



**THE EMPLOYMENT TRIBUNAL**

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**SITTING AT:** LONDON SOUTH by CVP

**BEFORE:** EMPLOYMENT JUDGE TRUSCOTT KC

**BETWEEN:**

Mr B Mehmet Claimant

AND

Forrest Road Brewing Company Limited  
Respondent

**ON:** 8 September 2023

**Appearances:**

**For the Claimant:** in person

**For the Respondent:** Mr P Brown director (from 11.35am)

**JUDGMENT**

1. The claim is amended to be directed against the correct respondent, Forrest Road Brewing Company Limited.
2. The claim for unfair dismissal for raising health and safety concerns(section100(c)(i) Employment Rights Act 1996) succeeds.
3. The respondent is ordered to pay compensation to the claimant of £9436.63.

**REASONS**

**Preliminary**

1. This case was listed for a 1 day hearing commencing at 10am. The claimant provided a number of emails with attachments to seek to establish his claim and assist with the calculation of compensation. These are referred to where necessary. The claimant gave evidence on his own behalf.
2. The respondent attended the hearing at 11.35am after judgment had been given.

## Findings of fact

1. The claimant was employed from 17 November 2021 to 22 August 2022 by the Forrest Road Brewing Company Limited. On 12 May 2022 he received a revised contract and a pay rise.
2. His work was considered satisfactory by Ms Sarah Dobsen, the Production Manager who texted him on 13 May 2022  
“Your (sic) a legend, and one of the hardest workers I’ve ever met with the best attitude.”
3. The claimant drove beer delivery vans which on occasion were overloaded, see overweight manifests dated 29 June 2022, 5 and 14 July 2022. The claimant raised concerns on a significant number of occasions and refused to drive the vehicle when it was overloaded.
4. He was dismissed by letter dated 22 August 2022 for allegedly harassing other employees.
5. He was unemployed from the date of his dismissal until 5 November 2022 when he gained employment working at a rate of £11.50 per hour. On 1 July 2023, his wages increased to £13 per hour. He did not receive state benefits.

## Law Dismissal

6. It is not disputed that the claimant was dismissed and that he does not qualify for “ordinary” unfair dismissal. What is in issue is the employer’s reason for dismissing the claimant. It is trite to say that the ‘reason’ for a dismissal is a set of facts known to the employer or a set of beliefs held by him which causes him to dismiss (**Abernethy v. Mott Hay and Anderson** [1974] ICR 323 CA per Cairns LJ; **W Devis & Sons Ltd v. Atkins** [1977] AC 931 HL). The issue is causation. In the present case, it is for the claimant to demonstrate that the predominant causative basis for the dismissal was his raising of a health and safety issue as he had under two years’ service.
7. Section 100 of the Employment Rights Act provides:  
**100 Health and safety cases**  
(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
  - (c) being an employee at a place where—
    - (i) there was no such representative or safety committee, or
    - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,  
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
8. Section 120 of the Employment Rights Act provides:

**120 Basic award: minimum in certain cases**

- (1) The amount of the basic award (before any reduction under section 122) shall not be less than [£7,836] where the reason (or, if more than one, the principal reason)—
- (a) in a redundancy case, for selecting the employee for dismissal, or
  - (b) otherwise, for the dismissal,
- is one of those specified in section 100(1)(a) and (b), [101A(d),] 102(1) or 103.

**Discussion and decision**

9. The ET1 makes the claim against Peter Maclin Brown whereas the contractual documentation makes it clear that the employer was Forrest Road Brewing Company Limited. The claim was amended accordingly.

10. The claimant gave evidence consistent with the narrative of his ET1. He was considered to be a good worker. He complained about the overloading of the vans and provided supporting evidence of the overloading. He said that the recommended weight was 1300kg and the vans were loaded to 2100kg. He refused to drive the overloaded vans. Mr Brown was only concerned to have his beer delivered.

11. When he was dismissed by Mr Brown, he was told that it was because he had made Mr Tom Cheeseman cry on 18 August. When it was ascertained that Mr Cheeseman had made no such complaint, Mr Brown changed the reason for dismissal to that he had made multiple people feel uncomfortable at work. The letter of termination refers to harassment of other members of staff. He denied harassing anyone.

12. The reason for dismissal as narrated in the letter of dismissal is a development on a reason which was given by Mr Brown after the original reason he gave was found to be not true. The failure by an employer to establish a reason for dismissal of an employee of this length of service does not establish a claim against the respondent by itself. However, the Tribunal accepted all the evidence given by the claimant which demonstrated that he had complained about the overloading of vehicles and had refused to drive them. Mr Brown's only concern was to get his beer delivered. On a balance of probability, the only reason for dismissing a good worker was that he had made complaints about overloading, refused to drive the overloaded vehicles which, at the very least, inconvenienced Mr Brown, who dismissed him for that reason. Section 100(1)(c) is applicable to his dismissal.

13. The claimant was born on 23 July 1977. He provided pay slips from his previous and present employment. The Tribunal decided to award compensation of a basic award of one and a half week's gross pay amounting to £1031.25. The statutory minimum basic award did not apply in this case. The Tribunal also awarded compensation of £8405.38 being loss of wages from his dismissal until 5 November 2022 when he obtained employment at £11.50 per hour and continuing loss from 5 November to 1 July 2023 when he started to be paid £13 per hour. The Tribunal declined to award any continuing loss thereafter and any other heads of loss. The total award is £9436.63.

14. The ET3 refers to the termination letter. On 9 November 2022, the respondent was asked by the Tribunal whether it intended to tick the box indicating the claim was not defended. The respondent replied on 24 November asking if the case had ended. On 13 December 2022, the respondent was informed that in the light of the claim not being defended, judgment might be issued against it. The claimant was also asked to provide information about the losses he had sustained. A hearing was fixed for 15 August 2023. On 15 May 2023, the claimant wrote to the Tribunal asking for the date to be changed as he was unable to get time off work. On 14 August 2023, a hearing was fixed for 8 September 2023. On 16 August 2023, Mr Brown emailed the Tribunal to say was disputing the claim and would attend the hearing on 8 September. He made no application similar to that of the claimant to say he was on holiday on the September date. At 11.16 on the day of the hearing, after having been contacted by the clerk, Mr Brown emailed to say he had the hearing down for October. When he joined the hearing, he said he was on a family holiday in America. He restated the terms of the termination letter but was not invited to participate further as judgment had been given. He said he would seek advice from his HR department and the Tribunal urged him to engage with the claim and the judgment when it arrived and advised in relation to procedures and timescales for reconsideration and appeal.

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**Employment Judge Truscott KC**

**Date: 12 September 2023**