



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hodkin

Respondent: DBL Transport and Storage Limited

HELD BY: CVP

ON: 1 June 2021

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr R Morton, Scottish Solicitor

JUDGMENT

1. The claim of unfair dismissal (health and safety) is dismissed.
2. The claim of no notice pay (one week) is dismissed.
3. The claim of unauthorised deduction of wages is dismissed on withdrawal by the claimant.
4. There are no other claims.

REASONS

1. Introduction

In this case Mr Hodkin was employed by DBL Transport and Storage Limited as an HGV driver from 30 June 2020 until his dismissal on 1 September 2020. The claimant complains to this Tribunal that he was unfairly dismissed, that he was entitled to notice pay and that there was unauthorised deduction of wages

2. Issues

The issues in this case relate to what was the reason for dismissal and if the reason was health and safety within the meaning of section 100 Employment Rights Act 1996. The right to notice pay will follow the finding in relation to the unfair dismissal claim.

3. Matters for decision during the hearing

- 3.1. The Tribunal in its discretion decided to hear evidence from the respondent first. This was because there was a prepared witness statement for the respondent and none for the claimant and the Tribunal, exercising its discretion, decided that the evidence would come out more easily for the Tribunal to understand if the respondent went first. Mr Morton continuously objected to the respondent going first but at the end of the hearing this no longer appeared to be an issue for the respondent.
- 3.2. The Tribunal was made aware that the respondent's witness statement, given by Mr Darren Lockwood, had not been served on the claimant. In the view of the Tribunal this put the claimant at a considerable disadvantage and the Tribunal asked Mr Morton supply to the claimant a copy of the witness statement. In the event the Tribunal arranged for the claimant to have a copy of Mr Lockwood's statement. Mr Morton wished to take the respondent's instructions as to whether the witness statement should be released to the claimant. Time was taken for the claimant to read the statement supplied to him by the Tribunal and for the respondent take instructions for the release of the witness statement, which was academic. The respondent also wished to consider in the adjournment that Mr Lockwood should give evidence at all and after the break Mr Lockwood was called and cross-examined by the claimant.

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

- 4.1. As can be seen from paragraph 1. of these reasons the claimant was a very short serving employee and the Tribunal finds that during that short period there were unsatisfactory instances of conduct of the claimant.
- 4.2. On 10 August 2020 the claimant damaged a fence while driving, which the claimant failed to report in breach of company procedures. The respondent received evidence that the claimant was aware of the incident at the scene. The cost of the damage was £165.00, which was subsequently deducted from the claimant's wages with his consent.
- 4.3. On or about 18 August 2020 the respondent received notice of a parking fine relating to the claimant's vehicle. This the claimant had also failed to report, in breach company procedures. The fine amounted to £60.00 or £65.00, which, with the consent of the claimant, was deducted from his wages.
- 4.4. The claimant also engaged poor or non-attendances, including absences for three whole days, on 10 July 2020, 24 and 25 August 2020. The claimant gave unsatisfactory explanations for these absences.
- 4.5. The claimant informed the Tribunal that on 30 August 2020 he telephoned Mr Willie Russell of the respondent to inform him that he was self-isolating

due to the death of a family member. He also said that he sent two WhatsApp messages to Mr Russell on the same date.

- 4.6. In his evidence before us Mr Lockwood said that no such messages were ever received from the claimant and in his evidence before the Tribunal the claimant accepted that he had no evidence that the phone calls or WhatsApp's were ever sent to or received by the respondent.
- 4.7. In the claimant's claim form the claimant did not refer to telephone calls and/or two WhatsApp's, but one text. Furthermore, in his claim form whilst the claimant did assert that he was self-isolating because of the death of a family member it turned out in answers to the Tribunal that the deceased person was not a family member but that it was someone who the claimant's wife's friend, who was the daughter of the deceased.
- 4.8. The claimant did not attend work on 1 September 2020, the Tribunal finds without explanation from the claimant. The claimant finds as a fact that that this was the straw that broke the camel's back, Mr Lockwood sending a text which read with words to the effect that: "... *just letting you know we will have to let you go due to your truck is going back ..*" This was followed on 18 September 2020 by a letter confirming termination of his employment with effect from 28 August 2020, although the Tribunal finds that the actual date of dismissal was 1 September 2020. The reason for the termination was said to be due to unsatisfactory performance, namely poor attendance and failing to report the accident referred to above.
- 4.9. A further letter of clarification was sent by the respondent to the claimant on 30 September 2020.
- 4.10. The claimant claimed that his dismissal was not due to any of the above matters other than the fact that he informed the respondent on 30 August 2020 that he would be self-isolating but failed to back the allegation with evidence.
- 4.11. The claim for notice pay stands or falls on the manner of the claimant's dismissal, which the respondent says was due to gross misconduct and although the claimant claimed £900.00 for unauthorised deduction of wages he withdrew this claim at the beginning of the hearing.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties:)

- 5.1. The Tribunal finds that the reason for dismissal does not relate to reasons of health and safety.
- 5.2. The claimant was unable to prove that there was any communication at all about self-isolation on 30 August 2020 or at any time.
- 5.3. Even if he had the claimant was unable to prove that any such communication caused the respondent to terminate his contract of employment.
- 5.4. The claimant was a short serving employee and his conduct and performance were clearly unsatisfactory. Whilst it was unusual the respondent in the first instant to give a reason relating to the withdrawal of the claimant's vehicle, it is clear that there were other reasons at the time to justify a termination.

- 5.5. In any case this was not an ordinary unfair dismissal case where the fairness comes into play, so that any discrepancy between the immediate reason for dismissal and subsequent reasons might be relevant.
- 5.6. What is wholly relevant is whether the claimant could prove a reason related to dismissal of health and safety. The claimant admitted in the witness box that he had told a lie about his self-isolation being for a family member. There was a clear discrepancy between the alleged manner of communication in his claim form as against his evidence.
- 5.7. In all the circumstances the claimant's claims for unfair dismissal and no notice pay are hereby dismissed, as is the claim for unauthorised deduction of wages on withdrawal by the claimant.

Employment Judge Shulman

17 June 2021

Date_____

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