



EMPLOYMENT TRIBUNALS

Claimant: Mr A Astin

Respondent: JDH Motor Repairs Limited

Heard at: Manchester by CVP

On: 14th September 2023

Before: Employment Judge A Khan

REPRESENTATION:

Claimant: In Person

Respondent: Mr Frankie Jaffier, Representative

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The Claimant was unfairly dismissed.
2. The issue of remedy is adjourned to Tuesday 14th December 2023, and will take place via CVP.

REASONS

The Hearing

1. This was a hearing to determine a complaint of unfair dismissal. At this hearing, Mr Astin the claimant gave evidence with the assistance of Ms Debbie Dewhurst Mr Astin's partner.

2. The Respondents were represented by Mr Frankie Jaffier, and Mr Gareth Holden the Company Director also gave oral evidence. Miss Catherin Alice Haworth the Company Secretary was present at the hearing, but gave no oral evidence but did submit a written witness statement.
3. The witness statements produced by the Claimant who was unrepresented today and assisted by his partner Ms Debbie Dewhurst was reminded to ask questions which were relevant to the proceedings, and to focus on the contents in the witness statements. The determination of the case depends entirely on whose version of the facts is preferred.

Issues to be determined

4. The crucial factual issue is whether the Claimant resigned from his employment or whether he was dismissed. The distinction is important because for an employee to be unfairly dismissed there must, unsurprisingly, be a dismissal. The only exception is of course in relation to constructive dismissal but this case does not involve any consideration of the principles relating to constructive dismissal.

The Law

5. The question for the tribunal to consider is whether there was an Actual Dismissal section 95 (1) (a). Actual dismissals occur where the employer terminates the contract. If the words used oral or written are clear it is an express dismissal.

Evidence

6. The Claimant's case is that he was told by the Respondent on the 10.01.2023 when he returned to work *"I think it's time you went", "you are putting obstacles in my way"*
7. When asked when by the Claimant the Respondent replied *"There's no time like the present"*.
8. The Claimant was then informed that the Respondent later the same day, advertised for a motor mechanic for JDH Motor Repairs with immediate start on Facebook, and within a few hours decided to remove the post.
9. The Claimant also submits that on the 07.01.2023 the Respondent had contacted the Claimants father to discuss the concerns regarding his son. On specifically the issue of the Claimants on-going health issues.
10. The Claimant asserts that the Respondent had informed the Claimants father that he was going to have to let him go, as both the Respondent and Claimant were no longer getting on.
11. The claimant also provided a screen shot of a message between the

Respondent Mr Holden and Ms. Dewhirst the Claimants partner dated the 10.01.2023. The message read:

12. *Good morning Debbie, Andrew has made life very uncomfortable at work for the last few months. I offered him an olive branch to talk before Christmas and once again last weekend. I asked him to resign and offered him to stay until he found alternative work. Andrew decided to leave this morning so I am taking that as his resignation. If there is any legal requirements for me to uphold Andrew would have to ask me for them personally. I hope you understand.*
13. The Respondent's case is that the Claimant had resigned and was not unfairly dismissed.
14. On the 10.01.2023 a brief conversation had taken place about the Claimant's holidays and him being late on Friday 6th January 2023 and not starting work for the first 20 minutes of the day. The Respondents view in essence is that the events of the 13-15 December 2022 regarding the Claimants change in working hours and holidays, as well as the Claimants actions on the 10.01.2023 amount to the Claimant resigning.
15. The Respondent also states that the Claimant had agreed to work four days per week, and even though the Claimant's hours were reduced, he was going to pay him 40 hours per week, however, the agreement was conditional that the Claimant would only be paid 40 hours if he worked a full 36-hour week.
16. The Respondent also stated that the Claimant had been working with him for three years and knew that he was fully aware that he was required to save 3 days for the Christmas period because he had done it in previous years. In short, the Claimant had taken more than his entitled annual leave which meant that if he wanted the days off that he was proposing, this would have meant that he would not be able to save 3 days for the Christmas period and I was desperately trying to avoid this happening to the Claimant.
17. The Respondent disagrees with what the Claimants version of events, and asserts that he said the following:
18. *"I think we are at the end of the road here."*
19. The Claimant then questioned what the Respondent had meant by that statement, to which the Respondent replied:
20. *"That he was obviously not happy at work. and suggested that he start looking for something else"*
21. When the Claimant questioned what the Respondent meant:
22. *"He thought he should look for a new job as he was obviously unhappy"*.

23. The Claimant asked, "When?" The Respondent replied
24. *"I did not know, maybe 4 or 5 weeks, whatever it would take for you to find something."*
25. The Claimant replied, *"No time like the present"* and left.
26. It is the Respondent's case that he did place an advert looking for a mechanic on the same day the Claimant left. The Respondent in his evidence contends this is because of the way the Claimant had behaved towards both the Company Secretary and the Respondent, as well as the silent treatment just before Christmas and his continued silence when he returned in January 2023.
27. The Respondent stated that he principally placed the advert because he was not sure that the Claimant would return, and he had several jobs in his diary which he would struggle to do on his own and would have to work extremely late to get through two people's workload.

Conclusions

28. Having regard to the evidence, I prefer the Claimant's evidence that he had did not resign on the 10.01.2023 and that he was dismissed by the Respondent. The Respondents statements are clear and could reasonably be construed as words of dismissal. I am satisfied it can be. *"I think it's time you went", "you are putting obstacles in my way"*
29. When asked when by the Claimant the Respondent replied *"There's no time like the present"*.
30. Asking for the company property such as the tool box to be returned usually refers to circumstances involving a termination of employment.
31. I also accept the actions of the Respondent on the 10.01.2023, advertising on Facebook for a motor mechanic for JDH Motor Repairs with immediate start on, was direct consequence of the Respondent dismissing the Claimant. I am therefore satisfied that there was no resignation on the 10.01.2023.
32. In the circumstances as the Claimant was dismissed without any fair procedure the dismissal must be unfair. I drew the attention of the parties to a legal principle known as '**Polkey**'. It may be relevant to the issue of compensation. I mention it because the Respondent may wish to consider it or seek advice for the forthcoming remedy hearing.

Employment Judge A Khan

18TH September 2023

REASONS SENT TO THE PARTIES ON
22 September 2023

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