



EMPLOYMENT TRIBUNALS

Claimant: D Stewart
Respondent: The Palm Indian Restaurant Ltd
Heard at: Bristol Employment Tribunal by CVP
On: 21 and 22 March 2022
Before: Employment Judge Murphy

Representation

Claimant: Mr D Jones of Counsel
Respondent: Mr B Uduje of Counsel

JUDGMENT

- (1) The Tribunal declares that the claimant has been unfairly dismissed;
- (2) The claimant was dismissed by reason of redundancy and has a right to a statutory redundancy payment. The 'relevant date' for the purposes of section 145 of the Employment Rights Act 1996 ("ERA") is 31 March 2021;
- (3) The respondent has breached the claimant's contract of employment in respect of the notice period served. The claimant was entitled to 12 weeks' notice of the termination of his employment.
- (4) The respondent has failed to provide the claimant with a written statement of employment particulars as required by section 1 of ERA and this failure persisted at the time when the claimant initiated the proceedings.

Case Management Order

The following case management orders are made under Rule 29 of the Employment Tribunal Rules of Procedure 2013. It is intended to ensure a fair hearing in accordance with the "overriding objective" set out in rule 2. That includes avoiding delay and expense so far as compatible with a proper consideration of the issues. The complexity and importance of the issues were taken into account when deciding the appropriate and proportionate order.

Amendment of respondent's name

1. Of consent, the respondent's name is amended to the Palm Indian Restaurant Ltd.

Amendment to the claimant's claim in relation to annual leave

2. The claimant is permitted to amend the claim for holiday pay to bring a claim for accrued untaken holiday alleged to be in excess of the 16.2 hours indicated in the original Grounds of Claim. No determination is made as to the merits of the claim itself, judgment on this complaint (only) having been reserved.

Listing of public Hearing on Remedy to take place via CVP

3. A public hearing will take place on **27 June 2022** via videoconferencing (CVP) to determine what remedy is appropriate in respect of each of the complaints recorded in the judgment above. The hearing will additionally determine remedy, if applicable, in relation to the claimant's claim for unauthorized deductions from wages in respect of accrued untaken annual leave, in anticipation that a reserved judgment with written reasons in that claim will have been promulgated before the appointed hearing on remedy.

Case Management Note

1. This hearing took place remotely by video conferencing. The parties did not object to this format. Evidence was heard from the claimant and the respondent's director and an oral judgment was given on liability in all claims brought with the exception of the claim relating to annual leave. There was insufficient time to hold a hearing on remedy.
2. I record the following issues which were discussed during the preliminaries in the morning of 21 March 2022:
 - a. Regarding the unfair dismissal complaint, the claimant alleged he was dismissed by the respondent on 31 March 2021. The respondent denied dismissing the claimant and maintained the claimant resigned on 27 April 2021. It was clarified that no alternative claim of constructive unfair dismissal was advanced by the claimant. In those circumstances, Mr Uduje confirmed that the respondent does not argue that there is a chance the claimant would have been dismissed anyway if a fair procedure had been followed (i.e. there is no **Polkey** argument). Neither

party alleges the ACAS Code of Practice on Disciplinary and Grievance applied or was breached. Mr Uduje confirmed the respondent does not argue that the claimant caused or contributed to his dismissal by blameworthy conduct so as to seek a reduction in any basic or compensatory award.

- b. With respect to the breach of contract claim for notice pay, the respondent denied the dismissal. If the claimant were found to have been dismissed, Mr Uduje confirmed it is accepted that the claimant was entitled to 12 weeks' notice.
 - c. With respect to the claim for a statutory redundancy payment, Mr Jones confirmed this was an 'alternative' claim for the claimant whose primary position is that his dismissal was not for redundancy.
 - d. With respect to the claim under section 38 of the Employment Act 2002 (failure to provide a written statement of particulars), the respondent accepts no such written statement had been provided to the claimant.
 - e. With respect to the claim for holiday pay, after an adjournment in the morning to allow further instructions to be taken, Mr Jones confirmed that the claimant brings this claim under section 23 of ERA (as opposed to under Reg 30 of the Working Time Regulations 1998 ("WTR"). The claimant's position was confirmed to be that his leave year ran from 22 March to 21 March annually. The respondent says that the leave year had been varied by a relevant agreement to run from 6 April to 5 April annually. Mr Jones confirmed the claimant pursues payment in lieu of accrued unpaid leave from the previous leave year (which, on the claimant's case, ran from 22 March 2020 to 21 March 2021) as well as the leave year in which the employment ended. Mr Uduje said the respondent did not permit any carry forward of more than 5 days' leave. The representatives advised me that they were still considering the figures and seeking to identify if agreement might be reached between them on the quantification of untaken leave and outstanding pay for that leave. It was agreed that the hearing would proceed to consider liability only in respect of this head of claim and all others and that evidence about the value of the claim would be held over for a hearing on remedy, if applicable.
3. At the conclusion of submissions, Mr Jones clarified that the claimant seeks more by way of accrued untaken annual leave than the 16.2 hours indicated in the Grounds of Claim. Mr Uduje objected to this expansion of the claimant's holiday pay claim. Having heard argument from the parties, I permitted the claimant to amend the quantification of the holiday pay claim. Reasons given during the hearing. I confirmed I am reserving judgment on the claim for holiday pay. A written decision will be issued with reasons. I confirmed that this will be confined to determining: (1) the claimant's annual leave year for the purposes of Regulation 13(3) of the WTR; and (2) whether, in the circumstances of the case, the claimant shall be permitted to carry forward leave year

from the preceding leave year for the purposes of calculating the accrued untaken leave for which he was entitled to compensation on termination. Directions for any further particulars of quantification needed will, if applicable, be given with the reserved written decision. If the respondent disputes the amount of leave the claimant says was taken and / or the amount of holiday pay received for the material period of employment (which period shall be identified in the reserved judgment), the respondent shall have an opportunity to lead evidence on these matters at the remedies hearing.

4. As an oral judgment was given on liability in all other complaints as recorded above, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

Employment Judge Murphy (Scotland), acting as an Employment Judge
(England and Wales)
Date: 23 March 2022

Judgment & Order sent to parties: 7 April 2022

FOR THE TRIBUNAL OFFICE

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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