EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102575/2020 (V)

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Held via Cloud Video Platform (CVP) on 5 October 2020

Employment Judge S MacLean

10 **Mr W Stafford** **Claimant**
In Person

Hill Glasgow Ltd **Respondent**
15 **No appearance and**
No representation

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The judgment of the Employment Tribunal is that the claimant was unfairly dismissed in terms of section 100 (1)(c)(i) of the Employment Rights Act 1996 and the respondent shall pay to the claimant a monetary award of £23,331.57. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply. The prescribed element is £13,266.50 and relates 25 to the period from 1 April 2020 to 5 October 2020. The monetary award exceeds the prescribed element by £10,065.07.

REASONS

Introduction

1. The claimant presented a complaint of unfair dismissal under section 100 of 30 the Employment Rights Act 1996. The respondent did not present a response. On 19 August 2020, an Employment Judge issued a case management order taking account of the contents of the tribunal file; practice direction – fixing and conducting remote hearings issued by the President Judge Shona Simon on 11 June 2020; remote hearings practical guidance referred to in the 35 practice direction. The parties were advised that a public hearing would be conducted remotely on Cloud Video Platform by an Employment Judge sitting

alone on 5 October 2020. A test was carried out by the clerk on 2 October 2020. The respondent did not participate. The respondent also did not participate at the remote hearing on 5 October 2020.

2. I heard evidence from the claimant whom I found to be a credible and reliable witness in absence of any evidence to the contrary. The claimant provided copy payslips; his P60 and his letter of termination of employment which was sent to him by email on 31 March 2020.

3. I found the following essential facts to have been established or agreed.

Findings in fact

4. The respondent is a limited company having its registered office on 115 Bath Street, Glasgow. The respondent operates four hotels, providing accommodation for homeless people. It also operates bars and restaurants. The respondent's workshop is at Unit 4, 11 St Luke's, Glasgow, G5 0TS.

5. The claimant was employed by the respondent as a maintenance manager from 29 August 2019 until the respondent terminated his employment on 31 March 2020. The respondent did not issue the claimant with terms and conditions of employment.

6. The claimant was based in the workshop. He reported to Gary Adams, Operations Manager who was also based at the workshop. The claimant managed the maintenance team the size of which fluctuated depending on the jobs but was around six people. While the claimant was primarily involved in facilitating the team and providing products, he would from time to time carry out maintenance.

7. The respondent does not have a safety committee or safety representative.

8. On Friday 24 January 2020, the claimant was working at one of the respondent's hotels, St Enoch Hotel, Glasgow. The claimant spoke to a surveyor carrying out an asbestos awareness report. The claimant became aware that the respondent did not have an existing asbestos register for the premises which was required because of the age of the building. The

operatives were told to stop work because of the asbestos risk and that work should not continue until the results were known.

9. On Monday 27 January 2020, the claimant was concerned and spoke to Mr Adams and reminded him of his duty of care to inform employees of health and safety matters. Later Mr Adams told the claimant that he had spoken to one of the Directors, Mr Biswas. Mr Adams advised that the surveyors would survey the respondent's other hotels in due course. The claimant informed four of the maintenance team and three subcontractors who were working at St Enoch Hotel of the asbestos risk given the age of the building and absence of any risk register.

10. The result of the survey report was not made known to the claimant. When he made enquiries of Mr Adams and Mr Biswas, the claimant was advised that the company undertaking the survey were fraudulent, had taken payment and had never issued a report. The claimant was told that another surveyor had been instructed.

11. The claimant was concerned and contacted Glasgow City Environmental Health and Safety Unit regarding the issues. The respondent was not aware of this.

12. The claimant also contacted the surveyor to whom he had spoken in January 2020 and was informed that a report had been prepared; that the report expressed concerns about the amount of asbestos in the property; and the consequences of disturbing this during the course of the renovations.

13. The claimant returned to work following a fortnight's annual leave on 30 March 2020. He was informed that there were works planned at St Enoch Hotel. The claimant then raised concerns about the absence of a survey report. Mr Adams reiterated that the original company were fraudulent and had never issued a report but a second company had completed surveys on all of the hotels and that these were available at the hotel reception desks. The claimant intended to check the report when he went to St Enoch Hotel given that it appeared to be inconsistent with the information that he had obtained from the original surveyor.

14. In the meantime, the claimant separately raised concerns about the trackers that had been fitted to vehicles and the absence of any written policy regarding the use of trackers. The claimant also enquired about the maintenance department being put on furlough. However, the claimant was informed that the company's position remained that the maintenance team was an essential service and that they were key workers.

15. On 31 March 2020, the claimant received a letter by email advising of the respondent's decision to terminate his employment. The claimant was given a week's pay in lieu of notice. The email did not state the reason for the dismissal.

16. At the date of his dismissal, the claimant was 53 years of age. The respondent had employed him for eight months. The claimant's gross pay was £560 per week. His net weekly wage was £512.

17. The claimant has attended a few interviews and has received no offer of employment. The claimant has been willing to take any maintenance job although his experience is primarily in the hospitality and accommodation sector. However there has been little opportunity for new employment.

18. The claimant has been in receipt of Universal Credit since 14 May 2020.

Deliberations

19. The claimant accepts that he does not have sufficient qualifying service to bring a claim of automatically unfair dismissal. He does however maintain that his dismissal is automatically unfair under section 100 of the Employment Rights Act 1996 (the ERA).

20. I referred to section 100 of the ERA which provides:

"An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one the principle reason) for the dismissal is that.., (c) being an employee at a place where – (i) there was no representative or safety committee or (ii) he brought to his employer's attention, by reasonable means, circumstances connected with his work

which he reasonably believed were harmful or potentially harmful to health and safety."

21. In order to succeed with the claim, I hand to be satisfied on the following had

    a. It was not reasonably practicable for the employee to raise the health and safety matters through the safety representative or safety committee.

    b. The employee must have brought to the employer's attention by reasonable means the circumstances that he reasonably believes are harmful or potentially harmful to health and safety; and

    c. The reason or principal reason for the dismissal must be the fact that the employee was exercising his rights.

22. There was no health and safety representative or safety committee. The claimant spoke to his line manager, Mr Adams, Operational Manager and expressed concerns about the absence of an asbestos register at the St Enoch Hotel. I also considered that given the age of the hotel, the renovations to be undertaken; and the concerns that had been expressed by the surveyor about potential asbestos on site, the claimant had reasonable grounds for believing that in the absence of knowing where the asbestos was located, there were circumstances harmful or potentially harmful to health and safety.

23. I then turned to consider whether the reason or principal reason for the claimant's dismissal was health and safety. While the respondent was unaware of the claimant making contact with the environmental health department, the respondent knew that the claimant had spoken to the original surveyor and informed other employees about his concerns. The respondent directed the claimant to work at St Enoch Hotel on 30 March 2020 and he again raised the health and safety issue. The respondent suggested that a report by another surveyor was in place. There was no real attempt to reassure the claimant or provide him with a copy of the report. Also, the respondent's explanation about the first report on the information available seems contradictory and unsatisfactory. While the claimant conveying his

views on policies about tracking vehicles and seeking clarification on furlough undoubtably did not assist his position there was no other explanation for his dismissal. The respondent's position was that the maintenance employees were essential workers. While the respondent operated hotels the nature of the clientele were such that the hotels would remain open and there would be ongoing employment for the claimant and the rest of the team. In the circumstances, I felt that but for the claimant's continuing querying of the asbestos report, he would not have been dismissed. The principle reason for his dismissal was having brought to the respondent's attention by reasonable means the circumstances that he reasonably believes are harmful or potentially harmful to health and safety.

24. I therefore concluded that the claimant was automatically unfairly dismissed by the respondent. Having reached that conclusion, I then moved onto consider remedy. The claimant seeks compensation.

25. From the date of the claimant's dismissal until the date of hearing is 26.9 weeks at £512.22 per week, that is £13,778.72 The claimant received one weeks in lieu of notice which requires to be deducted leaving a balance of £13,266.50.

26. I was satisfied that the claimant has taken reasonable steps in mitigation. He has however restricted his search to maintenance in hospitality and accommodation. He is a skilled worker and will have the opportunity to broaden his search other sectors.

27. I also considered that the claimant had only been employed by the respondent for eight months and in that period had clearly formed the view that this was not a company with whom he would seeking a long-term relationship. I therefore restricted his future loss at 17.6 weeks at £512.22, that is £9,015.07. I made no award for the loss of statutory rights as the claimant had less than a year's service and therefore most of the statutory rights which he had lost would be relatively quickly acquired in any new employment.

28. The total compensatory award after adjustment is £22,281.57.

29. I made an award for failure to provide a statement of written terms and conditions of two weeks' gross pay capped at the statutory maximum of £525, that is £1,050.

30. The total compensatory award including statutory rights is £23,331.57. The claimant has been in receipt of Universal Credit. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply. A notice is attached providing a further explanation. The prescribed period is 1 April 2020 to 5 October 2020. The prescribed element is £13,266.50 leaving a balance of £10,065.07.

Employment Judge: Shona MacLean
Date of Judgment: 08 October 2020
Entered in register: 29 October 2020
and copied to parties