



EMPLOYMENT TRIBUNALS

Claimant: Mrs Rano Karra

Respondent: Cube Manufacturing Limited

Heard at: Birmingham West

On: 08 June 2022 and
12.07.2022

Before: Judge L Mensah remotely

Representation

Claimant: Mrs Palminder Mann (Lay Representative)

Respondent: Mr Sunil Randev (Operating Manager)

FINAL RESERVED JUDGMENT

1. The Tribunal orders are;
2. The Claimant's holiday pay claim is agreed by the Respondent. I order the Respondent to pay the Claimant £1166.25 for untaken, accrued and carried over due to holiday pay for the employment ending 16.09.2019.
3. The claim for notice pay is made out, but I make no award given I have found in the Claimant's favour below and to avoid double recovery.
4. The Unfair Dismissal claim is made out and I find the Respondent has failed to demonstrate procedural fairness in the termination of the Claimant's contract of employment by failing to hold any meeting with the Claimant, failing to discuss alternatives to termination and terminating her employment with only one week's notice. The Respondent also failed to offer any right of appeal against the decision.

5. I also find the Respondent has failed to show her dismissal was for a potentially fair reason of redundancy or some other substantial reason or that they acted reasonably in all the circumstances in terminating her employment. They have not made out any reduction in evidence or on the facts as I have found them. I award as follows:

i. Basic award £1096.88

ii. Compensatory award £7464.00.

iii. The claim for expenses is not made out.

iv. I award 25% uplift for the complete failure of the Respondent to follow the ACAS code in terms of both dismissal and grievance procedures and in particular the complete lack of any proper consultation, meeting with the Claimant, no fair procedure in decision to dismiss and any right of appeal against the dismissal. £2227.72.

v. I award £350 for loss of statutory rights.

vi. I do not award notice pay given the award for loss of income given above.

vii. The outstanding holiday pay is agreed at £1166.25.

a. Total 12,304.85

viii. If the Recoupment Regulations apply to this award. The prescribed element is £9691.72 net. The period prescribed is the 16.09.2019 to the 15.05.2020. The excess of the prescribed element is £2613.13. The annex to this judgment explains the operation of the Recoupment Regulations.

The Issues in the hearing

6. The following issues were raised in this case,
- a. The Claimant alleges the Respondent had failed to pay holiday pay accrued and untaken at the date of termination.
 - b. The Claimant alleges the Respondent had failed pay appropriate notice pay on termination.
 - c. The Claimant alleges the Respondent mislead the Claimant into signing, and falsified the date in a document, purported to be a new contract of

employment dated 02.07.2019 for the Claimant, when in fact her employment had continued from the 16.07.2016. The Respondent says the Claimant's original employment commenced 16.07.2016 and was terminated on the 06.04.2018 and the Claimant was re-employed on the 02.07.2019 and terminated 16.09.2019. As a result of the above the Claimant alleges she was unfairly dismissed by the Respondent when her employment was terminated. The Respondent say the Claimant did not have two full years service and so is not entitled to bring a claim for unfair dismissal and was paid any redundancy payment in the alternative.

Holiday Pay

7. At the commencement of the hearing Mr Sunil Randev accepted the Claimant had not been paid her accrued and outstanding holiday pay and agreed the Respondent did owe the Claimant the sum of £1166.25 for untaken, accrued and carried over due to holiday pay for the employment ending 16.09.2019. I have made an order to that effect above. I therefore was not required to decide that issue.

Evidence

8. I heard evidence from Mr Sunil Randev who identified himself as the Operating Manager on behalf of the Respondent. On the Claimant's behalf I heard evidence from the Claimant, Mrs Balwinder Kaur, Mrs Balbir Kaur and Mr Wayne Massey. I also had a bundle of papers running to 169 pages prepared on behalf of the Claimant and a bundle of statements which included other individuals who did not give evidence. The hearing took one full day to deal with the evidence and submissions. The Claimant, Mrs Balbir Kaur and Mrs Balwinder Kaur gave evidence through an interpreter. I am satisfied they understood the Interpreter and could answer the questions put.
9. I reserved my decision as there was insufficient time to come to a decision and give a decision to the parties. I reconvened on the 12.07.2022 to come to a decision. The parties elected to have the decision sent out in writing rather than attend for an oral judgment.

The Findings

10. The Claimant told me she began working for the Respondent Company on the 16.07.2016. The Claimant explained she had been working for a company called Satin Limited but this business went into liquidation on the 31.05.2016 and I have seen an array of documentation regarding that. The Claimant was taken on as a Seamstress and was working alongside other staff in the business in the sewing machine room. The Claimant described how she and the other generally female staff from Satin had been called together by the management of Cube and told

Cube had taken over the site and their jobs would remain the same but their payslips would be from Cube.

11. The Claimant told me she did sign a contract of employment but was not provided with it. Mr Randev on behalf of the Respondent does not dispute the Claimant commenced employment on the 16.07.2016 but has not filed a copy of that contract of Employment. I asked him at the hearing if the respondent had complied with Tribunal directions to file all relevant documents in their possession and he said they had. I have no explanation for the failure to file a copy of that original contract and this is a theme from the Respondent in their conduct of these proceedings. What instead I have seen is the contract of employment the Respondent seek to rely upon dated 02.07.2019. Whilst there are issues with the legality of this contract I will address below, absent any other evidence I consider this contract most likely to duplicate and reflect the original contract, as signed in 2016. I turn to address this below.
12. The Claimant told me that her employer supplied pay slips from the 05.09.2016 through to the 05.10.2018 bar three months when she was off sick with Vertigo. In fact the Claimant has filed copies of some of those payslips in the bundle [pages 132-134] but not a complete set. In her witness statement and confirmed in her oral evidence the Claimant told me that in April 2016 she had returned from working her shift when she collapsed. She was told she had severe vertigo which was so disabling she could not stand, sit or look after herself. At the hearing the Claimant told me she saw her Doctor for a fit note and the next day she handed that note to a supervisor Mrs Balbir Kaur. The Claimant says she was then off work and did not return to the work until after the 05.07.2018. In fact she says she spent three weeks of this period seeking treatment in India and returned back to the United Kingdom on the 05.07.2018.
13. I have seen a copy of the Claimant's passport showing she arrived in India on the 13.06.2018 and arrived back in the United Kingdom on the 05.07.2018. I accept she was therefore outside the United Kingdom during this period. I have also seen a copy of the fit note issued to the Claimant dated as assessed on the 09.05.2018 and the condition is identified as vertigo. It states the Claimant was not fit to return to work from the 04.05.2018, which is a Friday. The Claimant told me she had returned from a shift at work when she had taken ill and that she was contracted to work 8am to 6pm Monday to Friday. It is therefore reasonable to assume she took ill after her shift on Friday 04.05.2018 and saw her doctor on Wednesday 09.05.2018, which is why he backdated the fit note.
14. I also heard evidence from Mrs Balbir kaur who told me when staff hand things to her like sick notes she simply passes them on to management. Mrs Balbir Kaur did not deny the Claimant had passed her the sick note as claimed. Mr Randev told me he doesn't know anything about the sick note and didn't even know the Claimant

was off sick during this period and did not produce or seek to rely upon any records kept about the Claimant's work. I accept the Claimant did go off sick as she has told me and I accept she provided the Respondent with her sick note. I find the lack of documentary evidence from the Respondent regarding the Claimant going off sick concerning and the decision to send Mr Randev, when he has no apparent knowledge of the Claimant's absence undermining to the Respondent.

15. The Respondent's case is that on the 26.03.2018 all staff were handed a termination letter and this included the Claimant [copy enclosed at page 150 bundle). Mr Randev says in his witness he can confirm this letter was served on the Claimant. However, when questioned about this at the hearing he admitted he was not even present when these letters were said to have been handed out. In fact he alleges the letters were handed out by Mrs Balbir Kaur but in her witness statement which she adopted and attested as the truth, she categorically denies ever handing out such a letter to staff or the Claimant. Mr Randev was given the opportunity to cross-examine Mrs Balbir Kaur about this and when he put to her that she handed out the termination letters and P45sm, she again categorically denied this and stated nothing was handed to the staff including the Claimant. Once again the Respondent has chosen to send Mr Randev, who has no direct knowledge of this alleged event.
16. Despite his witness statement asserting he could confirm such an event had taken place, he in fact was not a witness to the event. I prefer the evidence of the Claimant and Mrs Balbir Kaur and I find no such letters were handed out to staff as claimed. Whilst I did not hear from the other individuals who had filed witness statements in support and so the weight I can attach to their evidence is reduced, it is apparent they also make allegations of being asked to sign documents they did not agree to, or had not been read to them.
17. Despite these allegations the Respondent again has chosen to only send Mr Randev to give evidence. When Mrs Mann asked Mr Randev why the very Managers involved in the alleged serious incidents of attempted fraud and procedural irregularity were not present to give their accounts, he told me this was because he was the responsible manager. I do not accept this is a credible response and I find it damages the Respondent's overall credibility that not one manager with direct evidence as to any of the events appeared to give evidence.
18. The said termination letter purports to give notice to terminate the Claimant's employment and give a last working day as the 06.04.2018. The letters says the closure of the business is due to termination of the lease, poor business performance, production and lack of a supply chain. The Respondent had filed a copy of a P45 Part 1A form which I note gives the 06.04.2018 as the Claimant's last day of employment but is itself dated 06.06.2018. The Claimant says she never received a P45 and of course she was in India 13.06.2018 to the 05.07.2018. Once

again Mr Randev says the P45 was handed to the Claimant by Mrs Balbir Kaur but adds it was also posted. I prefer the Claimant's account in the light of the lack of any proper paper trail by the Respondent. I am also supported in this view by the evidence regarding what happened next.

19. The Claimant told me that in May 2018 she had been at a wedding and met a Mr Adi Bakshi and Katie Randev. Mr Sunil Randev confirmed the two individuals are family members, as he is, he told me Mr Adi Bakshi was described as a Line Manager and Katie Randev as a General Manager. The Claimant says at this wedding she was presented with some documents which were in English and told the business was moving to a different location in Tipton and could not locate any previous records for the Claimant so they asked her to sign these documents for the government checks. The Claimant says she was told everything would stay as it was at the old site. The Claimant says she wasn't told the document was an application for a job and a new contract of employment and does not read English to enable her to understand the document. The Claimant says she was not allowed to bring the document home to have someone look over it and felt effectively pushed into signing the document without knowing what it said.
20. The Respondent have produced the contract of employment and application for a job, both dated 02.07.2018 and rely upon it as part of their claim the Claimant's employment was terminated and she was re-employed in the July. At the hearing Mrs Mann asked Mr Randev about the above event. Remarkably yet again he had no knowledge, direct or otherwise, of these events and yet again the individuals involved were not called to give their account. Instead he sought to rely upon the documents as a contract the Claimant had signed and suggested Mr Adi Bakshi would have been able to tell the Claimant what it said because he spoke the same language. I find it astonishing the Respondent has chosen to present a response in this way and find it damaging to the Respondent's case.
21. As if matters were not bad enough, Mrs Mann then pointed out to Mr Randev that the contract and application form were both dated as signed on the 02.07.2018 and could not have been signed by the Claimant on that date as she was still in India. Mr Randev had no explanation for this and did not offer one, other than to assert again it has been signed by the Claimant. I also note the section where a responsible person should sign on behalf of the Respondent no individual is identified.
22. Finally, I note with some distain the manner in which the Respondent's General manager reacted to the Claimant's details of her loss as shown in an email dated 14.11.2019 at pages 65 of the bundle apparently sent by Katie Randev and cc'd to Tony Randev and sent to Mr Massey in which Katie Randev suggests the way to deal with the Claimant is to "assassinate" her and asks of this can be arranged. If this was meant to be a joke the Manager concerned need to think more carefully

about their choice of language in the future. Certainly I accept from the Claimant's perspective she did not view it as a joke and it caused her some concern. When this was put to Mr Sunil Randev he appeared to try to distance himself but provided no explanation for it and suggested Mr Massey was at fault or it might have been taken out of context. I agree with Mrs Mann the context is clear. Whilst this evidence post dates the Claimant's termination it demonstrates an unhelpful mindset at senior management level.

23. I prefer the evidence of the Claimant and accept she was pressurised into signing documents in a wedding, she was not accurately told of the content, she was not given the opportunity to take them away and have them explained in a language she could understand and someone in the Respondent business has some time later dated these documents the 02.07.2018, not realising the Claimant was not in the country. I therefore find this document is not a new contract of employment or an agreed variation to the original contract and has no effect on the Claimant's employment.

Eligibility conclusion

24. On the facts as I have found them I find the Claimant's employment was not terminated by the Respondent in 2018 as claimed. I find the evidence relied upon by the Respondent unreliable and not portraying the true situation. I therefore find the Claimant remained continuously employed by the Respondent from the 16.07.2019 until her employment was terminated on the 16.09.2019. Therefore, on the facts as I have found them the Claimant was employed for over three full years and is eligible to claim unfair dismissal.

Unfair Dismissal

25. When it comes to the Unfair Dismissal claim the Respondent's case is extremely weak. From pages 64 through to 62 of the bundle there are letters which show in a letter dated 12.08.2019 the Respondent, through the then Manager Mr Wayne Massey sought to terminate the Claimant's employment with one week's notice. In a second letter dated 16.08.2019 Mr Massey sought to retract the termination suggesting it was an oversight "in the restructure process." In a letter dated 20.08.2019 Mr Massey sought to reduce the Claimant's hours to 16 hours per week and says this is permitted by clause 6.4 of the Claimant's contract of employment and would commence on the 21.08.2019. The Claimant explained in her Updated statement at pages 52 and 53 of the bundle, how she sought to question the legitimacy of the attempted variation and refused to agree to it. The Claimant says she offered to retrain or work in any department in the business. On the 21.08.2019 the Claimant says she was told she had worked 30 hours that week and so not to come into work on the Thursday and Friday and the respondent sought to unilaterally impose the variation to 16 hours. The Claimant says despite her response she received nothing further from the Respondent but for a final termination letter dated 03.09.2019 terminating her employment with one week's

notice.

26. Each of the letters suggested there was a meeting with the Claimant but no records of such a meeting have been produced and nothing was put to the Claimant about this in the hearing. The Claimant says in the first meeting [09.08.2019] she was told the company was closing down and relocating to Holland and so the work would end on the 16.08.2019. In the second meeting [19.08.2019] the Claimant was told to ignore the termination letter of the 12.08.2019, the managers Tony and Katie told her she needed to work extra hours and the Claimant says Tony was aggressive and the Claimant.
27. Mr Sunil Randev simply adopts the letters without more and in the hearing he complains that Mr Massey did not relay any of this back to him and he has no knowledge of the same. Yet again though the Respondent have not adduced any witness or documentary evidence regarding these matters. Mr Massey in his evidence told me he was following instructions from management. Mr Sunil Randev was shown the document purported to be an agreement with the Claimant to vary her working hours and the fact that it had not been signed by the Claimant. Mr Sunil Randev told me he felt that was Mr Massey's fault, but offered no evidence to show the Claimant had ever agreed to the variation or that the Respondent took any steps to resolve the matter with the Claimant thereafter. The contract of the 02.07.2019 does appear to have a clause which might have allowed the Respondent to reduce the Claimant's hours but I have decided this contract has no effect in the circumstances. Albeit not a central issue, I note there is nothing else before me to show the Respondent had any contractual right to unilaterally vary the Claimant's hours.
28. Whilst I take into account the business is a modest size with what Mr Massey says is in excess of 30 staff, it is of sufficient size and resource to expect the Respondent to at least attempt to follow the basic guidance as to fair procedures and give reason for dismissing staff.
29. I took Mr Sunil Randev to the contract dated 02.07.2019 (which I have found the Claimant did not sign or agree to) and asked him if there was anything related to sickness absence, grievance or disciplinary procedures and he said there wasn't, but the company paid statutory sick pay. However once again the Respondent had no other records. I find the Respondent has failed to show any procedures were in place for staff to raise issues with Management. There appeared to be a completely chaotic approach to line management and staff issues and Mr Sunil Randev's position in the business seemed to be of complete ignorance of what was going on. Section 98(4) (b) requires the Tribunal to have regard to equity and the substantial merits of the case when looking at the evidence overall and to avoid substituting my own view.
30. Mr Sunil Randev also confirmed to me the status of the company as of the date of

the hearing is it has ceased trading and the business “technically” ceased trading when the lease came to an end in the new premises in the third quarter of 2020, effectively a year after the Claimant’s employment was terminated. At the date of hearing it was still active on Companies House.

Unfair Dismissal Conclusion

31. In the circumstances as I have found them. The Respondent has failed to demonstrate a potentially fair reason for dismissal such as redundancy or any other reason. The Respondent has completely failed to show therefore they acted reasonably in all the circumstances in dismissing the Claimant with one week’s notice when she had over three full years’ service. There is no evidence of any proper consultation, no suggestion of any or any reasonable selection process or decision or steps to find the Claimant any alternative employment, no evidence of a genuine redundancy situation. I reminded myself of what is said in the leading case of *Williams v Compair Maxam Limited [1982] IRLR 83*. In general terms, employers acting reasonably will give as much warning as possible of impending redundancies to employees, consult them about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job.

32. There is no evidence of any capability or conduct issues and there appears to be an almost wholesale lack of any proper procedures and total disregard for the ACAS codes. It appears the Respondent sought to rely wholly on the assertion they had dismissed the Claimant in 2018. I find the Respondent did not act reasonably in all the circumstances in dismissing the Claimant.

33. I find the Unfair Dismissal claim is made out.

Background

34. In deciding the above matters I had regard to the following questions

Notice pay

35. I had to address the following matters,

- 1.1 What was the Claimant’s notice period?
- 1.2 Was the Claimant paid for that notice period?
- 1.3 If not, did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

Jurisdiction

36. I had to address the following matters,

- 1.1 Does the Claimant have two years qualifying employment as per Section 108 of the Employment Rights Act 1996?

Unfair Dismissal/Redundancy

37. I had to address the following matters,

- 1.1 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.
- 1.2 Was it a potentially fair reason?
 - 1.1 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:
 - 1.1.1 The Respondent adequately warned and consulted the Claimant;
 - 1.1.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - 1.1.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;
 - 1.2 What was the reason or principal reason for dismissal? The Respondent says the reason was a substantial reason capable of justifying dismissal, namely redundancy?
 - 1.3 Did the Respondent act reasonably in all the circumstances in treating [the reason] as a sufficient reason to dismiss the claimant?

38. The test of fairness is tied into the reason for dismissal which the Tribunal has found. The size and administrative resources of the employer's undertaking are something to which the Tribunal must have regard. It can be reasonable for a large employer to do things which a very small employer could not do. When you come to decide fairness you should remind yourself of the respondent's position in that respect.

39. The key question is whether the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee. This effectively imports a “band of reasonable responses” test. It is generally an error of law for the Tribunal to decide the case on the basis of what it would have done had it been the employer. The question must be whether this employer acted in a reasonable way given the reason for dismissal. Dismissal can be a reasonable step even if not dismissing the employee would also have been a reasonable step.

Remedy

40. I had to address the following matters,

- 1.4 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 1.4.1 What financial losses has the dismissal caused the Claimant?
 - 1.4.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 1.4.3 If not, for what period of loss should the Claimant be compensated?
 - 1.4.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 1.4.5 If so, should the Claimant’s compensation be reduced? By how much?
 - 1.4.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.4.7 Did the Respondent or the Claimant unreasonably fail to comply with it by failing to meet with the Claimant to consult regarding her job, dismiss without notice, failure to offer a right of appeal, failure to offer any grievance procedure?
 - 1.4.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
 - 1.4.9 If the Claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
 - 1.4.10 If so, would it be just and equitable to reduce the Claimant’s compensatory award? By what proportion?
 - 1.4.11 Does the statutory cap of fifty-two weeks’ pay or apply?
- 1.5 What basic award is payable to the Claimant, if any?

- 1.6 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

Remedy

1. In the light of my findings, I have considered the Claimants Schedule of Loss. The Respondent does not offer a counter-schedule and Mr Sunil Randev's position was to ask me to make an award as I see fit. The Respondent does not evidence or argue for any reductions.
2. Basic award £4.5 weeks, the Claimant was aged 56 at the date of termination and had three full years service with a gross week's pay of £243.75. I award £1096.88
3. The Claimant claims for eight months loss of pay from the date of termination as she was able to find another job in April 2020. This pre-dates the Respondent business ceasing to trade. This seems a reasonable period to find alternative employment and the Respondent does not suggest otherwise. The Claimant does not suggest any continuing loss beyond this period and I don't have clear evidence so I have taken what I believe to be a reasonable approach and so I award £933.00 net loss per month x 8 months. I award £7464.00.
4. The Claimant says she spent £284.70 purchasing newspapers and travel to the Gudwara weekly to look for jobs on the notice board. There isn't any documentary evidence about this and it is unclear why the Claimant would not have been travelling to the Gudwara in any event if is practising. These matters are not covered in the witness statement so I find this loss is not made out.
5. I award 25% uplift for the complete failure of the Respondent to follow the ACAS code in terms of both dismissal and grievance procedures and in particular the complete lack of any proper consultation, meeting with the Claimant, no fair procedure in decision to dismiss and any right of appeal against the dismissal. £2227.72.
6. I award £350 for loss of statutory rights for employment lasting under four years.
7. I do not award notice pay given the award for loss of income given above.
8. The outstanding holiday pay is agreed at £1166.25.
9. Total 12,304.85

10. If the Recoupment Regulations apply to this award. The prescribed element is £9691.72 net. The period prescribed is the 16.09.2019 to the 15.05.2020. The excess of the prescribed element is £2613.13. The annex to this judgment explains the operation of the Recoupment Regulations.

11. That is my decision and reasons.

Employment Judge **Mensah**

Date 12.07.2022

Notes¹

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.