



EMPLOYMENT TRIBUNALS

Claimant: Mr R Johnston
Respondent: Salop Caravans (Cosford) UK Ltd
Heard at: Birmingham **On:** 16 & 17 December 2019
Before: Employment Judge Miller
Representation
Claimant: Mr M Edwards – legal representative
Respondent: Mr N Brockley – counsel

RESERVED JUDGMENT

1. The claimant's claim for breach of contract in respect of his notice pay is unsuccessful and is dismissed.

REASONS

Introduction

1. This decision is in addition to the judgment in this case relating to the claimant's claims of unfair dismissal and unpaid holiday pay dated 17 December 2019, reasons for which were given at the hearing.
2. The claimant was dismissed by reason of redundancy. The claimant also brought a claim for breach of contract on the basis that his notice pay was underpaid. In summary, the claimant's case was that he was contractually obliged to work overtime on Saturdays in addition to working Monday to Friday. He says that his notice pay should have been calculated including his Saturday overtime. The respondent's case was that overtime was ad hoc and did not therefore form part of his wages for the purposes of calculating the claimant's entitlement to notice pay.
3. This matter was not dealt with as part of the decision at the hearing.

The Hearing

4. The claimant provided a witness statement and gave evidence. The respondent called two witnesses – Mr Hughes, the managing director and Mr Lewis the Sales Manager. I heard from all witnesses. I also referred to a bundle of documents comprising 119 pages which included documents that the claimant applied to have admitted on the day. The respondent agreed to the admission of those documents.
5. The claimant was represented by Mr Edwards, a legal adviser and the respondent was represented by Mr Brockley of counsel. I am grateful to both representatives for their assistance in this case.

Issues

6. The issues for me to determine is whether the claimant had a contractual obligation to work overtime on Saturdays and, consequently whether he had a contractual right to be paid for this in his notice pay.

Law

7. Section 86 of the Employment Rights Act 1996 provides that an employee is entitled to one week's notice for each complete year of employment up to a maximum of 12 weeks.
8. An employee is entitled to claim damages for breach of contract if his employer fails to provide him with the correct notice. Such damages are the losses incurred which are the amounts that the claimant was entitled to under his contract.

Findings

9. The claimant worked for the respondent as a caravan fitter. His job included handing over caravans to customers who came to collect them.
10. It was agreed that the claimant worked varying hours on Saturdays depending on whether a customer came to collect a caravan. The time varied from around 45 minutes to up to five hours.
11. The claimant said that he had been given a piece of paper at some point saying it was mandatory for him to work on Saturdays on a rota basis. That document was not before the tribunal.
12. There were no other contractual documents indicating that the claimant was required to work on Saturdays.
13. Mr Hughes said, in evidence, that he had never required the claimant to work on a Saturday and that if he had been expected to work but did not turn up, he would ask someone else to cover. There was no suggestion of any disciplinary action.
14. The claimant was unable to recall a time when he had been required to work.
15. I find that there was no requirement for the claimant to work on Saturday mornings. Overtime was available on an ad hoc basis and the claimant could agree or refuse it as he wanted.

Conclusions

- 16. Having regard to my findings, I find that it was not a term of the claimant's contract that he was required to work on Saturdays or that he was entitled to be paid for any Saturdays that he did not work.
- 17. Further, there was no regular pattern or expectation of overtime so that there were no losses accruing to the claimant for failure to pay an amount in respect of overtime during or in respect of the claimant's notice period.

Employment Judge **Miller**

19 December 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....

.....
FOR EMPLOYMENT TRIBUNALS