



EMPLOYMENT TRIBUNALS

Claimant: Romello Shoaib-Brown

Respondent: IQVIA IES UK Limited

Heard at: Leeds Employment Tribunal via CVP
On: 22 February 2023

Before: Judge Sills

Representation

Claimant: Mr Mugliston

Respondent: Mr Turner

JUDGMENT and reasons having been given orally at the hearing and written judgment subsequently sent to the parties, and written reasons having been requested at the hearing in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This claim was listed for a remedy hearing before me on 22 February 2023.
2. The parties agreed the following facts.
 1. *The Claimant was employed by the Respondent at the material times.*
 2. *The Respondent failed to comply with section 10(2A)(a) of the Employment Relations Act 1999 in relation to the Claimant's right to be accompanied by the companion of his choice at:*
 - a. *a grievance appeal meeting held on 25 April 2022; and*
 - b. *a disciplinary hearing held on 6 May 2022.*
 3. *For the claimant a week's pay amounted to £513.69.*
 4. *The claimant's chosen companion for all relevant disciplinary hearings and grievance meetings was Imran Rehman, a representative from the EFWU trade union.*

3. The following matters were also common ground between the parties:
 - a. The Claimant was entitled to compensation of up to two weeks wages for each breach and so a maximum of 4 weeks wages.
 - b. I must award the Claimant some compensation.

The Hearing

4. I heard evidence from the Claimant and the Respondent's witness Olivia Scott. I then heard submissions from the representatives. The Claimant sought the full amount, 4 weeks wages. The Respondent argued that the Claimant had suffered no loss and failed to mitigate his loss, and so argued that the compensation should be nominal.
5. I retired to consider my decision. I then gave judgement awarding the Claimant 3 weeks wages and gave reasons. The Respondent requested written reasons which I now provide in similar terms to my oral judgment.

Preliminary Issue

6. The Respondent pointed out that the name given for the Respondent was incorrect. The correct name is IQVIA IES UK Ltd. The Claimant applied to amend the claim to give the correct legal name for the Respondent. There was no objection and I granted that application.

Legal Framework

7. The relevant provisions of Employment Relations Act 1999 state as follows:

10.— Right to be accompanied.

(1) This section applies where a worker—

(a) is required or invited by his employer to attend a disciplinary or grievance hearing, and

(b) reasonably requests to be accompanied at the hearing.

(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

(a) is chosen by the worker; and

(b) is within subsection (3).

(2B) The employer must permit the worker's companion to—

(a) address the hearing in order to do any or all of the following—

(i) put the worker's case;

(ii) sum up that case;

(iii) respond on the worker's behalf to any view expressed at the hearing;

(b) confer with the worker during the hearing.

(2C) Subsection (2B) does not require the employer to permit the worker's companion to—

(a) answer questions on behalf of the worker;

(b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or

(c) use the powers conferred by that subsection in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.

(3) A person is within this subsection if he is—

(a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992,

(b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or

(c) another of the employer's workers...

11.— Complaint to employment tribunal.

(1) A worker may present a complaint to an employment tribunal that his employer has failed, or threatened to fail, to comply with [section 10(2A), (2B) or (4)]1....

(3) Where a tribunal finds that a complaint under this section is wellfounded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.

8. I have also considered the two EAT cases to which I have been referred, namely TOAL and another v. GB OILS LTD [2013] IRLR 696, and Roberts v GB Oils Ltd [2014] ICR 462.

Findings

9. I must determine the level compensation to be awarded. As the Claimant is entitled to compensation, that must be based on the loss or detriment suffered by the employee.
10. The Respondent argued that the Claimant suffered no loss as, for instance, he could have been accompanied by a different individual. I do not accept that submission, as the statutory right is the right to be accompanied by an individual chosen by the employee from within a specified class of individuals. The statutory right does not provide for the Respondent having a veto over who can accompany the employee.
11. I am satisfied that the Claimant did suffer loss and detriment as a result of the Respondent's decision to exclude the Claimant's chosen representative for the following reasons. First, there were a number of issues with the procedure adopted by the Respondent. The letter informing the Claimant of the disciplinary process told the Claimant that he could be dismissed as a result. The Respondent accepts that this was an error.

12. Mr Rehmen raised a number of legitimate concerns at the meeting on 9 March 2022. Mr Rehmen raised legitimate concerns about extent of the investigation carried out by Ms Griffiths prior to the disciplinary action. He also raised the fact that the invitation to the disciplinary hearing did not attach relevant documents, namely the email of 17 February 2022 which was said to be the outcome of the investigation, as required by the Respondent's own disciplinary policy (see para 9.1 at p102). Mr Rehmen queried why, if the Respondent was taking disciplinary action against the Claimant for not having his camera on at meetings, neither Ms Griffiths nor Ms Scott had their cameras on (p134-6). Mr Rehmen queried why Ms Griffiths was conducting the disciplinary hearing if she carried out the investigation (see p138 and 141). This is in line with the ACAS Code of Practice on disciplinary and grievance procedures at para 6 which refers to best practice being for investigation and disciplinary meetings to be carried out by different individuals. In her interview as part of the grievance process, Ms Scott acknowledged that Mr Rehmen's questions were reasonable (p174).
13. Second, there was medical evidence before me that the Claimant was suffering stress and anxiety in early March (p280). Noting the Claimant's medical condition at the time, I accept Claimant's evidence that he wanted Mr Rehman to continue to represent him as he knew him and had worked with him before, and was familiar with the case.
14. In these circumstances, I am satisfied that the Respondent's decision to exclude the Claimant's chosen representative from these two meetings did adversely effect the Claimant's relationship with the Respondent and did cause the Claimant loss and detriment.
15. That said, I do consider that the conduct of Mr Rehmen at the meeting is relevant to the level of compensation in one regard. While I accept that Mr Rehmen raised a number of legitimate criticisms of the Respondent, having considered the oral evidence and the interview record in particular, I accept that after the break Mr Rehmen did act inappropriately. I accept that Mr Rehmen did interrupt Ms Griffiths as recorded in the note at p136. I accept that when Ms Griffiths raised the fact that she found Mr Rehmen to be obstructive, Mr Rehmen's response was to say, 'then leave'. I accept that Mr Rehmen then accused someone of 'abusing their position'. I accept that in these two instances, Mr Rehmen was rude at the meeting, and that the Claimant knew that as he was there. So, while the Claimant did suffer loss and detriment as a result of the Respondent's decision to exclude Mr Rehmen from the two meetings as discussed above, this loss is reduced somewhat by the Claimant's own knowledge that Mr Rehmen, while raising a number of legitimate concerns, contributed to this decision in that he had also acted inappropriately at the meeting.
16. In view of the above, I have decided that the appropriate award of compensation is 3 weeks wages, so £1541.07.

Judge Sills
Sitting as an Employment Judge
4 April 2023