



EMPLOYMENT TRIBUNALS

Claimant: Ms J Carr

Respondent: Stoelzle Flaconnage Ltd

TELEPHONE PUBLIC PRELIMINARY HEARING

Heard at: Leeds

On: 20 January 2021

This was a remote hearing by CVP video link (V). There were substantial connection problems and the hearing was changed to a Microsoft Teams meeting.

Before: Employment Judge Shepherd

Appearances

For the claimant: Mr Henshall

For the respondent: Mr Johnson

JUDGMENT

The response is accepted out of time without the need for further service.

REASONS

I am satisfied that it is just and equitable to extend the time for submitting a response. The witness statement from Lisa Burrows set out the tragic circumstances of a suicide on the respondent's premises and the consequences. This provided an adequate explanation for the delay in filing the response which was significantly out of time. There is an arguable defence and the balance of hardship is in favour of the

respondent. I was referred to the factors set out in the EAT decision in the case of Kwik Save Stores Limited v Swain [1997] ICR 49 which I have considered in reaching my decision.

CASE MANAGEMENT SUMMARY

Upon hearing submissions from Mr Henshall on behalf of the claimant in person and Mr Johnson on behalf of the respondent, I make the following notes and orders:

Notes

1. By a claim presented on 10 September 2020 the claimant brought a claim of unfair dismissal.
2. The claimant was employed by the respondent from 18 August 2014 until 18 August 2020.
3. The respondent contends that the reason the claimant's dismissal was the potentially fair reason of conduct.
4. The issues for the Tribunal to determine will be as follows:

Unfair dismissal

- 4.1. Was the claimant dismissed for a fair reason? The respondent contends that the claimant was dismissed by reason of conduct. Which is a potentially fair reason within section 98 of the Employment Rights Act 1996 (ERA)
- 4.2. Was the dismissal fair in accordance with section 98(4) of the ERA.
- 4.3. Did the respondent hold a genuine belief in the claimant's guilt on reasonable grounds following a reasonable investigation and was dismissal within the band of reasonable responses available to the respondent?
- 4.4. In the event that the claimant's claim succeeds:
 - 4.4.1. Should any compensation be reduced pursuant to Polkey?

- 4.4.2. Should any compensation be reduced due to the claimant's contributory fault?
5. The respondent is not interested in Judicial Mediation but will inform the Tribunal and the claimant should that stance change at any time.
6. It was agreed that the substantive hearing can be dealt with by CVP video link.
7. It was agreed that the case should be listed for a two-day hearing. This is a precautionary listing bearing in mind that the case will be heard by CVP video link. The respondent intends to call 2 witnesses and the claimant will give evidence herself.
8. The claimant has provided a schedule of loss.
9. In the circumstances it was agreed that it would be appropriate to make the following orders:

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. The substantive hearing of this case is listed to be heard by an Employment Judge sitting without members for two days on Monday, 10 May 2021 and Tuesday, 11 May 2021 commencing at 10:00 a.m each day. The hearing will take place by CVP video link and the parties will be provided with further information to enable them to take part in that hearing.

The parties' representatives must inform the Tribunal if it becomes apparent that the length of hearing is inadequate or excessive. Any timetable will be set by the Tribunal at the commencement of the substantive hearing.

2. On or before 17 February 2021 the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case. They shall send each other a copy of any of these documents if requested to do so.

3. On or before 10 March 2021, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files and provide the claimant with a 'hard' and

an electronic copy of the file of papers by the same date. The file should only include documents relevant to any disputed issue in the and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the file of papers the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the file of papers must follow a logical sequence which should normally be simple chronological order.

4. The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before 14 April 2021. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be crossreferenced to the bundle; contain only evidence relevant to issues in the case.

5. The respondent will provide to the Tribunal electronic copies and a hard copy of the witness statements and file of documents by 30 April 2021.

Other matters

The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

Public access to Employment Tribunal decisions

All 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.

Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.

Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

Employment Judge Shepherd

20 January 2021

Sent to the parties on:

20 January 2021

For the Tribunal: