



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Hallet

**Respondent:** Star Multifuels

**Heard at:** Cardiff by video

**On:** 4th March 2022

**Before:** Employment Judge C Butcher

## **Representation**

Claimant: In person

Respondent: In person

# JUDGMENT

The claim for wrongful dismissal is not well founded and is dismissed.

# REASONS

1. The claim in this case arises following the presentation of a claim form on 25/7/21. The claim was for wrongful dismissal. The Claimant was seeking compensation in the form of payment in lieu of notice and compensation for loss of wages until he obtained new employment. The Claimant also claimed that the Respondent had failed to provide written terms and conditions of employment.

2. The Respondent defended the Claim on the basis that the Claimant's actions amounted to gross misconduct and that they were entitled to summarily dismiss him.

## **The issues before the Tribunal were:**

3. Was the Claimant wrongfully dismissed from his employment?

4. Did the Claimant's actions amount to gross misconduct and was the Respondent entitled to summarily dismiss the Claimant?

5. Did the Respondent provide the Claimant with written terms of employment conditions?

### **The Hearing**

6. There was no agreed bundle of documents but both parties confirmed they had received all relevant paperwork and were ready to proceed. The Claimant had submitted statements which were not numbered but were easily identifiable. The Respondent had prepared a bundle of documents only insofar as their own evidence and page references related to this bundle and shown in square brackets. I heard evidence from the Claimant, Mrs Hallett and two witnesses, Mr Pleon and Mr Howard on behalf of the Claimant. I also heard evidence from Mr A Lacey, Mr S Lacey, both Company Directors of Star Multifuels and three employees of the Respondent, Mr Windsor, Mr Penston and Mr Davies.

7. At the outset, I explained to the parties that this was a claim for wrongful dismissal. The Claimant did not have the required length of service to pursue an unfair dismissal claim and as such, the Tribunal would be focusing on the issue of whether the Claimant's actions amounted to gross misconduct and entitle the Respondent to dismiss the Claimant without notice.

8. The Claimant was employed as a fitter/mechanic by Star Multifuels (the Respondent) from 19/10/20 until 11/3/21 when he was summarily dismissed by the company directors, Messrs Sean and Andrew Lacey. The company had 9 or 10 employees with the Claimant being the only mechanic/fitter employed at the time. The circumstances surrounding the dismissal are disputed by the parties. What is accepted is that on 11/3/20, the Claimant had been requested to conduct a six-weekly vehicle inspection on an articulated trailer (a 32,000 litre fuel trailer referred to as 'artic') and tractor unit.

9. The Claimant's case was that he inspected the vehicle, identified various faults, completed the relevant paperwork before starting to remedy the defects. He was prevented from completing the work by the Respondents and following a heated dispute with both Andrew and Sean Lacey, he was dismissed. The Claimant left the premises immediately and received confirmation of his summary dismissal by letter some time later. He did not appeal the dismissal at this stage.

10. The Respondent's position was that the Claimant failed to maintain the legally required documentation and did not complete maintenance and mechanical work on a number of vehicles, resulting in additional cost to the company, but more significantly, creating a potential risk to health and safety. On 11/3/20, the Respondents position was that the Claimant was negligent in his work and rendered the vehicle unsafe to the extent that it was not roadworthy and a potential hazard.

11. Both parties agree that the Claimant received a letter dated 15/3/21 confirming summary dismissal. A further letter was sent by the Respondents in which added to the initial letter, referring to previous warnings on 9/2/21 and 24/3/21 which "made clear that further misconduct was likely to lead to summary dismissal". The Claimant also received a written copy of his terms and conditions of employment and a copy of

the company's anti-bullying policy for this hearing. The Claimant stated that he had received no prior warnings nor a copy of his conditions at the commencement of his employment.

12. The Respondent provided an explanation in relation to the letters sent to the Claimant that he had sent the first letter, the references to warnings had been inadvertently omitted and in fact, the date of 9/2/21 was incorrect and should have been 9/3/21. In his evidence, Andrew Lacey stated that the first incident related to the Claimant leaving flammable materials around the workshop which was a breach of health and safety regulations. The second incident concerned the Claimant driving a company vehicle on 5/3/21, which, whilst covered by a valid MOT at that time, failed the MOT on that day due to dangerously low brakes and worn tyres.

13. Mr Andrew Lacey's evidence was that all employees, including the Claimant were provided with terms and conditions of employment upon starting with the company, together with various other documents, relating to the company and health and safety procedures. He acknowledged that he had not asked the Claimant or other employees to sign these documents at the time but that he would have provided these to the Claimant. Mr Andrew Lacey provided a further copy to the Claimant for the purpose of these proceedings at his request.

14. Mr Andrew Lacey's evidence relating to the day of dismissal was set out at [21-22]. In his oral evidence, he referred to a build up of incidents with various vehicles [7-10, 11-14], which required remedial work by Pontamman Garage to ensure their safety. The invoices for the work conducted are within these pages. The incident on 11/3/21 was, in Mr Andrew Lacey's view, so serious that he formed that view that he did not want the Claimant repairing trucks/vehicles anywhere near him or his family. Whilst he accepted that the Claimant had several qualifications to demonstrate his competence, the events of 11/3/21 were in his view as a result of the Claimant's negligence and the company had no other option to dismiss him straight away.

15. The Tribunal also heard evidence from three employees of the Respondent – Mr Windsor, Mr Davies and Mr Penston as well as Mr Sean Lacey. Mr Windsor confirmed the evidence in his statement [11] and described “constantly bringing things back and forth...things not getting sorted”. He referred to work conducted by the local garage after the Claimant has replaced a gear box which was to replace cables and missing bolts [12]. Mr Windsor had experienced no further problems with the vehicle after this. Mr Davies reported air pressure issues with his vehicle, which were subsequently reported as the incorrect fitting of a valve [15]. Mr Penston's statement in relation to 11/3/21 [18-19] records that the Claimant had informed him that the tractor and trailer were “good to go” and that he would fill in the paperwork later.

16. Mr Sean Lacey confirmed his statement [21-22] and described previous difficulties with the Claimant completing paperwork. His view in relation to the events of 11/3/21 and earlier was that the Claimant was competent but had been “blasé and negligent”. He referred to other incidents, such as a wheel bearing collapsing on a vehicle due to the incorrect fitting of a wheel hub [8]. In his view, the Claimant's actions amounted to gross misconduct, and he had to be dismissed before he caused any further damage.

17. On the Claimant's behalf, the Tribunal heard from Mr Pleon, a former colleague of

the Claimant who described him as someone who took his job seriously. Mr Howard also confirmed his statement and corrected a date.

18. In his evidence, the Claimant acknowledged that no one is “100% free from making mistakes” but was adamant that he performed his job and that he was a professional who knew the importance of completing paperwork accurately. In relation to the events on 11/3/21, the Claimant maintained that he had already recorded the faults to the vehicle and that he was in the process of addressing these when the Respondent dismissed him. He had completed the paperwork and could not account for it being unavailable. The Claimant denied informing Mr Penston that the vehicle was ready and could not explain why he would have claimed he said this.

19. When questioned about the various invoices contained in the Respondent’s bundle of documents, the Claimant disputed that his actions could have resulted in the additional work being necessary and suggested that anyone could have worked on the vehicles after his dismissal. He also denied any responsibility for any of the vehicle defects identified on behalf of the Respondent. The Claimant accepted that the faults recorded on 16/3/21 the tractor and trailer [26-28] were those identified by him and that he had not been given the opportunity to rectify them.

20. On the Claimant’s behalf, Mrs Hallett’s evidence was that the Claimant had not gone through the appeal process as he did not wish to work for the Respondents after “the way in which it had been done”. She understood personality clashes and that the Claimant was deemed not suitable to work for the Respondents, but that he should have been dismissed in a fair way.

## **The law**

21. Wrongful dismissal/dismissal in breach of contract

22. A wrongful dismissal concerns a dismissal by an employer in breach of the employee’s contract of employment. This can, and often does focus on whether an employment contract has been terminated without the necessary notice period.

23. Required notice periods are provided for through agreement in the employment contract, or through the statutory scheme contained at s86 ERA. Section 86 ERA provides a statutory minimum notice entitlement which cannot be reduced by contractual agreement. This provides that after one month’s continuous employment, an employee would be entitled to at least one weeks’ notice with increases in entitlement based on years of service.

24. Payment in lieu of notice can be provided for in a contract.

25. Where an employee does have an entitlement to a notice period, there are circumstances in which the employer can dismiss without the need to give notice. These are where it can be established that there has been a repudiatory breach of contract by the employee. In these circumstances, a summary dismissal (dismissal without notice) can be justified.

26. Following *Johnson v Unisys Ltd [2001] UKHL 13*, an employee is not allowed to

bring a wrongful dismissal claim relying on the implied term of trust and confidence to recover damages for loss arising from the unfair manner of his dismissal. This is covered by the statutory right to claim unfair dismissal, which has various restrictions on who is eligible to claim, time limits the amount that can be awarded and so on. An employee is not able to circumvent the statutory rules by seeking compensation for the unfairness via a wrongful dismissal claim.

27. The Supreme Court in *Edwards v Chesterfield Royal Hospital NHS Trust* [2012] IRLR 129 said that principle does not only apply to wrongful dismissal claims based on a breach of the implied term of trust & confidence in the manner of dismissal. It also applies where compensation is claimed for breach of an express contractual disciplinary procedure.

28. The accepted formulation of a repudiatory breach of an employment contract was given in *Laws v London Chronicle (Indicator Newspapers Ltd)* [1959] 2 All ER 285, as “whether the conduct..is such as to show the [employee] to have dismissed the essential conditions of a contract of service”.

29. Section 38 Employment Act 2002 provides that an award should be made by the Tribunal in the event of failure to provide written statement of employment particulars in respect of employees.

## Findings

30. Having considered all the evidence, I find that there were a number of significant failures in maintenance and mechanical work which arose during the time the Claimant was employed as a mechanic/fitter with the Respondent. Although it is not determinative to my decision, I find that the nature of the work conducted by the Claimant on behalf of the Respondent could have serious safety implications if not completed correctly.

31. The Claimant was employed by the Respondent for less than five months. During that time, the Tribunal was provided with evidence of mechanical defects for different vehicles. Whilst such mechanical work would no doubt arise in the course of this particular business, it is noteworthy that a number were subsequent to work being undertaken by the Claimant. I accept that there is some time delay between some invoices and the dismissal of the Claimant. The Claimant is resolute in his position that none of the issues were attributable to him. On the balance of probabilities, I do not accept that these are merely coincidental.

32. Turning to the day of dismissal, the Respondent provided statements from both the company directors but also by a fellow employee, Mr Penston with whom the Claimant considered had a good relationship. That witness confirmed under oath that he had not felt pressured to provide a statement and as such, I accept the evidence on behalf of the Respondent that the Claimant had failed to complete the relevant paperwork and that he had considered the vehicle ready to go, i.e. roadworthy. Had the vehicle been released, there would have been a serious and significant risk to health and safety.

33. I accept that the Claimant has achieved a number of qualifications and has experience in this area of work. The Respondent also acknowledged his ability. However, in the performance of his duties, I find that the Claimant's actions were so remiss as to amount to gross misconduct and in fundamental breach of contract. As a result, the Respondent dismissed the Claimant for that action and was entitled to dismiss the Claimant without notice and with immediate effect.

34. The Claimant disputed having received written terms and conditions of employment upon starting his employment. The Respondent stated that all employees received this along with several documents but that these were not signed at the time. I accept the evidence of Mr A Lacey that although he had not asked for Claimant to sign the document, that he provided this to the Claimant. He was specific in listing the documents he provided to the Claimant and was clear in his account. As the breach of contract claim fails, no claim for compensation for failure to provide the statement of employment particulars can succeed in any event.

35. For the above reasons, I do not consider the Claimant's claim to be well founded and it is therefore dismissed.

Employment Judge Butcher

4<sup>th</sup> March 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON 21 April 2022

FOR THE TRIBUNAL OFFICE Mr N Roche