



EMPLOYMENT TRIBUNALS

Claimant: Mr R Harris

Respondent: Fact Community Transport

Heard at: Bury St Edmunds

On :14 April 2023

Before: Employment Judge Laidler

Representation:

Claimant: Mr A Lo, Counsel

Respondent: Mr M Cameron, Consultant

JUDGMENT having been sent to the parties on 18 May 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was the remedy hearing following a liability hearing in January 2023 when it was found that the claimant had been unfairly dismissed by reason of redundancy.
2. The redundancy payment had been made so there is no claim for a basic award.
3. The parties have agreed that the unauthorised deductions which were found in the claimant's favour amount to £192.29 and that is ordered to be paid in addition to any other sums.
4. Although the schedule of loss still claimed 10 weeks notice it had already been determined at the liability hearing that there was no such contractual term for a lengthy period of notice. The claimant was only entitled to the statutory notice and had been paid that.

5. The claimant provided a new witness statement for this Hearing although a significant part of it dealt with his work history and the events leading up to the redundancy. The claimant also called Michelle Irvine to give evidence on his behalf. The respondent called the following:

Gary Christy, Chairman and Trustee
Richard Seekings, now respondent's workshop manager and claimant's former colleague
Mark Oakerbee, Transport Coordinator.

All witnesses produced witness statements that they were cross examined on. The tribunal had an updated bundle of 305 pages. From the evidence heard the tribunal finds the following facts.

The Facts

6. The claimant has given evidence about only two jobs that he applied for after being made redundant. One was as a Workshop Technician with Fenland District Council (at page 169 of the bundle) in July 2020 which he was interviewed for and had thought he was successful but was then not offered the job.
7. The other he mentions in paragraph 26 of his witness statement was with SNB Components but he cannot recall when that was. He states that they wanted to interview him for a Quality Controller role, which he did not have experience for.
8. The claimant has given no evidence of other roles applied for. He did not sign on with agencies but says he did look online. Whilst accepting that it was during the pandemic and that the claimant was shielding because of his daughter's illness that did not prevent him applying for jobs online but no evidence has been produced of such searches.
9. The respondent has produced various job vacancies but the Tribunal accepts that a lot of these were for HGV driving which the claimant did not wish to do even though he held a licence. He would have considered such only if ancillary to a workshop/mechanical role.
10. Further the tribunal and the respondent must take the claimant as it finds him, and the respondent has at all times been aware that his daughter is seriously ill awaiting a transplant and that he does not wish to be away from home or out of the area when it would not be easy for him to return were she to be hospitalised.
11. The tribunal at the liability hearing accepted the claimant's evidence that Richard Seekings had told him he had already been offered the Warehouse Manager role before the interviews. They were however both interviewed but the tribunal has found it rushed and an unfair process. Had the claimant not already heard that and had ample opportunity to prepare for interview he might have come over better. The tribunal has also accepted that the pool of two was appropriate. There were therefore two interviewed. They had both worked in the workshop and the tribunal finds there was a 50/50 chance of the claimant having been selected had a fair process taken place. Much was made of the lack of a D1E licence by Richard

Seekings but the tribunal accepts the respondent's evidence that the need to go out and recover vehicles had gone since the respondent used recovery firm.

12. What came out in the oral evidence and was not covered in the claimant's witness statement but was in his medical records which he had disclosed was the extent of the claimant's health issues. As was pointed out by his counsel in closing submissions they had been covered in the claimant's disability impact statement when he was still progressing a disability discrimination claim which was subsequently withdrawn. The contents of that statement have been taken into account in reaching this decision.
13. In the medical records at page 193 there is an entry in June 2020 of the claimant being concerned about the anger he felt towards a manager at the respondent and he had concerns as he had lost a previous job due to hitting his manager. There are other entries in July 2020 concerning the claimant's right shoulder on which he had previously had surgery. He is noted as reporting to the doctor it was 'popping out like it had done before'. There is another entry on 28 August 2020 with the claimant stating he could not now work because of the shoulder and numbness in his hand and discussing doing light work. It is noted that he was not expecting to be able to go back to work until the shoulder had been operated on, on a date unknown. It was noted that Co – codamol had not been an effective painkiller. He told this tribunal that an operation has still not been scheduled.
14. There was also documentation in the bundle which the claimant was taken to that again was not set out in his witness statement about the benefits he has received following his dismissal since 28 August 2020. He had been assessed as entitled to Personal Independence Payment and with an enhanced rate to help with his mobility needs until May 2023. His bank statement shows these payments continuing.
15. The claimant also produced a letter dated 28 February 2021 (page 165) confirming payment of Employment and Support Allowance from 12 November 2020 and again from the bank statements it can be seen that payment continues.
16. The claimant is also in receipt of Industrial Injury Benefit which he confirmed related to the shoulder injury.
17. The claimant stated in evidence that he considered his medical conditions to have been exacerbated by the manner of and stress caused by his redundancy. There is however no evidence of that and it certainly did not cause his shoulder injury.
18. These documents and the medical records coupled with the claimant's own evidence in his disability impact statement demonstrate he was not fit to work from 28 August 2020. His losses must be limited to the period from the end of his two-week statutory notice 15 July 2020 to 28 August 2020 which is 6 weeks. The Tribunal accepts that during that time the claimant had attempted to find work and had been interviewed by Fenland Council and there should be no deduction during that period for any failure to mitigate. 6 weeks loss at £450 per week would amount to £2700.

19. It has been submitted on behalf of the claimant that had a fair procedure been applied he would have been offered the role given to Richard Seekings of Workshop Manager. The tribunal does not accept that on the evidence heard. It has concluded that there was a 50-50 chance of the claimant being selected for the new role. It cannot say that there would have been a certainty that he would have been selected as was argued on his behalf. The compensatory award of £2700 must be reduced by half to £1350.
20. In addition the respondent is to pay the agreed unauthorised deduction of £192.29

Employment Judge **LAILER**

Date: 14 July 2023

SENT TO THE PARTIES ON

20 July 2023

FOR THE TRIBUNAL OFFICE