



EMPLOYMENT TRIBUNALS

Claimant: Christopher Harding

Respondent: Halls Distribution Ltd (in voluntary liquidation)

Heard on: 21 November 2022 by Cloud Video Platform

Before: Employment Judge Saward (sitting alone)

Representation:
Claimant: In person
Respondent: No attendance

JUDGMENT

1. The respondent's name is amended to Halls Distribution Ltd.
2. The claim for redundancy pay is withdrawn by consent.
3. The claimant's claims for unfair dismissal, notice pay and holiday pay are well founded and succeed.
4. The Tribunal will decide the question of remedy at a further Hearing.

REASONS

1. By a claim form presented on 4 October 2021, the claimant complained of unfair dismissal, wrongful dismissal and holiday pay. The claimant also sought a redundancy payment. No response to the claim was filed.
2. The respondent company is now in voluntary liquidation. The correct company name is Halls Distribution Ltd, rather than Halls Distribution. The claim should be amended accordingly.
3. The respondent did not attend the Hearing and was not represented. In such circumstances, Rule 47 of the Employment Tribunals Rules of Procedure 2013 allows the Tribunal to proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

4. Having failed to file a response, the respondent would (under Rule 21) only be entitled to participate in any hearing to the extent permitted by the Judge. Given that the company is in liquidation, the lack of any response to Tribunal communications is unsurprising. In the circumstances, it was impracticable to make enquiries of the respondent. Having regard to the overriding objective, and the interests of the claimant in avoiding delay, the Tribunal decided it would be fair and just to proceed with the hearing in the absence of any representative for the respondent.
5. The Tribunal heard live evidence from the claimant.

Issues

6. The claim for redundancy pay was withdrawn by the claimant during the hearing. The issues before the Tribunal were:-
 - 6.1. Did the claimant's dismissal amount to unfair dismissal
 - 6.2 What was the claimant's notice period?
 - 6.3 Was the claimant paid for that notice period?
 - 6.4 If not, did the claimant do something so serious that the respondent was entitled to dismiss without notice?
 - 6.5 Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

Findings of fact

7. The claimant, Mr Harding, was employed by the respondent as a driver of 7.5 tonne vehicles from 6 April 2014 until his employment was terminated on 10 August 2021.
8. On 5 May 2021 or thereabouts, the claimant was involved in a road traffic accident along the M25 motorway whilst at work. He was suspended from work on full pay pending investigation of the circumstances giving rise to the accident. The claimant was dismissed with immediate effect on 10 August 2021. The claimant was told that the insurer would no longer insure him. The claimant asserts that is false and the respondent wanted to "get rid of me".
9. The claimant was issued with written terms of employment particulars but he does not have a copy. The claimant did not receive payslips.
10. The claimant believes that his contract provided for 4 weeks' notice of termination. The claimant did not receive any payment in lieu of notice.
11. The claimant's annual leave year began on 1st January. The claimant had accrued but untaken holiday at the date of his dismissal for which he was not paid. The claimant was uncertain of the precise number but thought it was about 20 days' pay.

The Law

Unfair dismissal

- 12 Section 94 of the Employment Rights Act 1996 ('ERA') confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95. This is also satisfied by the respondent admitting that it dismissed the claimant (within section 95(1)(a) ERA).
- 13 Section 98 ERA deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

Breach of contract/ notice pay

- 14 A contract of employment for an indefinite term may be terminated by either party giving proper notice. If proper notice is given then the contract will terminate with no liability for breach of contract whatever the reason for termination.
- 15 Where there is a contract of employment with an express term stating the period of notice then that is the period applicable provided it is not shorter than the statutory minimum period within section 86 ERA.
- 16 The amount of notice to which an employee is entitled should be set out in a written statement of employment particulars (section 1 ERA). Until 6 April 2020, employers were required to give employees this statement within 2 months of starting employment.
- 17 In the absence of an express contractual term, it is implied in every indefinite contract of employment that it can be terminated on reasonable notice. What is 'reasonable' depends on the facts of each case but it must not be less than the statutory minimum.
- 18 The statutory notice required to be given to terminate the contract of employment of a person who has been continuously employed for one month or more but less than 2 years is not less than one week's notice (section 86(1) ERA). Where employed for a continuous period of 2 years or more (but less than 12 years) the period is not less than one weeks' notice for each year of continuous employment. Where employed for 12 years or more, then the employee is entitled to not less than 12 weeks' notice. This does not prevent a party from waiving their right to notice (section 86(3)).
- 19 An employer will be in breach of contract if they terminate an employee's contract without the notice to which the employee is entitled, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice (e.g. misconduct).
- 20 Where the employer is in breach of contract, the purpose of damages is to put the claimant in the position they would have been in had there been compliance with the contract of employment.

Holiday pay

- 21 There will be an unauthorised deduction from wages if the employer fails to pay to the claimant in lieu of any accrued but untaken leave upon termination of employment.
- 22 A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions of sections 221-224 ERA, with some modifications.

Conclusions

- 23 The respondent has not contested the claim.
- 24 In the circumstances, the Tribunal accepts the claimant's version of events and finds in his favour. The complaint of unfair dismissal is well founded and is upheld. This means the respondent unfairly dismissed the claimant. The claims for notice pay and holiday also succeed.
- 25 No schedule of loss had been provided. That being so, the remedy to be awarded will be decided at a further hearing provisionally listed for 4 January 2023. A separate Case Management Order will be issued.

Employment Judge Saward

Date **22 November 2022**

JUDGMENT & REASONS SENT TO THE PARTIES ON

27 November 2022

GDJ
FOR THE TRIBUNAL OFFICE