



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Tyler

**Respondent:** Mr Vik Patel, partner in the firm of SVA Car Lamps & Body Panels

**Heard at:** London South (by video)      **On:** 28 July 2021

**Before:** Employment Judge C H O'Rourke

**Representation**

**Claimant:** Ms J Harbert – Claimant's partner

**Respondent:** Miss L Halsall - counsel

**JUDGMENT** having been given to the parties on 30 July 2021 and written reasons having been requested, on 12 August 2021, in accordance with Rule 62(3) of the Employment Tribunal's Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Background and Issues

1. The Claimant was employed from 4 April 2018, for a period of up to two years, by the Respondent, as a driver. The effective date of termination (EDT) of his employment is in dispute.
2. The Respondent's title is amended to Mr Vik Patel, a partner in SVA Car Lamps and Body Panels, a partnership.
3. As a consequence of the termination of his employment, the Claimant brought claims of constructive unfair dismissal, unlawful deductions from wages, failure to pay pay in lieu of notice and arrears of holiday pay.
4. The issues in respect of these claims are as follows:
  - a. Constructive Unfair Dismissal
    - i. Was the Claimant dismissed, or did he resign? The Claimant states that he resigned on 6 July 2020 [87], whereas the Respondent states that they dismissed him on 5 March 2020. If he was dismissed on that latter date, then

clearly he cannot have subsequently resigned, so as to be able to claim constructive unfair dismissal. If in fact he was dismissed on 5 March 2020, (or at least prior to 4 April 2020) the tribunal has no jurisdiction to hear a claim of unfair dismissal, as the Claimant would have had less than two years' service.

- ii. If he resigned, did he do so because of an act or omission of the Respondent? The Claimant states that he was told, on 5 March, not to come to work the next day, but subsequently was never invited back to work and therefore, due to non-payment of salary, over the following months, which would clearly be a fundamental breach of contract, he resigned.
  - iii. Did he tarry before resigning and thus affirm the breach of contract?
- b. Pay in Lieu of Notice (PILON). The Claimant accepted in this Hearing that his entitlement to notice was to one week only, which was included in his final pay packet, but from which deductions were made by the Respondent, for damage to vehicles.
  - c. Holiday Pay. There was some confusion over the holiday year, but once agreed as 4 April to 3 April each year, it was clear that the Claimant had had his entitlement for the holiday year 2019/2020. He also claimed for any holiday he may have accrued from 4 April to the date of resignation.
  - d. Unlawful deductions from wages. He disputed the deductions made from his final pay packet for vehicle damage and also claimed for wages not paid in April to July.
5. Counterclaim. The Respondent counterclaimed for the cost of the increase in their vehicle insurance premium, resulting from an accident the Claimant involving a cyclist. The Claimant denied any liability for this accident or responsibility for the premium increase (approximately £10,000).

## The Law

6. I reminded myself of s.98 of the Employment Rights Act 1996 and the Employment Tribunals Extension of Jurisdiction Order 1994, in respect of contractual counterclaims by employers.

## The Facts

7. I heard evidence from the Claimant and on behalf of the Respondent, from Mr Vik Patel, a partner in the Respondent and who dismissed the Claimant and also from Ms Krishna Patel, the HR manager.
8. Date of EDT. I turn straight to the issue of dismissal/resignation and the date thereof. I am in no doubt that the Claimant was dismissed by Mr

Patel, by telephone on 5 March 2020 and I find that for the following reasons:

- a. Mr Patel's evidence was clear and straightforward on the point and not shaken in cross-examination. There had been a dispute between him and the Claimant over a holiday day that the Claimant felt he was booked and was due to him, but was not being permitted to take. There were three phone calls on the evening of that day. Mr Patel said that the Claimant had been rude and swore at him, which the Claimant denied, although he admitted that he was angry at the time. Mr Patel said that he felt that he'd had enough of the Claimant's behaviour (there being agreement as to at least one previous confrontation, in 2019, when the Claimant had refused to follow instructions [75]). Mr Patel agreed that he had not followed any disciplinary procedure in carrying out the dismissal, but as the Claimant had less than two years' service, felt secure in doing so.
  - b. Ms Patel wrote to the Claimant on 12 March, confirming that dismissal, with effect 5 March [84]. She said that she typed and posted the letter personally and was able, in questioning, to provide a 'properties' report, showing that the document was produced on that date. While the Claimant denied receiving this letter, I find that it was posted to him and applying the postal rule, receipt is assumed two days later.
  - c. Ms Patel also replied to an email from the Claimant, of 23 March, in which he raised a grievance. She didn't address the grievance, but replied the next day [85], by email, to an address that the Claimant confirmed was correct for him, referring to the termination letter, attaching a further copy and stating that it had already been posted. The Claimant stated that he had not seen that email, but I don't believe him.
  - d. Finally, the Claimant's own correspondence at the time was ambiguous as to his status, referring to him seeking confirmation as to whether or not he'd been dismissed on 5 March (*'has my employment been terminated?'*), with the clear implication that he knew that to be the case [88]. He was also asked to return his work keys, which he always otherwise retained and he could not explain rationally why otherwise these would have been required to be returned, if he had not been dismissed. He was also removed from a work-related WhatsApp group [78-79]. It was clear that he simply regretted his actions of 5 March and in subsequent WhatsApp correspondence sought to keep the possibility of his returning to work open, which Mr Patel appeared, on 15 March, to at least consider for a moment (*'need to speak payroll and our HR legal team'*) [89], but thought better of.
9. Unfair Dismissal. Accordingly, therefore, his claim of constructive unfair dismissal must fail, as by the point of alleged resignation, he had been dismissed three months earlier. An alternative claim of unfair dismissal

cannot succeed either, as the Tribunal does not have jurisdiction to consider such a claim, as the Claimant had less than two years' service.

10. Unlawful Deduction from Wages. As indicated, the Claimant had 'received' his full allocation of holiday and his one week's notice pay, as set out in his final pay statement, but that these payments had been deducted, to meet the cost of damage incurred to the Respondent's vehicles. The Claimant accepted that he had incurred this damage and signed damage reports on each occasion, in which he accepted that he might be liable for any repair costs [example 62] ('I will allow for deductions from my wages as per my contract ..'). The Claimant's contract stated:

*'13 Any vehicle damage that you are responsible for must be reported to the office immediately. You will be liable for any damage to the vehicle ...; the costs of repair will be deducted from your pay' and 'If due to an accident that is your fault or 50:50, the insurance premium increases, this may be deducted from your pay.'* [56-57].

11. I had no reason to doubt the validity of the repair estimates/invoices provided by the Respondent [119-129] (and the Claimant offered no evidence in respect of them) and therefore conclude that the money withheld (£900) was a lawful deduction, with the total of estimates/invoices totaling more than that figure.

12. Counterclaim. Finally, there is the Respondent's counterclaim, which it accepted should be limited to £6300, to reflect the Claimant's share of the overall insurance claims made in the relevant year, approximately two thirds of the entire increase in premium. The Respondent's insurance renewal schedule for the year to March 2019 showed a premium of just under £9000 [70]. The schedule for the following year show an increase to £19,600 [71]. The summary of claims made to the insurer showed that the accident in which the Claimant was involved, incurred damages of just over £50,000, in relation to total claims of £72,000 [72]. As stated, the contract of employment permits the Respondent to hold employees liable for increases in insurance premium. The Claimant had been involved in an accident with a cyclist in November 2018 [report form 60]. While the Claimant sought to deny responsibility for the accident that is not how the Respondent's insurers viewed the matter and I am confident that if they had not felt liability for a payout of £50,000 to the injured cyclist, they would not have done so. The Claimant made little attempt to challenge this counter-claim, or the documents provided in support of it, stating only that he had not been charged with dangerous driving. However, the fact that the police did not prosecute the Claimant does not exclude the civil liability of the Respondent/their insurer's, in this case. Accordingly,

the Claimant is contractually liable to the Respondent for such expense and the counterclaim therefore succeeds, in the sum of £6300.

Employment Judge O'Rourke

Date: 16 August 2021