



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr W Norton

v

Agricultural Industries Limited

Heard at: Leeds by CVP

On: 23 November 2020

Before:

Employment Judge Shulman

Appearance:

For the Claimant: In person

For the Respondent: In person

RESERVED JUDGMENT

1. The claim of unfair dismissal by the claimant is well founded.
2. The claim of unauthorised deduction of wages for a period of 13 days by the claimant is well founded.
3. The remedy hearing is hereby ordered by CVP for half a day on a date to be fixed.

REASONS

1. The claims
 - 1.1. Unfair Dismissal
 - 1.2. Redundancy payment
 - 1.3. No notice pay
 - 1.4. No holiday pay
 - 1.5. Unauthorised deduction of wages.
2. Issues

The issues in this case relate to:

- 2.1. Unfair dismissal: whether the claimant committed an act of gross misconduct, whether the sanction for the alleged conduct was fair and whether fair procedures were followed.
- 2.2. Redundancy payment: this claim is dismissed on withdrawal by the claimant.
- 2.3. No notice pay: whether upon dismissal the claimant was entitled to notice pay.
- 2.4. No holiday pay: the parties agree that the claimant is entitled to 20% of 4 days holiday and 100% of 0.7 of a day's holiday pay. The parties are directed to agree the sum due and the respondent to pay it, but if this is not done before the remedy hearing the Tribunal will make an appropriate order.
- 2.5. Unauthorised deduction of wages: whether the respondent was entitled to deduct pay. This is believed to relate to 13 days at furlough rate.

3. The Law

The Tribunal has to have regard to the following provisions of the Law:

- 3.1. In relation to unfair dismissal section 98 of the Employment Rights Act 1996 (ERA):

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show – (a) the reason (or, if more than one, the principal reason) for the dismissal, ...

(2) A reason falls within this subsection...if it - ...

(b) relates to the conduct of the employee.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

- 3.2. In relation to unauthorised deduction of wages:

The relevant sections of ERA are sections 13(1)(a) and (b) and (3). Those sections prohibit deduction from wages of a worker unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing to consent to the making of the deduction, (Furthermore if the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker, upon that occasion after the deductions the amount of the deficiency shall be treated for the purpose of this Part of the ERA as a deduction made by the employer from the worker's wages on that occasion.

4. Evidence

The claimant gave evidence as did Eliot Cattaneo, the proprietor of the respondent. Tracey Jayne Cattaneo, wife of Eliot Cattaneo, also gave evidence. Where there was a conflict on the evidence the Tribunal preferred the evidence of the claimant.

5. The Facts

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 5.1. The claimant was employed by the respondent as a landscape gardener from 1 February 2016 until his dismissal on 29 May 2020. The respondent is in the business of landscape gardening although Mr Cattaneo has other businesses in the construction industry and the Tribunal find that he was at all material times an experienced businessman.
- 5.2. In common with the other four employees in the respondent organisation the claimant was placed on furlough in or about March 2020.
- 5.3. On 3 May 2020 the respondent asked the claimant to return to work. The Tribunal finds as a fact that the respondent offered to pay a cash sum to the claimant on top of furlough. The Tribunal finds that from and after that date the respondent refused to pay the claimant for 13 days.
- 5.4. It was partly because the claimant was concerned about receiving unlawful payments and more particularly because the claimant expressed concerns about working because of his daughter that the claimant did not immediately return. The claimant's daughter was aged 3 and ill. In evidence the claimant stated that his daughter had febrile convulsions and therefore he had to shield. Mr Cattaneo accepted in evidence that he knew the claimant's daughter was ill, that he fully understood she could be vulnerable but nevertheless deemed the claimant on unpaid leave until the claimant showed the respondent evidence of her illness. It is in dispute whether or not evidence was shown but since the Mr Cattaneo had knowledge of the claimant's daughter's illness such evidence would not add to Mr Cattaneo's existing knowledge. In any case the claimant expressed concern about his daughter and the fact that government restrictions for Covid19 were still in force and that therefore he could not work.
- 5.5. On 11 May 2020 there was a government announcement which would enable the claimant to start work on 13 May 2020 and he accordingly said he was available to the respondent, but Mr Cattaneo yet again said to the claimant that the claimant was on unpaid leave.
- 5.6. On 17 May 2020 the claimant informed the respondent that the claimant could come back to work and the claimant asked about his pay.
- 5.7. On 20 May 2020 the claimant was asked to come back into work the next day but the respondent refused to pay the claimant the outstanding furlough payments.
- 5.8. On 21 May 2020 the claimant did come back to work and the claimant accepted that he was paid for the 21 & 22 May 2020 in respect of which he had previously claimed. The claimant worked until 29 May 2020.

- 5.9. The claimant was asked to attend a meeting at Mr Cattaneo's home about pay on that day. The respondent offered the claimant half pay and an altercation occurred.
- 5.10. Mr Cattaneo accepts that he "lost his cool". The Tribunal finds that Mr Cattaneo used foul language. The Tribunal finds that this was something that Mr Cattaneo was prone to do and the Tribunal was shown a message from Mr Cattaneo with the 'f' word in it used in the direction of the claimant. Mr Cattaneo said that he did use foul language at the meeting on 29 May 2020 and described himself and the claimant as being "just as bad as each other". The respondent dismissed the claimant on the spot and the claimant was given no chance to respond.
- 5.11. In this case the claimant is alleged to have received two warnings and a dismissal letter but received none. Mr Cattaneo said that the respondent does not have disciplinary meetings and the claimant was given no right of appeal against his dismissal. Mrs Cattaneo was called as a witness by her husband to the meeting but even she said that she did not properly hear a lot from "Eliot's side".
6. Determination of the issues (after listening to the factual submissions made by and on behalf of the respective parties):
- 6.1. As far as unfair dismissal is concerned we do not find that the respondent has established that there was conduct of a kind to show that this was the reason for dismissal.
- 6.2. The Tribunal finds the reason for the meeting on 29 May 2020 was because the respondent was unlawfully holding the claimant's wages to try to "do a deal". A man of his experience knew or ought to have known the respondent was liable to pay the claimant what was outstanding.
- 6.3. The meeting was not properly convened. In the view of the Tribunal it had nothing to do with the claimant's refusal to come to work on and after 3 May 2020 and in any case the respondent knew full well of the claimant's daughter's condition and that was the main reason why the claimant could not come to work. The Tribunal makes no finding that the claimant was offered cash to come in early.
- 6.4. Even if the respondent established conduct on the part of the claimant the "dismissal" meeting in clear breach of section 98(4) ERA was not properly convened. The reason for dismissal related a legal right of the claimant to be paid and no opportunity was given to the claimant to make representations. The claimant did not receive a letter of dismissal and there was no right of appeal.
- 6.5. Whilst the Tribunal accepts that the respondent is a small business the view of the Tribunal is that there can be no excuse to treat the claimant in the way that it has.
- 6.6. In all the circumstances the Tribunal finds that the claimant was unfairly dismissed by the respondent.
- 6.7. As far as the claim of unauthorised deduction of wages is concerned it is clear that the claimant had been employed by the respondent for some time and in section 13 ERA the respondent does not have the right to deprive a claimant of his wages.

- 6.8. The Tribunal now orders a remedy hearing by CVP to take half a day on a date to be fixed.

Employment Judge Shulman

Date 13 January 2021

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