



EMPLOYMENT TRIBUNALS

Claimant: Mr A Dobson

Respondent: Ms C Howarth

HELD AT: Sheffield (by CVP) **ON:** 9 November 2020

BEFORE: Employment Judge Little

REPRESENTATION:

Claimant: Mrs S Dobson (claimant's mother)

Respondent: No attendance or appearance

JUDGMENT

My Judgment is that:-

1. The claimant suffered an unauthorised deduction from wages when he was not paid for the period 31 March 2020 to 6 September 2020 and the respondent is now to pay to the claimant forthwith the sum of £1,500.
2. The claimant was dismissed by reason of the respondent's conduct and the effective date of termination is deemed to be the date that this claim was presented, 6 September 2020.
3. That dismissal was wrongful because no notice was given. The claimant is entitled to a statutory notice payment of five weeks' pay which is £750. Damages in that amount are now payable forthwith by the respondent to the claimant.
4. I find that the reason for the claimant's dismissal was redundancy and he is entitled to a statutory redundancy payment of £225.

REASONS

1. At today's hearing by video I heard from the claimant who was represented by his mother.
2. The respondent did not participate in the hearing. That is unsurprising in circumstances where the respondent has failed to present a response to this claim.
3. Whilst the claimant was not expressly dismissed, I find in the circumstances that his dismissal can be inferred by the conduct, that is the failure to take action, by the respondent. I have considered the respondent's text to the claimant of 18 March 2020 in which the respondent informs the claimant that she has had to close the café because she could not get stock. She goes on to refer to the claimant being able to get SSP (statutory sick pay). Clearly that must be wrong as the claimant was not ill and in effect he was being laid off informally.
4. I have also seen the claimant's text to the respondent of 3 July 2020 which says that the claimant has not heard from the respondent in a while. I have also seen the email which Mrs Dobson sent to the respondent on 11 July 2020 in which it is pointed out that the claimant has not in the meantime received any wages and Mrs Dobson asks for information about what is going to happen with regard both to her son's pay and his job. The email goes on to indicate that a reply is sought as soon as possible failing which the claimant would have no choice "but to use the legal channels available to employees".
5. The respondent failed to reply to either the claimant's text or Mrs Dobson's subsequent email. Taking into account that the respondent also failed to defend these proceedings, I consider that it can be inferred that by not providing work to the claimant, not paying the claimant's wages, not responding to the claimant's enquiries and then failing to respond to the Employment Tribunal proceedings, the respondent must have at some point treated the claimant's employment as at an end. I consider that the date he presented his claim to the Tribunal is a convenient date to regard as the effective date of termination.
6. The claimant was paid £150 per week and so for the period of 10 weeks unpaid wages the award is £1,500.
7. Although in his claim form the claimant refers to his employment having commenced on 1 April 2018, he has explained to me today that that was the date when his employment was transferred under the Transfer of Undertakings Regulations to the respondent. The claimant had in fact been working at the café since 2015. Accordingly I have calculated his length of service as five years when considering the appropriate notice entitlement for the dismissal and under the provisions of the Employment Rights Act 1996 section 86. In those circumstances he is entitled to five weeks' notice at £150 per week hence damages in the amount of £750.
8. In the circumstances I consider that it is appropriate to find that the reason for the claimant's dismissal was redundancy and accordingly he is entitled to a statutory redundancy payment. Although he had worked for five years, he is

not entitled under the statutory scheme to a redundancy payment for the earlier years because of his young age. He was 21 at the effective date of termination and had no less than three complete years' service and so is entitled to a redundancy payment in the amount of £225.

Employment Judge Little
Date 13th November 2020

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