



EMPLOYMENT TRIBUNALS

Claimant: Mr A Kairouz

Respondent: Ambar Entertainment Limited

Heard via Cloud Video Platform

On: 20 January 2021

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: Mr A Marshall, Director

JUDGMENT

The respondent is ordered to pay the claimant the sum of £6620.64 (gross) in respect of pay from 13 February 2020 to 20 July 2020.

Reasons

1. The issue before the tribunal was whether the claimant is owed for pay between 14 February and 20 July when he understood himself to be on suspension pending an investigation or whether his employment had been validly terminated on 13 February.
2. The tribunal had before it a bundle of documents prepared by the claimant together with a witness statement and the ET1. The tribunal did not have the ET3 or any documentary evidence from the respondent or any witness statements. The claimant and Mr Marshall gave oral evidence at the hearing.

3. The respondent's case is that the claimant was dismissed by letter containing notice of termination together with his P45 and final payslip which was sent to him by post on 13 February, a day prior to the Whatsapp exchange. The claimant's evidence is that he did not receive this.
4. On 14 February 2020 the claimant was told in a Whatsapp conversation with Adam Marshall that he was being investigated for cash discrepancies and was asked not to attend the premises while the matter was being investigated. He is claiming his pay during this period when he understood he was on suspension. The claimant's contract includes a provision allowing the employer to suspend the employee on full salary for such period of time as is necessary to carry out investigations to consider the employee's future employment.
5. The claimant followed up with Mr Marshall on 12 March 2020 regarding the progress of the investigation by Whatsapp but received no reply. Mr Marshall saw the message but was too busy dealing with issues relating to the beginning of lockdown to deal with it.
6. On 20 July, the claimant became aware from HMRC that his employment had been terminated on 13 February 2020 according to their records. He contacted the respondent on 23 July to query this and to claim unpaid money and received a response on 4 August from Laurent Beauvois. Mr Beauvois accepted that the claimant was owed some money in relation to unpaid wages and payments due on the termination of his employment but said that he had been told that the termination date was 13 February. He agreed to pay outstanding pay, notice pay and holiday pay.
7. The respondent's position is that the claimant's contract was effectively terminated on 13 February, whether or not he received the letter. Applying the judgment of the Supreme Court in *Newcastle-upon-Tyne Hospitals NHS Foundation v Haywood*, [2018] UKSC 22, I find that the notice of termination is deemed to be received when the letter comes to the attention of the employee and he has actually read it or had a reasonable opportunity to do so. I accept the claimant's evidence that he did not receive the notice of termination as his subsequent communications are consistent with this.
8. The dismissal letter was not before the tribunal although Mr Marshall read out its contents. It is not suggested that the letter was sent using guaranteed delivery nor was there any first-hand witness evidence before the tribunal that it had been sent.
9. In any event, the respondent was unable to provide a satisfactory explanation for the Whatsapp message on 14 February, which is in direct contrast to its position that the claimant had been dismissed by that time. If that was the case, the natural response to the claimant would have been to inform him he was dismissed rather than suggesting he was suspended pending an investigation.

10. The respondent is critical of the claimant for not following up. However, the claimant did follow up by Whatsapp in March, which the respondent ignored. However difficult a time it was, it was apparent at that time that the claimant was not aware he had been dismissed and it would have been a natural response to inform him of that and, if necessary, re-send the dismissal letter either by recorded delivery or by email. It is understandable that there were numerous pressures on Mr Marshall at the time, but he cannot blame the claimant for not contacting him when the claimant did so and received no reply.
11. On the basis of the evidence before me, I find that the claimant's employment was not validly terminated on 13 February 2020 and the termination date should be taken to be 20 July 2020, which is the date the claimant learned of the termination of his employment.

Employment Judge Davidson

Date 20 January 2021

JUDGMENT SENT TO THE PARTIES ON

.29/1/21..

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FOR EMPLOYMENT TRIBUNALS

Notes

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.

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

1. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
2. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no significant difficulties.
3. The participants were told that it was an offence to record the proceedings.
4. Evidence was heard from the claimant and Adam Marshall.
5. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.