



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Lindsay Boyce

v

The Harlestone Group Limited

Heard at: Cambridge

On: 24 November 2022

Before: Employment Judge Ord

Appearances

For the Claimants: In person

For the Respondent: Did not attend and was not represented

JUDGMENT

1. The correct Respondent is The Harlestone Group Limited.
2. The Claimant was unfairly dismissed.
3. The Claimant is awarded the basic award of £3,675.00 and a compensatory award of £3,000.00 making a total of: **£6,675.00**
4. The recoupment provisions apply.
5. The relevant period is 1 May 2021 to 26 June 2021 and the protected sum is £3,675.00.

REASONS

1. This matter came before me today for the purpose of a Final Hearing, as listed by the Tribunal on 4 May 2022.
2. The Claimant was employed by the Respondent on a “zero hours” contract from 1 April 2014 until 30 April 2021 as a Delivery Driver.
3. On 30 April 2021, his employment was summarily terminated by the Respondent when Mr Gayton, HR Consultant, told the Claimant that no further work would be offered to him, that he

“may well have been dismissed for gross misconduct due to his actions the previous week”

But instead, the decision had been made simply not to offer further work under the terms of the zero hours contract.

4. That constitutes a dismissal.
5. In its Response, the Respondent claims that the Claimant worked for 'The Wild Group Limited'. The Claimant produced to me today payslips which bear the name of the Respondent and not 'The Wild Group Limited'. The Claimant was entitled to believe (having previously signed a contract with 'The Wild Group Limited', a related company), that his employment had transferred (albeit he was not informed in any formal way) to the Respondent. It was members of the Respondent organisation that gave the Claimant orders / instructions and it was the Respondent that paid the Claimant for his work.
6. The Claimant told me that he was subsequently offered a payment and reinstatement on the basis that he could then be put on furlough. On the face of it this might constitute a fraud on HM Government and the Job Retention (Furlough) Scheme. It was not necessary for me to make further comment on that matter.
7. The Claimant worked every week under his so called "zero hours" contract. His basic rate of pay was £350 per week, but his average take home pay with bonuses etc. amounted to £375 per week. The Claimant was out of work for eight weeks until 28 June 2021.
8. The Claimant was born on 16 November 1955 and was over the age of 41 throughout his period of employment.
9. The Respondent claimed that the Claimant's claim was presented out of time. His employment was ended summarily on 30 April 2021 in circumstances where the Respondent has not established that the Claimant was guilty of any conduct justifying the summary termination of his employment.
10. The Claimant began Early Conciliation on 3 August 2021, his Early Conciliation Certificate is dated 4 August 2021 and his claim form was received in the Tribunal office on 5 August 2021.
11. Section 97(2) of the Employment Rights Act 1996, if an employer fails to give notice due under s.86 of the Employment Rights Act 1996 and that notice would, if duly given on the material date expire on a day later than the effective date of termination as to find in sub-section 97(1) if the later date is the effective date of termination.
12. The Claimant had been employed for seven complete years and thus is entitled to seven weeks' notice. The effective date of termination is therefore seven weeks after 30 April 2021, (i.e. 18 June 2021). The claim was therefore brought in time.

Remedy

13. The Claimant is entitled to a basic award. He was aged 41 years throughout the period of his employment which lasted 7 complete years. His basic pay was £350 per week. His basic award is therefore (7 x 1.5 x £350) £3,675.00.
14. The Claimant's average weekly take home pay was £375 per week and he was absent from work for a period of 8 weeks. He is entitled to a compensatory award of £3,000 to reflect those net loss of earnings.
15. Accordingly, the total award to the Claimant is **£6,675.00**.
16. The recoupment provisions apply. The relevant period is from 1 May 2021 to 26 June 2021 and the protected sum is £3,750.
17. The sum of **£3,675.00** is payable forthwith by the Respondent to the Claimant.
18. The Tribunal endeavoured to contact both the Respondent and the Respondent's previous Solicitors prior to this Hearing which did not commence until 10:45 am.
19. The Respondent's Solicitors referred to an email sent to the Tribunal on 5 October 2022 (and a previous email sent on 9 June 2022) seeking to convert today's Hearing to a Preliminary Hearing to consider the question of whether or not the Claimant's complaints were brought in time. The Tribunal had responded on 28 September 2022, direct to the Respondent, confirming that any time issues would be dealt with as part of today's Final Hearing.
20. It was also alleged by the Respondent's former Solicitors that "*they*" were in administration. This Respondent is not in administration and nor is 'The Wild Group Limited', which has entered a voluntary arrangement.

13 January 2023

Employment Judge Ord

Sent to the parties on: 19/1/2023

NG
For the Tribunal Office.