



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr Graham Eaveson AND Mr M W Davey, Mrs D M Davey and Mr W G Davey  
(Together in partnership trading as Trethorne Leisure Park)

**Respondent**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Bodmin

**ON**

20 July 2023

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** Did Not Attend

**For the Respondent:** Mr Michael Davey of the Respondent

### JUDGMENT

**The judgment of the tribunal is that the claimant's claims are all dismissed**

### RESERVED REASONS

1. In this case the claimant Mr Graham Eaveson claims that he has been unfairly dismissed, and that the principal reason for this was because he had made protected disclosures. He also brings monetary claims for unlawful deduction from wages, for accrued but unpaid holiday pay, and for his notice pay. The respondent contends that the claimant resigned his employment and was not dismissed, and it denies the monetary claims.
2. The claimant did not attend today. For the respondent I have heard from Mr Michael Davey. I also accepted a written statement from Ms Sarah Shelley on behalf of the respondent, but I can only attach limited weight to that statement because she was not present to be questioned on her evidence.
3. The claimant had earlier attended a case management preliminary hearing by telephone on 31 March 2023 at which he outlined his claims (which are set out further below). However, he has taken no further part in the proceedings, and has not adduced a statement of evidence in support of his various claims, as was clearly ordered in the case management order which followed that hearing ("the Order"). He did not attend today. Mr

- Davey did attend today on behalf of the respondent with a paginated bundle of the relevant documents which I was able to read.
4. In accordance with Rule 47 I decided to proceed with the hearing in the absence of the claimant having made practicable but unsuccessful enquiries about the claimant's absence. I also noted that the claimant had not notified the Tribunal that he was unwilling or unable to attend and the claimant had made no application to postpone this hearing.
  5. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
  6. The Facts:
  7. The respondent is a partnership of Mr Michael Davey and his parents Mr W G Davey and Mrs D M Davey trading as Trethorne Leisure Park near Launceston in Cornwall. The claimant Mr Graham Eaveson was employed as an assistant manager from 31 January 2022 until 22 July 2022.
  8. The claimant signed a written contract of employment with the respondent on 31 January 2022 under which he authorised certain deductions from his wages. In clause 4.2 this included the deduction of overpayments and other payments due to the respondent, and in clause 6.6 this included overpayment of accrued holiday pay on the termination of employment. Under clause 9.4 the notice period for the first two years of employment was one week.
  9. At the commencement of his employment the respondent loaned the claimant the sum of £700, and subsequently loaned a further £200, on the basis that £100 would be deducted each month from the claimant's salary. The agreed deductions of £100 per month were made in February, March, April, May and June 2022 and recorded in the relevant itemised payslips. £500 of the £900 owing to the respondent was thus deducted before July 2022.
  10. It seems that a number of customers and other members of staff raised complaints about the claimant's conduct. One of the respondent's managers namely Sarah Shelley met with the claimant on 22 July 2022 to discuss these issues. The claimant took umbrage at being challenged, and he asserted that he had been dismissed. Ms Shelley denied this and wished to talk about improving the relationship as it progressed. The claimant then telephoned his wife to argue that he had been dismissed, and he left the claimant's premises with immediate effect.
  11. The claimant has adduced no evidence in support of his assertion that he was dismissed. I prefer the respondent's version of events and I find that the claimant resigned his employment on 22 July 2022. I find that the claimant was not dismissed.
  12. It is clear from the final payslip that the claimant was paid up to and including 29 July 2022, even though he had left the week before on 22 July 2022. He was therefore paid for his contractual and statutory minimum period of notice, namely one week.
  13. The respondent also deducted overclaimed holiday pay from the claimant's final salary. At the time of the termination of his employment the claimant had taken 10 days paid holiday during his employment. His pro rata entitlement was 8.21 days and the respondent therefore deducted 1.79 days at £111.54 per day (a further deduction of £198.88). As noted above this deduction was authorised by the claimant's contract of employment.
  14. Having established the above facts, I now apply the law.
  15. The Law:
  16. Under section 108(1) of the Employment Rights Act 1996 ("the Act") the right to pursue a claim for unfair dismissal under section 94 of the Act does not apply unless an employee has been continuously employed for a period of not less than two years. In addition that right is limited to employees who have been dismissed in accordance with the provisions of section 95.
  17. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. This form of "automatically unfair" dismissal does not require two-year service.
  18. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

- Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
19. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
  20. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
  21. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
  22. The claimant also claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
  23. Decision – Unfair Dismissal:
  24. The claimant's claim for unfair dismissal is dismissed for a number of reasons. In the first place I have found that the claimant was not dismissed, but rather he resigned his employment. That in itself is enough to dispose of the claim. In addition, the claimant had insufficient continuous period of service to bring a claim for unfair dismissal. The exception to that rule upon which the claimant relies is the automatically unfair dismissal claim for having raised protected public interest disclosures. The disclosures relied upon set out in the Order were vague, and the claimant has given no evidence to support his contentions that he made qualifying public interest disclosures and how these might be said to have become protected. In addition, the claimant has given no evidence to suggest why any protected public interest disclosures are said to have been the principal reason for his dismissal. The claimant's claim for unfair dismissal is accordingly dismissed.
  25. Decision – Breach of Contract
  26. It is clear from the claimant's final payslip that he was paid up to and including 29 July 2022 and was therefore paid his contractual period of notice of one week. The claimant's claim for breach of contract in respect of the non-payment of one week's notice is not therefore made out and is accordingly dismissed.
  27. Decision – Unlawful Deduction from Wages:
  28. It is also clear from the claimant's final payslip that £500 of the £900 which had been loaned to him had already been reclaimed by the respondent, and the respondent deducted the remaining £400 from the claimant's final pay. That sum had been lent to him by the respondent, and the respondent was entitled to reclaim it. The claimant had authorised the deduction of that sum from his wages by reason of his signed contract of employment. The claimant's claim for unlawful deduction from wages in respect of the loan repayments is therefore dismissed, because the deductions were authorised.
  29. Decision – Accrued Holiday Pay
  30. The respondent also deducted overclaimed holiday pay from the claimant's final salary. At the time of the termination of his employment the claimant had taken 10 days paid holiday during his employment. His pro rata entitlement was 8.21 days and the respondent therefore deducted 1.79 days at £111.54 per day (a further deduction of £198.88). As noted above this deduction was authorised by the claimant's contract of employment. The claimant's claim that this was an unlawful deduction from his wages is also therefore dismissed.

31. In conclusion therefore the claimant claims are all dismissed.

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Employment Judge N J Roper  
Dated 20 July 2023

Judgment sent to Parties on 03 August 2023