



EMPLOYMENT TRIBUNALS

Claimant: Mr Martin Reeves

Respondent: The Committee of Garswood and Simms Road Labour Club
t/a Garswood Sports and Social Club

Heard at: Liverpool (remote public hearing via CVP)

On: 16 April 2021

Before: Judge Brian Doyle

Representation

Claimant: In person
Respondent: Not in attendance or represented

JUDGMENT

1. The correct title of the respondent is “The Committee of Garswood and Simms Road Labour Club t/a Garswood Sports and Social Club” and the title of the proceedings is amended accordingly.
2. The claimant’s complaints of (1) unfair dismissal, (2) wrongful dismissal, (3) non-payment of accrued statutory holiday pay and (4) non-provision of a statutory statement of employment particulars are well-founded and the claim succeeds.
3. The respondent is ordered to pay the claimant compensation in the total sum of £2,482.21 calculated as set out in the reasons below.

REASONS

1. This claim was presented to the Tribunal on 25 November 2019.
2. The claimant complains of (1) unfair dismissal, (2) wrongful dismissal (in respect of notice pay), (3) non-payment of accrued statutory holiday pay and (4) non-provision of a statutory statement of employment particulars.
3. The respondent responded to the claim on 1 January 2020.

4. The claim was originally listed for an in person final hearing on 24 March 2020 with standard case management orders. Notice of the hearing was sent to the parties on 19 December 2019. That was further confirmed by the Tribunal on 21 January 2020.

5. In the light of the Covid-19 pandemic the hearing on 24 March 2020 was postponed on 19 March 2020.

6. On 18 August 2020 the final hearing was re-listed to take place on 21 October 2020 via video conference (CVP). That was further confirmed on 8 October 2020.

7. At the final hearing on 21 October 2020 the claimant attended via video, but the respondent was not in attendance or represented.

8. Employment Judge Feeney conducted the final hearing. She recorded that the Tribunal had received an email that morning from the respondent to say that it could not attend the hearing. There seemed to have been some initial doubt about the correct date of the hearing. That had been resolved, but the date was not one that the respondent could meet or take part in over the internet. Without determining the rights or wrongs of that position, Judge Feeney decided that the hearing should be postponed and be re-listed. She set a case management timetable for the parties to disclose documents, prepare a file of those documents, exchange witness statements and (in the claimant's case) provide a schedule of loss.

9. There was a delay in the preparation and/or delivery of Judge Feeney's case management order. The dates for the case management timetable were subsequently adjusted on 3 February 2021 as a result. Although the case management order refers to a date for the re-listed hearing, that date does not appear on the face of Judge Feeney's order. It may be that the date was agreed at the hearing.

10. Nevertheless, a notice of final hearing was sent to the parties on 3 February 2021 re-listing the final hearing for 16 April 2021 at 10.00am with a time allocation of 1 day and to take place via video conference (CVP).

11. Details of how to join the video conference were sent to the parties very recently. I do not have a record of that on the papers available to me this morning. My clerk confirmed to me that efforts had been made yesterday to contact both parties with those details.

12. The problem appears to be that while communications with the claimant have been through email throughout these proceedings, the contact details for the respondent (via the Club Secretary, Mr Anthony McKeegan) have been through the post or by telephone. There is a reference to an email communication from the respondent in Judge Feeney's case management order, but it does not appear that the respondent's email address is on the record. There is no email address provided in the ET3 response and no emails upon the electronic papers provided to me from the case file.

13. I am told that efforts to telephone the respondent yesterday were

unsuccessful.

14. However, just as I was about to start the hearing this morning, the Tribunal administration forwarded to me an email from Mr McKeegan timed at 2.08am this morning and using an email address that appears to be associated to the respondent club. The email reads:

I have been waiting all day and night for the link to join the video hearing. It is now too late for legal representation to represent me, they informed me they needed to know before 6pm tonight if they was needed and now they are unavailable. This has happened previously as well and I was informed I would receive a link this time round. I do not know what time the hearing starts due to the letter I received just says the date and not the time and I have had no correspondence since the 3rd February 2021. Please could you advise me of a time and a link, I will now have to revise this case myself and represent myself so now need this case to be held in the afternoon due to poor lack of communication.

15. I have considered that email. I have noted that there appears to have been no earlier communication from the respondent. I have also noted the Tribunal administration's efforts to contact the respondent by telephone. It is also apparent that there has been no obvious compliance by the respondent with the case management orders made by Judge Feeney. The claimant has provided a schedule of loss, as required. I deduce from the email that some effort may have been made on the respondent's part to obtain legal advice and representation, but seemingly rather late in the day.

16. The decision for me is whether to postpone the hearing in the light of the respondent's email. I have decided on balance – having regard to the overriding objective, the interests of justice and the balance of hardship – not to do so. I have had regard to rule 30A (on postponements), the requirements or conditions of which for a postponement to be granted at this very late stage have not been complied with.

17. I recognise that there has already been one postponement of the final hearing in circumstances that were not entirely clear. I acknowledge that these are proceedings which commenced nearly 17 months ago. They involve relatively straightforward issues and relatively small sums in potential compensation (although I recognise that they may not appear small to the claimant or indeed the respondent). On balance, it would be better to proceed to determine the claim, which might in turn give the parties a basis to treat this matter as closed, but I do so in the expectation that the respondent is in any event free to ask me to reconsider any decision I make by persuading me that it is in the interests of justice to do so.

18. Accordingly, I have proceeded under rule 47. That provides that if a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

19. I do not dismiss the claim. I have decided to proceed with the hearing in the absence of the respondent for the reasons I have weighed above. I have not considered it practicable to make further enquiries about the respondent's absence. Mr McKeegan's email in the early hours of this morning speaks for itself, as does the information I have been provided by the Tribunal administration.

20. I have considered the ET1, the ET3 and the claimant's schedule of loss. The claimant gave me short oral evidence and responded to my questions. As a result, I make the following findings of fact.

21. The claimant was employed by the Garswood and Simms Road Labour Club from January 2009 as a member of bar staff. He has always worked 4.5 hours per week, initially on Saturdays and more recently on Sundays. In March 2019 the club became the Garswood Sports and Social Club. That was a change in name only. Contrary to what the respondent says in its ET3, that did not terminate the claimant's employment. He continued to work as before, albeit he ceased to receive wage slips and his wages were paid "from behind the bar".

22. The claimant agrees that in 2009 a statutory statement of employment particulars was prepared in relation to his employment, but he was not provided with a copy of it. The statement was kept on the club premises and can no longer be found. He has not been issued with a fresh statement at any time, not least when the club changed its name in March 2019.

23. In September 2019 a member of the club raised a concern about whether the claimant had said that other members of bar staff were stealing from behind the bar. The respondent says that this led to other staff refusing to work with the claimant. The claimant says that that was not the case. I do not need to resolve any of the contentions in this paragraph because what is clear is that that claimant was then dismissed by the respondent by telephone without notice and without any procedure being followed. There is no evidence that he was invited to a committee meeting, as the respondent asserts and which the claimant denies.

24. In those circumstances, and recognising that I am relying upon the claimant's evidence only, I find the claim to be well-founded. It is not necessary to set out the well-known legal principles that apply.

25. I find that the claimant was unfairly dismissed by the respondent contrary to section 98 of the Employment Rights Act 1996. He was also wrongfully dismissed in breach of contract by being dismissed without lawful excuse or reason without notice or payment in lieu of notice (he had not acted in gross breach of his employment contract). He is thus entitled to notice pay and to compensation for unfair dismissal.

26. He is also owed for 3.77 days accrued holiday pay unpaid in breach of Part 2 of the 1996 Act and also the Working Time Regulations 1998. He is also entitled to compensation for the non-provision (and non-revision) of a statutory statement of employment particulars, contrary to Part 1 of the 1996 Act. He is entitled to an uplift (where appropriate) to reflect the failure to follow the Acas code, in accordance with section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

27. The remedy is calculated as follows.

28. Unfair dismissal

Basic award

Effective Date of Termination (EDT) 6 September 2019

Age at EDT 27 years old
Number of years' service at EDT 10 years
Statutory week's pay £36.95 gross
7.5 weeks x £36.95 per week = £277.13
Total Basic Award = £277.13

Compensatory award

Loss of earnings
18 weeks @ £36.95 net per week = £665.10
Allowance made for mitigation of loss
Loss of statutory rights = £500.00
25% uplift = £291.28
Total Compensatory Award = £1456.38

29. **Wrongful dismissal**

10 weeks' notice pay @ £36.95 net per week = £369.50
25% uplift = £92.38
Total compensation = £461.88

30. **Holiday pay**

Leave year commencing: 1 January 2019
Amount of holiday accrued at EDT: 3.77 days
Amount of holiday taken: 0
Number of weeks/days holiday owed: 3.77 days
Statutory weeks' pay: £36.95
Total holiday pay £139.02

31. **Failure to provide statutory statement of employment particulars**

4 weeks @ £36.95 per week = £147.80

32. The total award is £2,482.21.

33. It appears to the Tribunal that the correct title of the respondent is "The Committee of Garswood and Simms Road Labour Club t/a Garswood Sports and Social Club" and the title of the proceedings is amended accordingly.

Judge Brian Doyle
Date: 16 April 2021

JUDGMENT SENT TO THE PARTIES ON
26 April 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or 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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2416511/19

Mr M Reeves v The Committee of Garswood and Simms Road Labour Club
t/a Garswood Sports and Social Club

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 26 April 2021

"the calculation day" is: 27 April 2021

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.