



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hussein

Respondent: Compass Group UK & Ireland Ltd

Heard at: London South Employment Tribunal (By CVP)

On: 4 March 2021

Before: Employment Judge Keogh

Representation

Claimant: In person

Respondent: Mr Joicey, lay representative

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal is unsuccessful and is dismissed
2. The Claimant's claim for holiday pay is unsuccessful and is dismissed

REASONS

1. This is a claim brought by Mr Mohammed Hussein against Compass Group UK & Ireland Ltd for unfair dismissal and failure to pay holiday pay.
2. In advance of the hearing I received a bundle of documents and witness statements from the Claimant, and Ms Sue Accorsi and Mr Denis Verrier on behalf of the Respondent. I heard oral evidence from all three witnesses. The Respondent was represented by Mr Joicey and the Claimant represented himself.

Facts

3. The Claimant was employed by the Respondent from 1 May 2016 to 5 February 2020 when he was dismissed. The Claimant worked at a school which was the client of the Respondent.
4. In autumn 2019 allegations were made against the Claimant that on 28 August 2019 he had said the school's bursar had forced out the previous

head chef. On 12 September 2019 the Claimant's new manager, Mr Hugh Ruddock, wrote a statement regarding a conversation with the Claimant he alleged had taken place on 28 August 2019. Various other statements were collected from staff members during September.

5. The Claimant was invited to a fact finding meeting on 3 October 2019. During the course of that meeting he alleged that he had been bullied by the head chef. The Claimant was suspended pending a full disciplinary investigation. The same day the Claimant wrote a grievance letter alleging bullying and also alleging that he had not been paid properly. This included an allegation that he had not been paid properly for holidays.
6. The Respondent placed the disciplinary process on hold in order to hear the Claimant's grievance. This was heard on 15 October 2020 and an outcome letter was issued on 22 November 2019. The Claimant raised an appeal against the grievance outcome dated 3 December 2019 in relation to pay. An appeal meeting was held on 3 January 2020 and an outcome provided on 23 January 2020. The outcome acknowledged that corrections had been made to payroll's records for holiday taken. The letter shows 13 days of holiday taken. It confirms that annual entitlement was 20 days plus bank holidays, and therefore there were 7 days of holiday left in the holiday year.
7. In the meantime, the Respondent conducted its quarterly review with the client. A meeting was held on 18 November 2019 which was conducted by Ms Accorsi. During the meeting the bursar of the school raised concerns about the Claimant, stating that he considered him to be disruptive to the team. It was said that this had been raised with previous managers. Ms Accorsi assured the client that she would address this with the Claimant through performance improvement procedures. After the meeting she checked the Claimant's file but did not find any concerns noted. She was unable to investigate further as the previous managers had left the Respondent's business.
8. Around 10 December Ms Accorsi had a telephone call with the bursar. During the call he talked about the Claimant and said there was a noticeable difference in how the atmosphere in the catering department was in his absence. He had also seen improvements to the food service offered. He thought these improvements were because the Claimant was not at work, and indicated that it would be best for the school if the Claimant did not return. Ms Accorsi said she could monitor these issues on the Claimant's return. However on 13 December 2019 she received an email from the bursar formally requesting the Claimant be removed from site.
9. The Claimant was invited by Ms Accorsi to a disciplinary meeting on 17 December 2019 by letter dated 13 December 2019. The letter confirmed that it would deal with the disciplinary allegations and would also deal with the issue of the client not permitting the Claimant to return. The letter warned that one outcome of the meeting could be dismissal from the company.

10. A meeting was held on 17 December 2019 which the Claimant attended with Ms Accorsi. Ms Accorsi first dealt with the allegations against the Claimant. She concluded that she could not be sure the conversation alleged did or did not happen, so there was no case to answer. She then dealt with the client request for removal. She read to the Claimant the letter from the bursar. She assured the Claimant she would try to find him other work within the group. She stated that a letter would be sent giving six weeks' notice of dismissal. She informed the Claimant of his right to appeal.
11. Ms Accorsi sent a letter to the Claimant dated 19 December 2019 which confirmed he had been served notice of termination of employment. It again assured the Claimant the Respondent would continue to search for alternatives during the whole period, but confirmed that if it was not possible to secure another role, the date of dismissal would be 29 January 2020. The letter went on to state that Ms Accorsi expected the Claimant to be proactive in searching for positions by registering at the jobs website and/or calling People on the Move for vacancies.
12. The Claimant sent an appeal against dismissal by letter dated 22 January 2020. The letter also repeated a number of areas of the Claimant's grievance.
13. Ms Accorsi in evidence confirmed the details outlined in an overview document as to the efforts made to secure the Claimant a role. I find that she contacted the Claimant regularly during the six week period. She sent two letters to the Claimant which were signed for but which he contended he had not initially received. She contacted him by telephone on 3 January 2020 and agreed to send the letters by email. She left a voicemail for him on 9 January 2020 and spoke to him on 10 January 2020, when he said he wanted to await his grievance outcome before appealing against the client removal. They spoke again on 13 January 2020 and discussed jobs available on the Compass job portal. The Claimant said there were 4 vacancies he would apply for. Ms Accorsi told him to register on the portal and he would automatically be sent any new vacancies. Ms Accorsi agreed to review the Claimant's CV. They spoke again on 20 January 2020, at which point the Claimant said he had applied for vacancies but hadn't heard back.
14. On 22 January 2020 Ms Accorsi was told by Mr Nisbett from chef recruitment that he hadn't had any applications from the Claimant and he was not registered on the job site. The Claimant finally registered on 27 January 2020 at 1.20am. The Claimant says that he had registered on the job portal in 2018. However it appears this was an old website and was no longer active.
15. On 27 January 2020 Ms Accorsi spoke to the Claimant again about job roles. He had only applied for 3 roles on the job site. Ms Accorsi agreed to speak to the chef recruiter for him. At some point there was a discussion about a position in Seven Oaks. This was at a lower salary than the Claimant wanted. Ms Accorsi had spoken to the relevant manager and it

was agreed that they could increase pay by a few thousand pounds, however I accept what Ms Accorsi says, that the Claimant declined to proceed further with this role as it was not enough money for him. He was however interested in a position in Surbiton. Ms Accorsi arranged an interview for him. She also extended his notice period by a further week in order for the interview to take place.

16. Ms Accorsi states, and I accept, that she was told by the manager after the interview that the Claimant had arrived 20 minutes late, and during the interview he was negative about the Respondent and told the manager lots of details about his grievances and how he was going to sue the Respondent. The manager ultimately decided not to employ the Claimant.
17. Ms Accorsi spoke to the Claimant again on 3 February 2020. She pointed out some jobs on the job portal, however the Claimant discounted them.
18. On 7 February 2020 Ms Accorsi gave the Claimant the news about the Surbiton job. I accept her evidence that she gave the Claimant feedback and he was argumentative. She explained that as a role had not been secured the Claimant would be dismissed with a leave date of 5 February 2020.
19. The Claimant's appeal against dismissal was considered by Mr Verrier. An appeal meeting was held on 21 February 2020. Following the meeting Mr Verrier contacted Ms Accorsi to investigate further. Ms Accorsi confirmed to him that she had not discussed details of the Claimant's ongoing disciplinary process with the client, and that to her knowledge the client remained unaware of the reason why the Claimant had been suspended. Mr Verrier also asked Ms Accorsi about the efforts made to find alternative employment for the Claimant. Ms Accorsi provided an overview. Mr Verrier dismissed the Claimant's appeal by letter dated 10 March 2020.

Issues and law

20. The issues to be determined are as follows:
 - (i) What was the principal reason for dismissal?
 - (ii) Was it a potentially fair reason in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("*ERA*")? The Respondent contends the dismissal was for 'some other substantial reason'.
 - (iii) If so, was the dismissal fair or unfair in accordance with *ERA* section 98(4), and in particular, taking into account the size and administrative resources of the Respondent, did the Respondent in all respects act within the so-called 'band of reasonable responses'?
 - (iv) If the Claimant is successful, what compensation should be awarded?
 - (v) Should there be any reduction in compensation as a result of the Claimant's contributory fault or under *Polkey* principles?
 - (vi) What holiday had the Claimant accrued but not taken as at the date of dismissal?

- (vii) If there was holiday outstanding at the date of dismissal, was the Claimant paid appropriately for that holiday? If not how much is the Claimant owed?

21. In a case where a client procures the dismissal of an employee, in deciding whether or not the employer has acted reasonably or unreasonably, the injustice to the employee and the extent of that injustice is an important factor (*Dobie v Burns International Security Services (UK) Ltd* [1985] 1 WLR 43). One question is whether the employer has done everything he can to avoid or mitigate any injustice brought about by the stance of the client. This includes trying to get the client to change his mind, and seeking alternative work for the employee (*Henderson v Connect (South Tyneside) Ltd* [2010] IRLR 468; *Bancroft v Interserve (Facilities Management) Ltd* UKEAT/0329/12/KN).

Conclusions

22. I did not find the Claimant to be a credible witness. Of particular concern was the Claimant's treatment of a document at page 191 of the bundle which was a list of 54 job vacancies. The Claimant insisted that this was his document and that it showed 54 jobs he had applied for. The document was described in the bundle index as the 'Respondent's job search'. It was put to the Claimant that this was a document produced by the Respondent in order to show what external vacancies had been available to the Claimant to apply for. The Claimant maintained that the document was his. It was suggested to him that he was being dishonest. Such was the seriousness of the allegation that I requested enquiries should be made by both parties as to who had produced the document. Mr Joicey obtained confirmation from an individual at the Respondent's head office who said that she had produced the document, that it was her handwriting on it and that she could produce a screenshot of her to do list for the day it was printed showing that it was on her list to produce such a document. Mr Hussein on the other hand was unable to produce any evidence that the document emanated from him. I find that he was being dishonest to the Tribunal in his treatment of this document. This cast doubt on the credibility of some of his other evidence. There were a number of matters raised for the first time in the Claimant's oral evidence, notably in relation to holiday pay. Where his evidence differed from that of Ms Accorsi and Mr Verrier, I generally preferred the Respondent's evidence.

23. I am satisfied that the reason for dismissal was some other substantial reason, namely a request by the client to remove the Claimant, which is a potentially fair reason for dismissal. The Claimant did not positively assert that there was a different reason for his dismissal. At some points in his evidence he suggested that there was a conspiracy by his manager to remove him from his role. His evidence for this was that his manager had written a statement about the allegations against the Claimant on the same day that the Claimant had complained about not being paid correctly. I find this was no more than a coincidence. It appears an investigation had already commenced, an anonymous statement having been provided at the

end of August 2019. In any event the matter of the allegations against the Claimant was separate from the request for removal. I find that no information about the disciplinary process was leaked to the client and that the client had its own reasons for requesting removal of the Claimant.

24. I find that there was injustice to the Claimant in the client seeking to remove him from his role in circumstances where there had not been any performance improvement procedures put in place to ameliorate any perceived difficulties. However, the Respondent, through Ms Accorsi, made great efforts to try to avoid this injustice by seeking to persuade the client not to remove him and in seeking alternative employment for the Claimant. This included applying the Respondent's policy and extending the Claimant's notice period to first six and then seven weeks' notice. During this period Ms Accorsi spoke regularly with the Claimant and made efforts to find him roles herself, alongside the Respondent's job portal which the Claimant was encouraged to use. I find that the Claimant did not greatly assist in this process. He was not prepared to consider jobs at too low a salary, he delayed significantly in ensuring he was registered on the Respondent's job portal, he applied for jobs which he lacked the relevant experience for, and when Ms Accorsi secured an interview for him he did not perform well, arriving late and complaining about the Respondent to the interviewing manager. The Claimant contended that he should have been given any role, including a temporary position. However he accepted in evidence that no such temporary vacancy was available.
25. I have considered carefully whether, in light of the injustice to the Claimant, the Respondent could reasonably have done more to mitigate against this. I find that, viewed objectively, the Respondent acted within a range of reasonable responses in this regard.
26. The Claimant has complained that there were significant delays in the disciplinary process and in the dismissal process. In particular he complains that it was a month between Ms Accorsi's meeting with the client on 18 November 2019 and the hearing at which he was dismissed. I find that this was because Ms Accorsi was taking steps to persuade the client not to remove the Claimant and instead to undergo performance improvement procedures. However a formal letter was received from the client on 13 December 2019. It was only 4 days thereafter that the hearing was held.
27. In all the circumstances therefore, and taking into account the size and administrative resources of the Respondent, I find that the dismissal was fair and within the band of reasonable responses open to the Respondent.
28. In relation to holiday pay, I find that the Respondent's calculations are correct, that the Claimant had taken 13 days of holiday in the holiday year and was also paid for 8 bank holidays, such that there were 7 days of holiday remaining in the holiday year. As the Claimant ended his employment before the end of the holiday year he was entitled to a pro rata number of days, leaving a balance of 3.23 days. The Claimant accepts that

the Respondent paid him 31.3 hours which is 3.7 days' holiday on termination of his employment.

29. In oral evidence for the first time the Claimant suggested firstly that he had holiday outstanding from a previous holiday year, and secondly that he had worked a bank holiday and had not been paid or given leave in lieu. I found the Claimant's evidence to be unconvincing. These were not matters which had been raised at any point in the grievance, grievance appeal or disciplinary appeal where issues of pay were again raised. The only matter complained about was that he had been at work from 14 to 18 July 2019, which I find was not the case, the Respondent having investigated this fully. In his claim he sought only 15 days which were said to be remaining on a holiday form (this was correct but did not take into account the bank holidays taken as leave or the pro rata effect of terminating employment before the end of the leave year). The Claimant produced no evidence at all that he had holiday accrued from a previous holiday year or that he had worked a bank holiday and not been paid or received leave in lieu. In the circumstances I find the holiday pay claim is not proven on a balance of probabilities and is unsuccessful.

Employment Judge Keogh

Dated: 5 March 2021