



EMPLOYMENT TRIBUNALS

Claimant
Mr M Rhone

Respondent
Milk Club Deliveries Ltd

v

Heard at: Reading
Before: Employment Judge Forde

On: 5 September 2023

Appearances

For the Claimant: In Person
For the Respondent: Mr T Moore, General Manager

JUDGMENT

1. The judgment of the tribunal is that:
 - 1.1. The claimant's claim of wrongful dismissal is unfounded and is therefore dismissed.

REASONS

Claims and issues.

1. By way of a claim form dated 2 November 2022, the claimant pursues a claim of wrongful dismissal or notice pay against the respondent. The claimant was employed by the respondent, a small employer as a milk delivery person. The claimant's employment started on 9 May 2022 and ended on the 21 September 2022.
2. The central issue in this case is what was the claimant's contractual notice period. The claimant's case, as I understood it, asserts that the applicable notice period is two months. On the other hand, the respondent through Mr Moore asserts that the claimant had not passed his probation period, a fact that he says was communicated to the claimant during the course of a probation review meeting that took place on the 14 August 2022. While the claimant accepts that this meeting took place he does not accept that there was any discussion around the extension of his probation period. By extension, the claimant assumed at the time that he had passed his probation and therefore was entitled to believe that he had the benefit of a

notice period of two months duration as provided for in his contract of employment.

Evidence

3. Tribunal had before it a bundle of documents extended to 34 pages as well as witness statements from the claimant and Mr Moore on behalf of the respondent.
4. Both witnesses gave sworn evidence. The claimant gave evidence first. His evidence was largely consistent with his statement save for when I asked him questions to clarify the detail of conversations that took place with Mr Moore on both the 13 and 14 of September 2022.
5. The claimant told me that he resigned on the 13 September 2022 during a conversation which culminated in him seeking clarification that his notice period was two months. The claimant's case here is that Mr Moore either affirmed or did not question the fact that the claimant was asserting that he had a two month notice period. The position changed by the following day (14 September 2022) when Mr Moore informed the claimant following a period reflection by the claimant, that his notice period was one week as apposed to two months.
6. Where Mr Moore's version of events differs from that of the claimant is that he was clear that the claimant was informed during the meeting on the 14 August that his probation had been extended by a further three months. However, Mr Moore recognises that the extension may not have registered with the claimant due to the fact that the meeting was in Mr Moore's words "positive". Mr Moore failed to provide the claimant with written notice of the probation decision as required by the claimant's contract of employment.

The law

7. This case is unusual in that this is not a wrongful dismissal claim which hinges upon the claimant's conduct. Here, there is a difference of opinion as to whether or not the claimant has a one week notice period or a two month notice period as dictated by the contract of employment. It follows that my decision is to determine whether or not, on the balance of probabilities it is open to me to determine that the claimant had completed his probation period or had reasonable expectations that his probation period had concluded based upon the conduct of Mr Moore as his employer.

Decision

8. I remind myself that of the burden of proof in this case. Specifically, the claimant had the burden of proving the claim. I also remind myself that the burden of proving this particular issue raised by a party falls on the party making it. This means that in order to succeed in this claim, the claimant

must show that his version of events is to be preferred over that of Mr Moore's.

9. However, I have difficulty in preferring the evidence of either parties in this case. I find that I was not assisted by the documents in the bundle that what I was being asked to do was to prefer one version of events over another. What I heard were two competing accounts and I was unable to determine which to prefer. I accept that it is commonplace for employees to fail to communicate successfully completed probations to employees. However, I find on the balance of probabilities that it is impossible for me to determine which case on the evidence I have heard and seen is to be preferred and why. In essence, this was a finally balanced decision. Given my findings, it follows that the claimant's claim must fail because he has failed to prove his case on the balance of probabilities; I have been unable to find that he had a 2 month as opposed to a one week notice period. Accordingly, it must follow that the claimant's claim must fail.

Employment Judge Forde

Date: 27 September 2023

Sent to the parties on: 18 October 2023

For the Tribunal Office