dispute at, are as follows: -
 - 9.1 The Claimant, who is a Hungarian national and was born in 1970, started working at the Respondent's recycling site as an operative on 8 May 2007.
 - 9.2 In about September 2015 the Claimant made a request for flexible working which was incorrectly worded and was rejected.
 - 9.3 On 20 April 2017 the Claimant was unable to locate the hard hat he was required to wear and was sent home unpaid by the production manager, Mr Brooks.
 - 9.4 On 5 May 2017 a similar event occurred. The Claimant was given a "strike" (a form of disciplinary sanction) for each of these occurrences.

- 9.5 On 8 May 2017 the Claimant complained about these deductions, and on 1 June 2017 he was informed they had been unauthorised and would be reimbursed.
- 9.6 In the interim, on 31 May 2017, the Claimant was observed on the CCTV system by Mr Brooks engaging in horseplay with a female colleague, including taking a sweet from the back pocket of her trousers and eating it. Mr Brooks transferred some of that CCTV footage to his mobile phone and showed it to the Claimant in the presence of others.
- 9.7 On 1 June 2017 Mr Brooks gave the Claimant a “strike”, for not working when engaged in horseplay with his colleague.
- 9.8 Shortly after this the Claimant stopped attending work, saying that he was not well enough to do so, and was diagnosed with work related stress.
- 9.9 On 18 June 2017 the Claimant wrote to HR to appeal against the strikes that he had been subjected to.
- 9.10 On 20 June 2017 the Claimant and his wife wrote a letter of grievance about Mr Brooks’ conduct in respect of the CCTV and issuing strikes.
- 9.11 On 29 June 2017 the Claimant was called in to see Mr Newell, the Operations Director, who had an interpreter present. At the conclusion of that meeting the Claimant withdrew his grievance concerning Mr Brooks’ conduct. It was the Claimant’s case that he was “coerced” or “blackmailed” into doing so by Mr Newell saying that the Claimant’s wife, who invariably attended meetings with the Claimant, would inevitably see the video of the Claimant engaging in horseplay with a female colleague.
- 9.12 On 30 June 2017 the Claimant wrote an extensive letter of complaint concerning that meeting and the earlier events involving Mr Brooks. It was treated by the Respondent as a grievance.
- 9.13 On five July 2017 the Claimant attended a grievance meeting with a senior manager, Mr Colin Jeckell.
- 9.14 On 18 July 2017 Mr Jeckell wrote to the Claimant to give his decision on the grievance. He did so at length, over eight closely typed pages. Whilst he accepted some of the points raised by the Claimant he rejected each part of the grievance.
- 9.15 On 27 July 2017 the Claimant appealed against that outcome. He was invited to attend an appeal meeting on 17 August, but solicitors acting for him indicated he was not well enough to do so.
- 9.16 On 29 September 2017 The Claimant attended a long term sickness absence meeting accompanied by his wife. At that time the Claimant had been signed off for three months with work related stress.
- 9.17 A grievance appeal meeting took place with Mr Nick Maddox, Group Director of Operations, on 14 November 2017. Written minutes were taken and the Claimant was again accompanied by his wife. In the course of that meeting the notes record the Claimant as saying that he would not engage in mediation and could not return to work for the Respondent or any part of

the Norse group. The Claimant made a covert recording of that meeting and although he alleged that the notes of it were inaccurate he was unable to identify in what respect.

9.18 As part of his investigation Mr Maddox interviewed relevant witnesses and obtained a statement from Mr Soos, the interpreter who had been at the meeting with Mr Newell on 29 June 2017, and has also made a statement for the Claimant in these proceedings.

9.19 On 18 December 2017 Mr Maddox wrote to the Claimant setting out over 10 closely typed pages why he had reached the conclusion that he should dismiss the Claimants appeal. His letter concluded by inviting the Claimant to a meeting on 9 January 2000 18 for the following purposes:-

To confirm the outcome of your grievance;

To discuss whether you have reconsidered mediation to facilitate your return to work;

To consider whether there are any actions that the company can take to assist you in continuing in your employment;

To discuss redeployment opportunities;

9.20 The penultimate paragraph was as follows,

“I must make you aware that given you have previously advised that you are unable to work with Dave Newell an outcome of this meeting may be that you are served notice to terminate your employment due to irretrievable breakdown between yourself and Dave Newell. Should this be the decision taken at our meeting we will of course aim to redeploy you in an alternative role with your agreement.”

That that letter complied with all the relevant statutory requirements.

9.21 The Claimant attended that meeting, again accompanied his partner, and in the course of it confirmed that he was unwilling to work with Mr Newell and was not willing to participate in mediation. Following an adjournment the Claimant was informed that Mr Maddox had decided that the Claimant should be dismissed and would be paid in lieu of notice. The Claimant was advised of his right of appeal orally. That outcome was confirmed in a letter from Mr Maddox to the Claimant of 11 January 2018.

9.22 On 18 January 2018 the Claimant appealed against the outcome of his grievance appeal. Mr Andrew Merricks, Head of Finance, conducted that appeal meeting. He gave his conclusion in a lengthy letter to the Claimant dated 18 April 2014, in which he dismissed the appeal.

9.23 The Claimant's appeal against his dismissal was considered by Mr Dean Wetteland, Norse Group Managing Director, on 31st August 2018. He gave his outcome, dismissing that appeal, in a lengthy letter dated 1 October 2008.

10 It is against that background that I considered the Respondent's application to strike out the claim

- 11 I heard the submissions of each of the parties and considered the documents to which I was referred.
- 12 I accepted as a general principle that I should take the Claimant's case at its highest, and only strike out a claim under Rule 37 in plain and obvious cases.
- 13 I concluded that this was such a case. My reasons are as follows:-
- 13.1 Neither the Claimant nor his witnesses (whose evidence I thought to be largely irrelevant and inadmissible) made any criticism of the process that was followed in dealing with his grievances or his dismissal. They did not complain of, for instance; unreasonable delay or over-enthusiastic progress; failure to investigate appropriately, failing to seek evidence or seeking the wrong evidence.
- 13.2 Similarly, the witness statements made no complaints regarding the probity or reasonableness of those involved in the grievance and dismissal processes. They did not allege predetermined outcomes, bias, or any other impropriety at any stage of the procedures.
- 14 In reality the Claimant's case was based on his dissatisfaction with the manner in which he had been treated prior to and by his dismissal.
- 15 I gave careful consideration to all the evidence he wished to adduce and could not find any evidence to support even an 'ordinary' unfair dismissal claim, far less, which I also considered, dismissal for health and safety reasons or dismissal for asserting a statutory right.
- 16 I did raise with the Respondent what I thought might be a very thin possibility: that his grievance concerning Mr Newell's conduct on 29 June 2018 might have been a public interest disclosure alleging a failure to comply with a legal duty under the ACAS Code of Practice to investigate the Claimant's grievance concerning Mr Brook's conduct. I thought it 'thin', not least because the extent of any public interest was difficult to see.
- 17 In addition, as the Respondent pointed out, however:-
- 17.1 There was no suggestion of such a claim in the ET1;
- 17.2 The Claimant had been represented by solicitors for a period;
- 17.3 The Claimant had been given advice by Norfolk Community Law Service;
- 17.4 EJ Cassel had explained the relevant principals of unfair dismissal to the Claimant and his partner at that hearing, and no such case had emerged;
- 17.5 Any such claim would require an amendment, and a postponement to obtain further evidence on behalf of the Respondent;
- 18 I accepted those submissions.
- 18.1 It was apparent on the face of the ET1 that the Claimant did not have whistleblowing in his mind, a concept that is widely known and recognised throughout the developed world.

- 18.2 It was only by going over the case with a fine toothed comb that I had seen the slim possibility of such a claim: it had not occurred to anyone else who had been involved.
- 18.3 It would be contrary to the interests of justice to re-write the Claimant's claim, and contrary to the overriding objective to do so at this late stage.
- 19 I also accepted that, had the Claimant resigned at some point before he was dismissed, the situation might have been quite different, but he had not. This was not claim alleging unfair constructive dismissal.
- 20 For all the above reasons I concluded the Claimant's claim had no reasonable prospect of success and should be struck out.

Employment Judge Kurrein
23 November 2020

Sent to the parties and
entered in the Register on
7 December 20

For the Tribunal

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