



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr R Rebelo**

**v**

**ICTS (UK) Limited**

**Heard at:**

Reading

**On:** 10 January 2023

**Before:**

Employment Judge Talbot-Ponsonby

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr Andrew Burgess

**JUDGMENT** having been sent to the parties on 9 February 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. This is a claim by the claimant, Mr Romaldo Rebelo, against the respondent, ICTS (UK) Limited, for compensation because he says he was unfairly dismissed.

### Claims and issues

2. The claimant was employed as a security officer by the respondent. He was dismissed by the respondent on 10 January 2022. The respondent says that the dismissal was for “some other substantial reason capable of justifying dismissal” within s.98(1)(b) ERA 1996, namely that the claimant had been working on Amazon’s site, Amazon had required that the claimant no longer work at any of its sites, the respondent had tried unsuccessfully to persuade Amazon to reconsider, and that the respondent had no other opportunities for the claimant. The claimant claims that this was unfair and seeks compensation.
3. At the start of the hearing, I considered the list of issues prepared by Mr Burgess, the respondent’s representative, and approved them. The issues are:
4. Unfair dismissal

- (a) Was the claimant dismissed? It is accepted by the respondent that the claimant was dismissed.
  - (b) What was the reason or principal reason for dismissal? The respondent says the reason was a substantial reason capable of justifying dismissal, namely third-party pressure.
  - (c) Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant? In considering this, I must ask whether dismissal was within the range of reasonable responses open to the respondent.
5. Remedy (if appropriate)
- (a) The claimant confirms in his ET1 at point 9.1 that he is seeking compensation only.
  - (b) Basic Award:
    - (i) What is the basic award payable to the claimant?
    - (ii) Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
  - (c) Compensatory Award
    - (i) What financial losses has the dismissal caused the claimant? According to the claimant's schedule of loss, the total losses he is seeking is 3 months [151]
    - (ii) Has the claimant taken reasonable steps to replace his lost earnings, for example by looking for another job?
    - (iii) If not, for what period of loss should the claimant be compensated?
    - (iv) Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed?
    - (v) If so, should the claimant's compensation be reduced? By how much?
    - (vi) Did the claimant contribute to his dismissal by blameworthy conduct?
    - (vii) If so, would it be just and equitable to reduce the compensatory award? By what proportion?

**Procedure, documents and evidence**

- 6. The claim was heard in the Reading Employment Tribunal by me sitting alone. The parties attended by CVP.
- 7. The claimant represented himself. The respondent was represented by Mr Andrew Burgess. I am grateful to both the claimant and Mr Burgess for their submissions.
- 8. I had witness statements from Miss Victoria Smith, for the respondent, and a brief statement from the claimant. There was a bundle of documents of

172 pages, and a skeleton argument and chronology prepared by Mr Burgess.

9. I read the skeleton argument and chronology, witness statements, the claim form and response, and such other pages of the bundle as I was directed to in the skeleton argument, in cross examination, in submissions, or as I considered necessary to make my decision. In practice, this has included almost all of the bundle.
10. I heard oral evidence from the claimant and from Miss Smith.

### **Fact finding**

11. The claimant was employed by the respondent as a security officer; he commenced his employment on 1 March 2017.
12. The claimant was working not on the respondent's own premises but on an Amazon site, under an agreement by which the respondent supplies such services to Amazon.
13. The respondent has a contract with Amazon in which Amazon is defined as "Purchaser" and the respondent as "Supplier". Within this contract it states:

"Purchaser may, in its absolute discretion and without a need to provide its reasoning to Supplier, request removal of any of the Supplier's Personnel providing Services on Purchaser's premises, if deemed unacceptable to Amazon for providing the Services in an appropriate manner, and Supplier will remove and promptly replace such Personnel in accordance with each such request".

14. The respondent's employment handbook makes it clear to employees that:

"Your ongoing employment may be conditional on the approval and continuing support of third party clients. This is particularly influential where you work at or have occasion to visit their premises. If clients withdraw support for you to attend their premises, we have no alternative other than removing you. To facilitate this, we may suspend you with pay if necessary.

A client may request your removal from their premises or contract with or without explanation. Where this happens, we may make representations to request the client to reconsider their decision. We may temporarily redeploy you or place you on special (paid) leave while we do this. We will discuss the matter with you personally and make you aware of any alternative employment that may be available. We will also advise you of any current vacancies and you are free to apply for these in the normal way.

If a client alleges misconduct or lack of capability on your part, we will investigate their complaint. If we believe further action is necessary, we will utilise the provisions of our disciplinary/capability procedure. In the most serious cases, we may summarily dismiss you. We do this where, following investigation, we believe your actions amounted to gross misconduct.

Where a client withdraws their support, it may not be possible for you to work with them in any event. In such circumstances we will consider possible alternatives to maintain your employment. If in our sole opinion no suitable alternatives exist, we reserve the right to terminate your employment. In such circumstances we will place you on garden leave during your contractual notice period. As an alternative we may pay you in lieu of notice. "

15. The claimant was off sick from 9 to 23 November 2021.
16. During this time, Amazon received a complaint from a female member of staff. The member of staff in question appears to be an "associate", i.e. a

third party contractor, rather than an employee, but this is not germane to the issue. The complaint says:

“Dear [redacted]

I’m writing this email to complaint because I’m feeling intimidating in a work place. I believe I have been sexually harassed by one employee from security staff. I don’t know his name nut I can indicate him.

It started some about 2 years ago when I was working in DRG1, one man from security staff was constantly watching me and ask questions “When you finish your shift?”, “How you will to get home?”. I was trying to ignore him but it didn’t help. That time I spotted that he’s taking his break when I’m in the canteen and when I was changing after shift in locker room I saw him couple times through the glass in the door, he was looking at me.

In last year right before peak time I finished my shift at 8pm, the same man went out in front entrance and he was watching me all my way from exit gate to the end of the parking area. I felt really uncomfortable and worried about myself so next day I started talking about this situation with my friend from the shift [redacted]. Next day when I was taking with [redacted] before shift, the same guy from security stuff spotted us and when I was entering the company he asked sitting at the front desk “Do you like black guys?” In unequivocal way. He started making derogatory remarks and I didn’t know what to do so I asked for advice another friend from the shift [redacted]. He advised me to report about his situation to shift Manager but I didn’t make that decision because I didn’t have any proofs or witnesses. I also noticed that I had to stand longer in front of the thermal imaging camera than the others, when that man was at the front desk.

I was trying to avoid that man and don’t even look at him because I was thinking naively that maybe I’m doing something wrong, but it didn’t help. He started looking for an opportunity to collide or pass next to me so close to rub me, so I stopped walking alone in work. That time I found out that my contract terminated right after peak time so I decided not to report it.

I’m writing this email today, because I started work more than one month ago in DRG2 and I met the same men from security stuff in this place. He started acting in the same way and I’m not feeling comfortable with it. When we’re working in the same days, he’s constantly watching me in sexual nature way. I had to be vigilant all the time. When he’s at the front desk he’s watching me from top to bottom like some kind of sexual object.

I’m aware that it taken me a long time to find the courage to write this complaint, but I can’t do nothing anymore.

Kind regards

[redacted]”

(sic)

17. Amazon passed on this complaint to the respondent and, on 13 November, asked that he not work at that particular site. Following an exchange of emails, on 18 November, the respondent asked Amazon to reconsider, and also whether this was an exclusion from the particular site or from all sites. Amazon responded on 19 November saying:

“[...] the situation is that the element of trust has gone from this guard within Amazon now. Its our duty to protect our employees and allow them to feel safe while they are at work.

Therefor the request of removal will still stand and this will mean that he will not be allowed to work on a Amazon site.”

18. On 20 November, the respondent invited the claimant to a meeting to discuss this.
19. On 24 November, David Knowles of the respondent held a meeting with the claimant to investigate the claims. Although the claimant was not provided with a copy of the email of complaint, the minutes (which the claimant accepted as accurate) show that Mr Knowles went through each allegation carefully and set them out to the claimant. The claimant denied all of the allegations.
20. The claimant also alleges that, before the meeting, Mr Knowles took him outside and suggested that he resign. I did not have any evidence from Mr Knowles on this, but Miss Smith said that she had asked him about this and he denied it. The claimant did not raise this in the investigation meeting. In his appeal, he suggests that this took place after the investigation meeting but in cross examination he was clear that it was before the meeting.
21. I do not accept that Mr Knowles suggested this to the claimant. If it was before the meeting, I would expect it to have been raised in the meeting; and, if not, I would still expect it to have been raised in the next meeting and/or his appeal letter, and it was not.
22. Following the meeting, by a letter dated 25 November 2021, the respondent suspended the claimant pending the investigation. I mention in passing that 2 subsequent letters from the respondent (dated 17 December 2021 and 8 January 2022) refer to a letter of 18 November 2021 but I am satisfied that this was a typographical error and that these references are intended to be to the letter of 25 November. I am satisfied that the most likely explanation for the repeat of the erroneous date in the January letter was that the author of that letter took the details from the first.
23. Meanwhile, by a letter dated 26 November 2021, the respondent again asked Amazon to reconsider. By email dated 30 November 2021, they refused, in unequivocal terms, saying:

“Hi Both,

Due to conduct issues stated below we do not want the following officer to work on ANY Amazon contracts from this point on.

Associate has raised a complaint against a guard. The associate has began to feel unsafe with the guard while she is working. Example of guards behaviour is that she has caught the guard spying on her in the locker room and when she is on break in the locker room he is on break and sits staring at her. The questioning to the associate from the guard has made her feel unsafe when she leaves work late at night. The associate worked at DRG1 18 months or so ago and this same guard made her feel uncomfortable then but she did not tell anyone about it. She has returned to work at the sister site DRG2 a month ago and this same guard has begun make her feel unsafe whilst she is at work.

Officer : Ronaldo Rebelo login is rebelor

Site DRG2

Any issue please reach out to me.

Kevin”

24. By letter dated 17 December 2021, the respondent informed the claimant of this and invited him to a video meeting on 20 December with Mark Fage, and with Andrew Martin present to take notes and explained the purpose of the meeting. The letter reads:

“17<sup>th</sup> December 2021

Dear Romaldo

As you are aware, we placed you on paid leave following a request by Amazon LP to remove you from their site due to concerns that they had raised over your conduct, namely harassment towards an Amazon employee.

I informed you in our letter on 18<sup>th</sup> of November 2021 that we had no alternative but to respect the client’s wishes as it is part of the contractual arrangements that they can insist that our employees are removed from their site.

We discussed these issues at the investigatory meeting held on 24<sup>th</sup> November 2021 where you were invited to make comments on the situation so that I could make representations to our client your behalf in an effort to get you re-instated.

We wrote to the client on 25<sup>th</sup> November 2021 and have now received their response. I regret to inform you that they have refused our request.

You are now required to attend a formal meeting to discuss this on 20<sup>th</sup> December 2021 at 13:00 and on a teams call if you don’t have teams I will do this over the phone. You are entitled to be accompanied by a fellow employee or a union rep If you wish to exercise this right then it is your responsibility to make the necessary arrangements.

The meeting will be conducted by Mark Fage . Andrew Martin will also be in attendance as note taker.

It is very important that you attend this meeting because a failure to do so will be regarded as a breach of a reasonable management instruction and the meeting will go ahead in your absence. I must point out to you that if no alternative position can be found for you, your employment may be terminated.

I look forward to speaking with you on the 20<sup>th</sup> December 2021. If you have any queries regarding the contents of this letter please contact me

Yours Sincerely,

Mark Fage”

25. The meeting on 20 December was brief as a dispute arose about whether the claimant was permitted to record it.
26. By letter dated 23 December, it was rescheduled to 24 December. The new invitation reads:

“23<sup>rd</sup> December 2021

Dear Romaldo

I write further to your formal meeting on 20<sup>th</sup> December 2021.

I stipulated that I wasn’t happy that you wished to record the conversation and therefore the meeting has been rescheduled in order to arrange an appropriate minute taker in lieu of a recording.

The matters of concern remain the same per my letter dated 17<sup>th</sup> December 2021.

I have rescheduled your formal hearing as follows:

Date: 24.12.2021

Time: 14:00

Location: teams call

You are entitled to be accompanied by a fellow employee or a union rep If you wish to exercise this right then it is your responsibility to make the necessary arrangements.

It is very important that you attend this meeting because a failure to do so will be regarded as a breach of a reasonable management instruction and the meeting will go ahead in your absence. I must point out to you that if no alternative position can be found for you, your employment may be terminated.

I look forward to speaking with you on 24.12.2021. If you have any queries regarding the contents of this letter please contact me

Yours Sincerely,

Mark Fage”

27. I accept this was short notice but in my view the respondent was acting reasonably to try to progress this, and the claimant was already aware of the issues for the meeting.
28. The meeting was held; it was explained to the claimant that, since Amazon had requested that he be removed from the contract, there was no way that the respondent could require Amazon to accept him if they did not want to.
29. By a letter dated 8 January 2022, Mr Fage informed the claimant that: (i) Amazon had requested that he no longer work at any of their sites; and (ii) there was no alternative roles for him; so he was dismissed with immediate effect and paid in lieu of his notice.
30. In cross examination, the claimant accepted that the only additional role he had applied for was at another Amazon site, and that he could not work outside Reading. I accept the evidence of Miss Smith that there were no alternative roles to which the respondent could assign the claimant.
31. By letter dated 12 January 2022, the claimant appealed. He complained that the accusations against him were vague, unsubstantiated and untrue and he had no details of them. He did say however that he understood the respondent could not force Amazon to reinstate him and indeed he no longer wished this He further suggested that it may be possible for the respondent to find alternative roles, and asked for his previous record and length of employment to be taken into consideration.
32. The appeal was heard on 26 January 2022 by Miss Smith with Gebz Kaur taking notes. The notes are at pages 124 to 127 of the bundle. They discussed all the aspects of the appeal including alternative work; the claimant agreed he could not work outside Reading, and the only other application he had made was to Amazon.
33. By letter dated 7 February 2022 and sent to the claimant on 9 February, his appeal was dismissed.
34. The claimant then made this application to the tribunal.

## **Law**

35. If an employee is claimant that he has been unfairly dismissed then, in accordance with section 98 of the Employment Rights Act 1996, it is for the respondent to show what the reason for dismissal is, and that it is one of the potentially fair reasons set out in section 98(2).
36. There are several potentially fair reasons set out in section 98(2), and a “catch-all” provision in section 98(1)(b), that the employee was dismissed

for “some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.”

37. It was held in the case of Dobie v Burns International Security Services (UK) Ltd [1984] ICR 812, (CA) that pressure from a third party, such as Amazon in this case, can amount to a fair reason.
38. It is worth noting that, in the first instance, the employer need only establish that there is a reason that could justify the dismissal, not that it necessarily did justify it; that is considered later.
39. Having established the reason for the dismissal, I must consider whether the decision to dismiss was reasonable in all the circumstances; this falls to be determined in accordance with equity and the substantial merits of the case.
40. There is quite a long line of cases addressing this issue, many of which were identified by Mr Burgess in his skeleton argument. Of particular relevance are the following:
41. In Dobie v Burns International Security Services (UK) Ltd (above), Mr Dobie was employed by the respondent to provide security services at Liverpool Airport. The airport was owned controlled by Merseyside County Council, and the contract between the council and the employers included the following wording: “Merseyside County Council reserves to itself the right to approve or otherwise the employment or continued employment of any member of the [employers] at the airport.”
42. Friction arose between the employee and the chief security officer, who was an employee of the county council. There were two incidents; the court of appeal was prepared to assume that they arose through no fault of the employee. The county council said that he must be withdrawn from service at the airport. That created a problem because, although the employers were a national organisation, it appeared that there was no other comparable work in the area. In those circumstances, the employers decided to offer him an alternative but lower paid job in the neighbourhood but not at the airport.
43. As a matter of law, that offer amounted to a dismissal.
44. In this context, the court of appeal confirmed that the tribunal should look at the conduct of the employer and, in particular, should have regard to any injustice caused to the employee.
45. Further guidance is provided in the case of Henderson v Connect South Tyneside Ltd [2010] IRLR 466 (EAT). In giving judgment, Underhill J said:

“13. Cases of this kind are not very comfortable for an employment tribunal. Nevertheless, it has long been recognised that the fact that the client who procures, directly or indirectly, the dismissal of an employee may have acted unfairly, and that the employee has thus suffered an injustice, does not mean that the dismissal is unfair within the meaning of the statute. That is because the focus of s. 98 of the Employment Rights Act 1996 , and its statutory predecessors, is squarely on the question whether it was reasonable for the employer to dismiss.

[...]

It must follow from the language of s. 98(4) that if the employer has done everything that he reasonably can to avoid or mitigate the injustice brought about by the stance of the client – most obviously, by trying to get the client to change



his mind and, if that is impossible, by trying to find alternative work for the employee – but has failed, any eventual dismissal will be fair: the outcome may remain unjust, but that is not the result of any unreasonableness on the part of the employer. That may seem a harsh conclusion; but it would of course be equally harsh for the employer to have to bear the consequences of the client's behaviour, and Parliament has not chosen to create any kind of mechanism for imposing vicarious liability or third party responsibility for unfair dismissal.”

46. Accordingly, I do not need to look at whether Amazon acted fairly, but only whether the respondent did.
47. If I find that the claimant has been unfairly dismissed, I must consider what remedy is due.
48. The remedy is split into 2 elements:
49. Under section 119 of the Employment Rights Act 1996, there is a basic award, determined by reference to the number of years C has worked and his age. This is subject to adjustment under section 122 of the Employment Rights Act 1996, if I find that C's actions contributed to his dismissal.
50. Under section 123 of the Employment Rights Act 1996, there is a compensatory award, of such amount that the tribunal considers just and reasonable, but subject to adjustment in the following circumstances:
  - (a) under section 123 of the Employment Rights Act 1996, if I find that C's actions contributed to his dismissal;
  - (b) in accordance with the case of Polkey v AE Dayton Services Ltd, if and to the extent that, regardless of any procedural flaw, there is a chance that the Claimant would still have been dismissed in any event; and
  - (c) the extent to which C complied with the ACAS code.
51. The award can also be reduced if C has failed to mitigate his loss.
52. Finally, there is a statutory cap, currently £93,878, that is applied to each of the basic and the compensatory awards. This cap is applied after any other adjustments.

### **Conclusions**

53. Considering the facts that I have set out above in the light of the law, I come to the following conclusions.
54. The reason for dismissal of the claimant was some other substantial reason as set out in s. 98(1)(b). This was the respondent's evidence and was not challenged by the claimant.
55. It is accepted, as set out above, that Amazon were entitled to have the claimant removed from the contract between Amazon and the respondent without giving any reason for this. In fact, Amazon did give reasons.
56. The respondent had made it clear to the claimant that his employment depended on Amazon's continuing acceptance of him.
57. There were repeated requests by Amazon for the claimant's removal, especially the last one that I have set out above. The respondent could not proceed under their disciplinary process, as they did not have the details to

do this. This was made clear to the claimant at the time, in letters dated 17 November, 25 November and 23 December 2021.

58. I therefore find that this was the reason for dismissal/
59. I must therefore consider whether the respondent acted reasonably.
60. In accordance with the law I have set out, Amazon's requirement for the respondent not to work for it can amount to a fair reason for dismissal under s. 98(1)(b). Considering Henderson, the respondent must do all it reasonably can to assist the claimant, by trying to get the client to change its mind or, if that fails, by trying to find alternative employment. On the evidence here, the respondent did do this; there are repeated requests for Amazon to reconsider, and the possibility of alternative work was discussed both at the hearing when the claimant was dismissed and in the appeals process.
61. Accordingly, I find that the respondent did act reasonably in dismissing the respondent, and dismissal was within the range of reasonable responses open to it: in essence, the dismissal was fair. I therefore do not need to consider questions of remedy.

---

Employment Judge Talbot-Ponsonby

Date: 13 July 2023

Judgment sent to the parties on

14 July 2023

For the Tribunal office