



EMPLOYMENT TRIBUNALS

Claimant: Mr R Rodriguez

Respondent: Johnsons Textile Services Ltd t/a Johnsons Hotel Linen

Heard at: Cardiff (hybrid) **On:** 11th April 2023

Before: Employment Judge H V Dieu
(sitting alone)

Representation:

Claimant: In Person

Respondent: Ms Johns, Counsel, instructed by Capital Law Ltd

JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim for wrongful dismissal is not well founded and is dismissed.

REASONS

1. I have read the hearing bundle and heard evidence from the Claimant, Emma Tamplin, and Rebecca Morgan. The Claimant gave evidence through an interpreter. I ensured that they understood each other fully. I also heard closing submissions. Having assessed all of the evidence, I make the following findings:

2. The Respondent is a provider of linen and laundry services to the UK hospitality industry and the Claimant was employed by the Respondent as a Production Operative at the Respondent's Cardiff site.
3. The Respondent's position is that the Claimant commenced employment on 25 October 2021 and was summarily dismissed, on 31 May 2022, to take effect on 1 May 2022, for gross misconduct as a result of ongoing unauthorised absence.
4. The Claimant did not attend work on 1 May 2022 and did not have prior authorisation not to. The Claimant does not dispute this and accepted in evidence that he had not telephoned or otherwise contacted the office on the day. He also accepted that according to Company policy, absences not notified with the procedure will be deemed unauthorised. Section 11.1 of his contract of employment further states:

'If you are absent from work for any reason you must notify the office of the reason for your absence by telephone by 9:00 AM on the first day of absence. Thereafter, you must keep the Company informed on a regular basis as to your condition and expected date of return to work to enable the Company to make arrangements to cover your absence.'

5. And at 11.6:

'Your employment may be terminated at the Company's absolute discretion if you are unable to perform your duties due to sickness or injury or if your non-attendance at work reaches a level so as to cause a significant detrimental impact to the business of the Company.'

6. The Respondent wrote to the Claimant on 9 May 2022 by letter posted to his home address as provided in his new starter documentation, namely 27 Emerald Street, Cardiff ("Letter 1"), advising that they had not heard from him since 1 May 2022 and expressing concern for his welfare. The Respondent requested that the Claimant contact them by 12 May 2022.
7. The Respondent wrote to the Claimant to the same address again on 19 May 2022 ("Letter 2"), advising that they still had not heard from him nor had they received a sick note to cover the period of continued absence. The Respondent invited the Claimant to a meeting on 24 May 2022 to discuss his ongoing absence. The Claimant did not attend this meeting and did not contact the Respondent.
8. The Respondent wrote to the Claimant to the same address on 25 May 2022 ("Letter 3"), inviting him to attend a disciplinary hearing on 31 May 2021. The invite detailed the purpose of the hearing, which was to discuss the circumstances surrounding his absence from work, failure to follow the absence reporting procedure and maintain adequate contact with the Company. The letter stated that a possible outcome of the hearing may be dismissal and that

failure to attend may result in a decision being made in his absence. The Claimant did not attend the hearing and did not contact the Respondent.

9. A disciplinary hearing was held on 31 May 2022 in the absence of the Claimant due to his failure to respond to correspondence and his ongoing absence with leave (AWOL) since 1 May 2022. The Respondent then wrote to the Claimant on 31 May 2022 ("Letter 4") to confirm the outcome of the hearing in his absence. The Claimant was notified that his actions amounted to gross misconduct and that he had been summarily dismissed. The date of dismissal is recorded as 1 May 2022, which is the date the Claimant first went AWOL.
10. In accordance with the Respondent's standard practice, Letters 1-4 were sent by first class post to the Claimant, in the name of Emma Tamplin (HR Advisor). The Respondent attempted to telephone the Claimant, but the number provided by him during his induction immediately disconnected, meaning telephone contact was not possible.
11. It was not until the 6 June 2022 that the Claimant contacted Ms Tamplin by email advising that he had received 3 letters (unspecified) which had been delivered to his last known address. The Claimant advised that he had recently moved out of the 27 Emerald Street property in late April. In evidence, he accepted that he had failed to inform the Respondent of his new address until this point.
12. On the issue of when the Claimant was made aware of his dismissal, I find that the Claimant's emails with Ms Tamplin are clear evidence that he had received Letter 4, and had been notified of his dismissal by 6 June 2022 at the latest. I find that the contents of his correspondence (set out below) are more indicative that he had known he had been dismissed and was asking effectively for a second chance.
13. I find that the Claimant gave inconsistent evidence. It was put to him that when he opened the letters on the 6th June 2022 he knew he had already been dismissed to which he agreed. Later, he changed his account and denied that he had known. I find that this inconsistency damages the reliability of his account. I prefer the Respondent's submissions which are that the Claimant stated that he was "not ready to get a disciplinary action against me" and "if" the Respondent was ready for him to return to work, he would work the next shift. The Claimant ended his email by stating "I hope JHL can understanding [sic] about my difficult times. If not, thanks for the opportunity whilst working for your company." Furthermore, the Claimant sent a further email to Ms Tamplin on 20 June 2022 stating that "if returning to work is authorized, please can you let me know about any important matter/information or letter I have missed since April, please?" Then on 23 June 2022, the Respondent requested to meet with the Claimant to discuss potential re-employment. The Claimant by email to Ms Tamplin stated that did not want to meet with the Respondent, and just wanted them to provide him with shift work.

14. On 28 July 2022, the Claimant emailed Ms Tamplin again stating that he was “ready for returning to work. I am receiving a lot of messages about JHL advertising jobs in Cardiff”. The Claimant also stated that “I just want a second chance getting into work after 3 months out of it.”
15. The Respondent submitted that at no point in his emails with Ms Tamplin during this period did the Claimant seek clarification of the outcome of the meeting held in his absence on 31 May 2022, which he was aware of following receipt of Letter 3, and he was informed that a possible outcome of that meeting would be dismissal in that letter. The Respondent averred that the Claimant did not seek this clarification as he was fully aware of the outcome by having received Letter 4 at the same time as Letter 3. I accept the Respondent’s submission on this and find it more likely than not that the Claimant was by that point aware.
16. In addition to the receipt of letters and emails with Ms Tamplin, the Respondent also sent the Claimant’s P45 confirming his termination date to his MyEpay account, and appeared on his account on 14 July 2022. The Claimant would have been notified of receipt of his P45 via his MyEpay account.
17. The Claimant emailed the Respondent on 4 August 2022, requesting further confirmation of his dismissal, having had sight of his P45 form via his online personal tax account. Rebecca Morgan (Head of HR) emailed the Claimant on 10 August 2022 attaching Letters 1-4. Ms Morgan further confirmed to the Claimant that his employment was terminated by letter dated 31 May 2022, with effect from 1 May 2022.
18. The Claimant claims that he had not received and was not aware of Letter 4 on 6 June 2022 despite it having been sent to the same address as the previous letters which were received by the Claimant. I find his account unlikely. The Claimant emailed Ms Morgan on 15 September 2022 alleging there was a breach of his contract of employment in the dismissal process.
19. In the circumstances as set out above, I find that the Claimant was not wrongfully dismissed as alleged or at all. The Claimant was AWOL and had an unauthorised absence for 31 consecutive days, and at no point made effective contact with the Respondent to notify them of his absence. The Respondent therefore reasonably believed the Claimant had committed gross misconduct and committed a fundamental breach of his obligations as an employee under his employment contract, by failing to report to work and/or inform his employer of any sickness or other absence. I find that the Respondent was therefore entitled to terminate the Claimant’s employment without notice, or payment in lieu of notice, in accordance with clause 17.6 of the Claimant’s employment contract, which stated: “*The Company shall be entitled to dismiss you at any time without notice or payment in lieu of notice if you commit a serious breach of your obligations as an employee...*”.
20. No disciplinary procedure formed part of the Claimant’s contract of employment, as confirmed by clause 15.1 of his contract. In any event, the

process leading to his dismissal was entirely reasonable, and the Respondent wrote to the Claimant on 3 occasions before holding a disciplinary hearing and reaching a decision to dismiss the Claimant without notice. The Respondent wrote to the Claimant using the address the Claimant provided on recruitment. The Claimant did not make the Respondent aware of the reasons for his absence and did not provide an updated postal address. In addition, the Respondent tried to contact the Claimant via phone during his unauthorised absence. However, the Claimant had provided the Respondent with an incorrect telephone number.

21. Further and in the alternative even if, the notification of dismissal was not received by the Claimant by 6 June 2022, the Respondent averred, and I agree, that the Claimant was aware that he was dismissed on 4 August 2022 at the latest (but is likely to be earlier), being the date of his email to the Respondent confirming his receipt of his P45 and stating that “your office has just fired someone...”. If, which is denied, the notification of termination was received later than 6 June 2022, the Respondent was nonetheless still entitled under the Claimant’s contract to terminate his employment without notice when it did, and accordingly his dismissal remained in accordance with his contract of employment.
22. The Claimant relied upon the case of *Gisda Cyf v Barratt [2010] UKSC 41 SC* and *West London Mental Health NHS Trust v Dr Chhabra [2013] UKSC 80*. The former case is not relevant to the issues here as it relates to time limits for bringing claims, and the latter case does not establish the general proposition that HR personnel cannot be involved in investigation and decision making. The facts of that case are very different. I see nothing inappropriate in the way that the Respondent handled the Claimant’s dismissal.

Employment Judge H V Dieu

Dated: 19th July 2023

JUDGMENT SENT TO THE PARTIES ON 20 July 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche