



EMPLOYMENT TRIBUNALS

Claimant **Respondent**
Mr Luke Chappell **v** **Crouch Logistics Ltd** **(in**
Administration) – 1st
Complex Logistics Ltd – 2nd

PRELIMINARY HEARING

Heard at: Watford

On: 16 November 2022

Before: Employment Judge Bedeau

Appearances:

For the Claimant: In person, assisted by his father

For the Respondents: Did not attend, nor represented

JUDGMENT

1. The claimant's claim for notice pay is proved and the second respondent, Complex Logistics Ltd, is ordered to pay him the sum of £692.30 net.
2. The unauthorised deduction from wages claim is well-founded and the second respondent is ordered to pay the claimant the sum of £1,500 net.
3. The claimant's accrued unpaid holiday claim is well-founded and the respondent is ordered to pay him the sum of £1,315.37 net.
4. The claimant's unfair dismissal claim is not well-founded and is dismissed.
5. For the avoidance of any doubt, the total sum to be paid by the second respondent to the claimant is £3,507.67 net.

REASONS

1. In a claim form presented to the tribunal on 18 March 2022, the claimant made claims of unfair dismissal, unpaid holiday, non-payment of wages, and notice pay. His claims were against Crouch Logistics Ltd and Complex Global Logistics Ltd. However, in the narrative he also refers to Complex Logistics Ltd as his employer. He worked as a full-time Van Driver.
2. There was no response from Crouch Logistics Ltd as it went into Administration on 31 January 2022. No judgment has been issued against it in default of a response been filed.
3. In the response presented by Complex Logistics Ltd on 18 May 2022, it avers that the claimant was employed by Crouch Logistics Ltd and understand that he had health issues and had taken time off work. He was issued with a final written warning in September 2021 with regard to his absences and was subsequently dismissed on 12 January 2022. Crouch Logistics Ltd went into Administration on 31 Jan January 2022. Even if there was a transfer of undertakings from Crouch Logistics Ltd, to it, the claimant did not transfer as he was dismissed prior to the date of the transfer which was on 31 January 2022.

The issues

4. In relation to the unfair dismissal claim, I have to consider what was the reason for the claimant's dismissal. If conduct, had the respondent followed a fair procedure, and did it have grounds for forming a genuine belief in his guilt? Was the decision to dismiss within the range of reasonable responses?
5. In relation to unpaid holiday, I have to consider the claimant's entitlement during the holiday year; whether he had taken any holidays within this year; and if so, what was outstanding at date of termination?
6. As regards unauthorised deductions from wages, the question is whether the claimant was entitled to his wages upon termination of his employment; if so, was he paid upon termination; and if not, was the failure to pay him authorised?
7. In relation to notice pay or wrongful dismissal, was he entitled to payment in lieu of notice? If so, was he paid for the period of his notice? If not, what was his entitlement to notice?

The evidence

8. I was satisfied that Complex Logistics Ltd, the second respondent, on 9 July 2022, was informed by the tribunal that the hearing today was to consider whether the claimant's employment transferred from the first respondent to it? No one from it or on its behalf attended. There was no information in the tribunal's file as to whether it was either unable or unwilling to attend. I applied rule 47 Employment Tribunals (constitution and Rules of Procedure)

Regulations 2013, and proceeded in its absence. The claimant wanted a final resolution of all matters today.

9. I heard evidence from the claimant who produced a small bundle of documents comprising of 12 exhibits. I did not hear evidence on behalf of the second respondent.

Findings of fact

10. The claimant worked for the first respondent as a full-time Van Driver. He commenced employment on 16 May 2019. In his terms and conditions of employment, the holiday year ran from 1 April to 31 March. At the date of his dismissal he was entitled to 19 days holiday with pay.
11. From the payslip he produced, it shows that he was paid gross the sum of £1,916.67 on 16 December 2021. He tells me that his average gross monthly pay was £1,900. His net monthly pay was £1,500. Payment was made into his bank account.
12. On 7 September 2021, he was issued with a final written warning for consistent absences and for incorrectly reporting his absence. The warning was to last 12 months during which he was not to have any absences in the following six months and that if he was to be absent, he should follow the correct reporting procedure.
13. On or around 16 November 2021, he was sent a letter by Mr Chris Couch, Chief Executive Officer, of the first respondent company, Crouch Logistics Ltd, stating the following:

“Dear Valued Employee,

Please find below some information and the new updates –

Company Name Change

As from December 01st 2021 we are changing our company name to Complex Logistics Ltd. We have decided to do this as part of the restructuring of the business and the strategy for the business as we move through 2022 and beyond.

You will receive a new contract to sign but apart from that everything will remain the same with the same management structure, pay system and date etc.

Pension Provider

You may recall that we had nothing but problems our previous supplier NEST. We have now replaced them with Smart Pensions who will write out to you with a welcome letter and an account set up letter.

Even if you do not want the pension option you will need to sign up and then take this opportunity to Opt Out.

All of this is completed via the online site and cannot be done by any of our team so please take this into account.

If you would like to discuss the above or have any queries please direct to your line manager in the first instance. This will then collate for me and I will be able to update all at the same time.

Many thanks for your continued support.”

14. By December 2021, he had been absent on a further four occasions. This resulted in him being dismissed orally by the Depot Manager on 13 January 2022, at a time when he was on sick leave. He was not paid this final salary which would normally be paid on the 14th day of each month. Further, he was not allowed to work his notice nor was he paid his notice.

1. Following his dismissal, Mr Crouch offered to pay him the sum of £1300 but this was refused as it fell far short of his full entitlement.

The law

2. I have taken into account section 98(2) Employment Rights Act 1996, on the potentially fair reasons for dismissal, as well as s.98(4), on the fairness of the dismissal.

3. In relation to accrued unpaid holiday and unpaid salary for January 2022, I considered the provisions of s. 13 ERA.

4. For notice upon termination, I took into account the provisions in s.86 ERA.

Conclusion

5. I was satisfied that on 13 January 2022, the claimant was working for the second respondent. All that happened by then, having regard to Mr Crouch's letter, was a change of name. There was no transfer of an undertaking before 13 January 2022.

6. In relation to the unfair dismissal claim, I was satisfied that the claimant had breached the requirements in the final written warning letter as he was absent on 4 days within 6 months of that warning. I was further satisfied that the dismissal was fair but unsure, in the absence of evidence from the second respondent, whether he would have been allowed either to work his notice or be paid in lieu of notice. I decided that he should have been paid his two weeks' notice.

7. I was also satisfied that he had not been paid his January 2022 salary.

8. In relation to accrued unpaid holiday, at the date of termination he had 19 days holiday remaining.

9. As his net monthly pay was £1,500. This is £346.15 per week. For one day, it is £69.23.

10. He is entitled to be paid for two weeks' notice at £346.15 net per week, the sum of £692.30 net.
11. There was an unauthorised deduction from wages in that he was not paid his January 2022 salary of £1,500 net.
12. He was entitled to 19 days holiday with pay. This is 19 x £69.23, which is £1,315.37.

Employment Judge Bedeau

16 November 2022

Sent on : 16/12/2022

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For the Tribunal

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