



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr U Ahmed v Pars Freight Limited t/a Speedy Freight Oxford and Luton

Heard at: Watford

(by CVP and telephone)

On: 21 January 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the Claimant:

In person

For the Respondent:

Mr Alan Williams (Solicitor)

JUDGMENT

The judgement of the tribunal is that:

1. The claimant's claim for unfair dismissal is well founded and the respondent is ordered to pay him the total sum of £8,050.69 made up as follows:-
 - 1.1. A basic award of: £1,575
 - 1.2. Compensation in the net sum of £5,886.99
 - 1.3. 10% uplift for failure to comply with the Acas Code of Conduct: £588.70.

REASONS

1. The claimant was employed by the respondent on 6 June 2016 as a Transport Manager.
2. It is the claimant's case that his employment terminated on 25 October 2019 when he was summarily dismissed by Mr Kouros Karami, Managing Director of the respondent. It is the respondent's case that the claimant resigned as of that date.

3. By a claim form presented on 17 February 2020, following a period of early conciliation from 18 November until 18 December 2019, the claimant presents a claim of unfair dismissal.
4. The claimant returned from annual leave on 24 October 2019. On his return he learnt that two of his colleagues had handed in their notice. Excluding Mr Karami, the office consisted of a team of four and so these two resignations clearly would have an impact on the respondent's business.
5. The claimant told me that he telephoned Mr Karami on 24 October in order to understand why the two colleagues were resigning and what was to be done about it. Mr Karami told me that, whilst he accepted that he received telephone calls from the claimant, the claimant did not say why he wanted to meet him. For reasons that will become apparent I prefer the evidence of the claimant and do not believe Mr Karami's evidence. Accordingly, I find that the claimant did indicate the reason that he wanted to discuss the situation with Mr Karami. There would be no reason for him not to say so given the importance of the news.
6. In any event, Mr Karami attended the office on the morning of 25 October 2019. The claimant and Mr Kane Griffith were already there.
7. It is common ground that the claimant and Mr Karami went into Mr Karami's office and closed the door. Apparently, Mr Karami was in the habit of playing a radio during meetings for privacy.
8. There is a straight conflict of evidenced between the claimant and Mr Karami as to what was said at that meeting. The claimant gained the impression that Mr Karami took offence at the claimant asking him for explanations as to why his colleagues had resigned and how the business was going to cope going forward. The claimant's case is that Mr Karami responded that he was the boss and, that he asked the questions. He states that Mr Karami attacked his character and requested that he gather his belongings, return the office keys and leave the premises.
9. On the other hand, Mr Karami states that given that two colleagues had handed in their resignations at a very busy time of year, he was expecting the claimant to seek more money to stay and stated that he was prepared to pay it. However, no such offer was made. Mr Karami states that the claimant asked how much he would get if he left and Mr Karami formed the impression that the claimant wanted to leave. He states that the claimant just shrugged his shoulders, went back to his desk, made a telephone call, picked up his bag, collected his personal belongings and walked out.
10. Both parties agree that Mr Karami went after the claimant in order to retrieve the office keys.

11. Mr Karami suggests that it would be unlikely that he would fire the claimant as he was already short of two workers and could not afford to lose another. On the other hand, the claimant says that he did not have another job to go to and would not have just walked out of his job given his commitments.
12. Both parties exchanged their witness evidence very late. The claimant has tendered an email from Mr Kane Griffith which appears to have been written on 20 January 2021. Mr Kane Griffith was one of the two colleagues who had tendered their resignation. This statement says as follows:-

“On his [the claimant’s] return he wanted to have a meeting with Kourosh to discuss what the plans are as two members of staff are leaving. 25/10/19 This meeting happened. The meeting was held in a room next to my desk. Kourosh took a radio in with him to try to offer some privacy due to the close proximity of the building. However during this meeting I can confirm Kourosh fired Osman in a very aggressive tone and told him to leave the building right away. Usman collected his belongings and left still in his very familiar calm manner.”

13. At the outset of this hearing Mr Griffith was said to be unavailable due to the fact that his grandfather was in intensive care ill with covid-19 and he was attending upon him. However, during the course of the hearing Mr Griffith made himself available to attend by telephone and he did so, giving sworn testimony. Mr Griffith accepted that when the claimant and Mr Karami went into the office the door was shut and the radio was on. He accepted that he was not particularly listening and all that he could hear initially were muffled words. He said the walls were only plasterboard and so he could hear something. Mr Griffith was quite clear that there came a point when he heard raised voices and Mr Karami stating words to the effect, “You’re fired, collect your things and leave immediately”. Mr Griffith was quite clear that those were the words or the gist of the words that he had heard and said that that is what the claimant did. He accepted that the claimant could have made a telephone call before leaving.
14. Mr Griffith accepted that under pressure from Mr Karami he had in the past signed a statement dealing with the departure of another colleague that he later discovered was not entirely accurate. He said to me that he was pressured into this by Mr Karami and that he was in a “you or him situation”. I accept his explanation and do not find it casts doubt on his credibility.
15. Mr Griffith told me that Mr Karami has contacted him since the dismissal on two occasions to offer him firstly, £2,000 and secondly, £5,000 to give evidence against the claimant in this case on the basis that if he loses this case he would have to pay more than that to the claimant. I accept that evidence from Mr Griffith.
16. Mr Karami gave evidence and it was put to him that on a previous occasion he had summarily dismissed an individual who he subsequently then persuaded to return to work. Mr Karami accepted that, following a conversation with, Mr Griffith as it happens, he had decided to “let him go” on the spot. This suggests to me that Mr

Karami is indeed someone who could make a rash decision to fire someone on the spot. The claimant himself characterised the decision as idiotic.

17. I believe the claimant and Mr Griffith and do not accept the evidence of Mr Karami.
18. I find that the claimant was told that he was fired and that he was to gather his belongings and leave the premises immediately. I find that there was no ambiguity about the claimant's dismissal as he was required to surrender his office keys, which I find to be an act of finality. I find that the procedure was manifestly unfair and that there was a total failure to comply with the Acas Code of Conduct. I find that the reason for dismissal was that Mr Karami was annoyed with the claimant and that that reason was unfair.
19. Consequently, I find that the dismissal was unfair.
20. It would appear that following the dismissal Mr Karami took advice and there is a chain of emails and events after the dismissal wherein Mr Karami was endeavouring to arrange for a disciplinary hearing with the claimant for unauthorised absence which culminated with a direction that the claimant should return to work with a written warning. I find that these steps were of no relevance as the claimant had by then been dismissed but I am willing to take them into account in that Mr Karami was seemingly trying to arrive at a position where the claimant could have resumed his employment.

Remedy

21. Despite clear directions, the claimant has failed to file a schedule of loss and his witness statement does not deal with the issue. The claimant told me that he thought his claim form was sufficient. Against that background I have done the best I can to arrive at a fair remedy.
22. The claimant told me that he obtained alternative employment on 20 January 2020 at a rate of pay greater than what he earned with the respondent.
23. The claimant was out of work from 25 October 2019 until 20 January 2020. The claimant told me that he was paid until 31 October 2019. Accordingly, he was out of work for 11 weeks and 3 days.
24. I do not consider the claim for notice pay as the compensation payment will cover the same period.
25. The claimant told me that he was in receipt of no state benefits and, accordingly, the recoupment provisions will not apply.
26. Mr Karami volunteered that the claimant's net earnings for October 2019 were £2,117.22. That comprises his basic pay and a bonus payment. I was informed that

the bonus payment could vary according to how busy the respondent was. Mr Karami stated that November and the first two weeks of December were busy but thereafter, until at least mid-January, things quietened down. I am prepared to accept that evidence.

27. Accordingly, I worked on the claimant probably having net earnings of £2,117.22 per month for the first 6 weeks of his unemployment and that thereafter a net figure of £1,900 should be taken.

28. Remedy calculations

Basic award: $3 \times £525 = £1,575$

Compensation award

Loss of statutory rights: £500

Loss of earnings: monthly net earnings of £2,117.22 = £488.59 per week

monthly net earnings of £1,900 = £438.46 net per week

6 weeks at £488.59 = £2,931.53

5 weeks 3 days at £438.46 net per week = £2,455.46

The loss of earnings is therefore £5,386.99

Acas uplift

29. This is a claim to which the Acas Code of Practice applies and the respondent totally failed to comply with that Code in relation to the claimant's dismissal. In my judgment that failure was unreasonable and I consider it just and equitable in the circumstances to increase the claimant's compensatory award by 10%. In arriving at this figure, I have taken into account the fact that the respondent is a very small concern and the post dismissal actions of the respondent.

30. Lastly, although the claimant has claimed wasted expenditure on a gym in his claim form, the claimant has not proved this head of claim.

Employment Judge Alliot

Date:03/02/2021.....

Sent to the parties on: ...18/02/2021.....

.....
For the Tribunal Office