



EMPLOYMENT TRIBUNALS

Claimant: Mr C Sampson
Respondent: Lawtech Group Ltd

Heard at: London South **On:** 16 December 2020

Before: EMPLOYMENT JUDGE BECKETT
Sitting Alone

Representation

Claimant: Mr Sali, Solicitor
Respondent: Mr L Renak, Director

JUDGMENT

1. The Claim relating to unfair dismissal is dismissed.
2. The Claim relating to wrongful dismissal is dismissed.
3. The Claim relating to unlawful deduction of wages is dismissed.

REASONS

Claim and issues

1. The Claimant's complaints were:
 - 1.1 Automatic unfair dismissal;
 - 1.2 Wrongful dismissal;
 - 1.3 Unlawful deduction of wages.
2. The issues were discussed at the outset of the hearing with the parties, and as recorded in the Record of Hearing of 13 December.

Automatic unfair dismissal

3. Did the Claimant refuse to comply with a requirement that the employer imposed in contravention of the Working Time Regulations and/or refuse to forego a right conferred on him by those Regulations, by taking a 10 minute break (which is disputed by the Respondent)?
4. If so, was this the principal reason for dismissal? Alternatively, was the reason for dismissal the fact the Claimant was asleep during working hours, in particular during a meeting?

Wrongful dismissal

5. Did the Claimant commit conduct that justified withholding notice? In particular, was he asleep during working hours?
6. If not, what is the Claimant's entitlement to notice after 4 days' service?

Unlawful deduction of wages

7. Did the Claimant attend work on 22 June 2018?
8. If so, was the Claimant authorised to attend work on 22 June 2018?

The hearing

9. The matter was listed for one day. The Respondent had not arranged for any witnesses to attend as the nature of the hearing had not been understood.
10. The case was put back for
 - a) the Respondent to contact witnesses to enable them to attend over the link and
 - b) for the Claimant to consider carefully whether he wished to pursue all or any of the claims, in light of observations made on previous occasions and that if there were to be an adverse decision, the question of costs would arise. It was noted that the Deposit Order had been complied with and the sum of £750 deposited.
11. Upon confirmation that the Claimant wished to proceed, the Tribunal heard evidence from the Respondent's witnesses first: Hazel Bergin, Rexhep Blislimi and Dan Lupascu.
12. In respect of the two other witnesses whose statements appeared in the bundle, Mr Tippett had left the Respondent company and the Respondent no longer had his details, and Mr Dauti was on leave.

13. I read those witness statements which were both signed with a declaration of truth, however as their evidence could not be tested under cross-examination, I have placed a limited weight upon them.
14. The focus of evidence was on the disputed factual issues: was the time taken by the Claimant to undertake his training on his first day of employment excessive? Was the Claimant late for work on his second day? Or had he been given the incorrect address to attend? And finally, was the Claimant sleeping during a management meeting? Or was he taking a short nap during an authorised break?
15. I do not have to reach decisions in respect of each point raised.
16. I find as facts that the Claimant spent 150 minutes completing the online course relating to asbestos awareness training on his first date of employment, Monday 18th June 2018. I accept that the course ordinarily took competent staff between 45 and 60 minutes.
17. The Claimant scored 93.33%; the pass mark is 80%. Mrs Bergin who was in effect supervising the test, was so concerned as to the time taken that she asked the Claimant on more than one occasion if he needed assistance.
18. However, there was no time limit for the training, and the Claimant's score was high.
19. The Claimant signed his contract on that same date. Within that contract there is reference to the Respondent's disciplinary procedure (paragraphs 25 and 26). In particular, the employee is "strongly advised" to familiarize themselves with the company's disciplinary procedure, code of conduct and standards set out in the Employee's Handbook.
20. The Claimant signed the contract which included an acknowledgement that he had read, understood and accepted the terms and conditions of his employment "which together with the Employee Handbook" formed his contract of employment. The Claimant signed that acknowledgement on 18th June 2018 (paragraph 42).
21. The Claimant stated that he had signed it but had been told he could access that on the hard drive when he was provided with a laptop.
22. However, a copy was available within the office in addition to the version online. The contract and acknowledgement are in clear terms. Within the handbook the Respondent has set out a list of behavior that the Respondent considered amounted to gross misconduct (as provided in the Bundle). The fifth in that list, which is said to be non exhaustive albeit it includes 22 examples, is sleeping during working hours.
23. Further, the contract states that the Respondent reserved the right to dismiss without following a procedure for those under a minimum continuous service (paragraph 25).

24. I find that the primary reason for the dismissal was the fact that the Claimant was asleep during a management meeting during his working day. That was an important meeting, to go through the specific issues including matters of health and safety, of the Brewster and Malting site.
25. I find that the Claimant had not requested a break and therefore it had not been authorised. The Claimant was in a meeting at the time. He was not entitled to take a break at that time, as he was a site manager whose contribution was required at the meeting. I accept the proposition that employees who work long hours are entitled to take breaks. However, not during a management meeting.
26. Two others present at the meeting, Mr Bislimi and Mr Dauti, gave evidence that the Claimant had been snoring loudly, that they had had to prod him a number of times to wake him up and that a photograph had been taken. I have seen that photograph. It was submitted on behalf of the Claimant that there was an empty chair to the right of the Claimant, which places the evidence called by the Respondent into doubt. However, it is clear from the photograph that there is a person sitting immediately to the Claimant's left.
27. I note in passing that a further witness Mr Dauti made a statement that he was present at the meeting. He was not able to attend today, so I give less weight to his evidence. However, Mr Dauti supported the contentions that the meeting took place for managers to discuss the project, and that it was during that meeting that the Claimant fell asleep.
28. The dismissal was therefore not automatically unfair.

Wrongful dismissal

29. Having found that the Claimant was dismissed for sleeping during a meeting within his working hours, I further find that such conduct justified withholding notice.
30. It is conduct that is specifically referred to in the Respondent's policy as gross misconduct. Whilst there might well have been no health and safety issue for sleeping in a meeting, there could well be a significant subsequent concern that the Claimant had not listened to the meeting which Mr Bislimi had called to discuss the progress of the project, any potential issues and to distribute the work to the site managers.
31. Each manager was asked to read the Soltherm specifications. However, the Claimant fell asleep and had to be roused a number of times.
32. It does not matter, in my judgment, that his colleagues did not ask him why he was sleeping or why he was tired. That was not their concern. Their concern was the fact that the Claimant was sleeping at work.

33. It is the repudiatory breach of his contract by the Claimant that entitled the Respondent to dismiss him without notice.
34. I prefer the evidence of the Respondent on this point for the reasons set out above. I am satisfied that the Claimant was not entitled to notice in light of his conduct.

Unlawful deduction from wages

35. Finally, the Claimant stated that he had attended the site on Friday. There is no record of him attending. Other staff were able to locate the sign in sheet, and signed into the site. The Claimant accepted in evidence that he had been dismissed the previous day by his immediate manager. He was asked to leave the site and did so.
36. The Claimant accepted that he had contacted Human Resources, who had not been aware of the issue, and that he had not heard back from them.
37. The record of staff working at the site on 22 June has been produced in the Bundle. The Claimant's name does not appear on it. The Claimant stated in evidence that it had not been where he expected it to have been, in the canteen and he therefore could not sign in. However, he has not given any details as to what he did during that day, which staff he interacted with or any further evidence that placed him on site that date.
38. I do not accept the Claimant's evidence that he attended. He was well aware of the importance of signing in and the various consequences of not doing so. Had he been confronted with a situation where the document had been moved, he would have contacted management or ensured his presence was noted.
39. Even if the Claimant had attended the site on 22 June 2018, he was not authorised to do so. On his own case, he accepts that he had been dismissed on 21 June and that the Respondent did not authorise his attendance the following day. The Claimant is therefore not entitled to any payment for 22 June 2018.

Claims and costs

40. The claims are therefore dismissed.
41. Having found against the Claimant in respect of the three allegations specifically cited by Judge Corrigan in her Deposit Order dated 26 April 2019, the issue of costs arises.
42. Judge Corrigan ordered that funds be deposited in respect of each claim on the basis that each allegation had little reasonable prospect of success. Having heard representations from the Claimant in respect of each matter, I am not satisfied that the Claimant has shown that he has not acted unreasonably in pursuing each allegation.

43. I find that the Claimant acted unreasonably in pursuing each claim and therefore order that the deposit be paid to the Respondent.

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Employment Judge Beckett

Dated: 4 March 2021