



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Ms A Urbanska

The Happy Chef

Heard at: London South (by CVP)

On: 25 January 2024

Before: Employment Judge Cowen

**Appearances For the Claimant: Ms Urbanska (in person) For the Respondent:
Ms Veimou (consultant)**

Polish Interpreter: Ms Leigh

REASONS

These written reasons are provided following an oral judgment on 25 January 2024 which was sent to parties on 16 February 2024 and a request for written reasons which was made 22 February 2024

1. Introduction

Both parties were represented, and the Claimant and her witness were assisted by a Polish interpreter throughout the hearing.

2. A bundle of documents was provided and agreed between the parties. Witness statements were provided by the Claimant and Ewa Horchulas and for the Respondent, by Elias Eliades. All of whom gave oral evidence.

3. The Facts

3.1. The Claimant and Elias Eliades were in a personal relationship before they took over the running of the café from Mr Eliades' family in 2012. They worked together in the café, with other staff and made a successful business for many years.

- 3.2. Whilst the Claimant had worked in the business for 5 days per week since it reopened after Covid, from 8 April 2021. she had never discussed with Mr Eliades what her holiday entitlement, or other employment terms would be. They did close the business in February each year for 3 weeks, to take a holiday together. Otherwise, the Claimant would have the occasional days of absence when her relatives visited from Poland.
- 3.3. There is no formal documented record of holidays. The Claimant was paid for 45 hours per week, a sum of £540 gross per week. Payments were not always timely.
- 3.4. Although their personal relationship was volatile, they lived and worked together until approximately early May 2023, when their personal relationship came to an end.
- 3.5. The disagreements between the Claimant and Mr Eliades would occasionally come out at work and on more than one occasion the Claimant left work early due to these disputes. On at least one occasion customers stopped to look at what was happening in the kitchen when the Claimant and Mr Eliades were in dispute.
- 3.6. However, as they lived and worked together, when their personal relationship ended, they agreed to continue to live in the same flat and to work together. The Claimant urged Mr Eliades to sell the business.
- 3.7. Unfortunately, on 24 May 2023, the Claimant broke her thumb in an accident at work. She was not able to continue to work in the café and obtained sickness certification for her absence which covered the period up to 31 August 2023.
- 3.8. The Claimant's absence from the business created more stress and pressure for Mr Eliades who was dealing with a number of personal and family issues as well.
- 3.9. As a result of an argument at the end of May 2023, Mr Eliades moved out of their shared accommodation and their relationship deteriorated further. Sadly, Mr Eliades' mental health also deteriorated. Messages between them on 24 May 2023 (the day of her accident) from the Claimant say she wants to move on.
- 3.10. There was no evidence of any further discussion on WhatsApp about employment terms between the parties until 3 August 2023 when the Claimant asked Mr Eliades to pay what she was owed. Mr Eliades response was that he had not terminated the Claimant on the payroll and that he will do

so. The conversation continued and Mr Eliades indicated that he dismissed the Claimant when they had 'that big argument at home.... When I was paying you sick pay'. He went on to say that this worked in the Claimant's favour.

3.11. The Claimant's payslips between 25 April and 16 May 2023 show only £275 gross pay rather than the usual £540.

3.12. The Claimant started her claim by way of ACAS notification on 17 August 2023 and issued her ET1 on 22 August 2023.

4. The Law

4.1. In order to substantiate a claim of unfair dismissal the Tribunal must consider whether there has been a potentially lawful reason for dismissal. In this case the Respondent says that there was a dismissal on the grounds of 'Some Other Substantial Reason', specifically a breakdown in the relationship between them.

4.2. In *Harper v National Coal Board* 1980 IRLR 260 the test was set out as whether the employer can show a genuine belief that it had a fair reason, which was substantial i.e. not whimsical or capricious. This requires consideration of what was known to the Respondent at the time.

4.3. Where there is a breakdown in the relationship between the parties there may be sufficient reason to bring the employment to an end. *Gorfin v Distressed Gentlefolk's Aid Association* [\[1973\] IRLR 29](#)

4.4. In this case the Respondent clearly knew that his personal relationship was over and that this meant that he no longer wished to work together with the Claimant.

4.5. The Tribunal must also consider the procedure used to dismiss and whether it was fair and gave the Claimant a reasonable opportunity to respond to Mr Eliades' stated reason for dismissal.

4.6. In order to dismiss, the employee must be in receipt of notice of the termination. In *McMaster v Manchester Airport plc* [1998] IRLR 112, the EAT held that the effective date of termination cannot be earlier than the date on which an employee receives knowledge that he/she is being dismissed.

4.7. The Tribunal also considered *Gallacher v Abellio Scotrail Ltd* EATS 0027/19 where the decision to dismiss was held to be fair as a fair process would not

have made any difference. Consideration must be given to whether a fair process could have resulted in a different outcome.

4.8. The Tribunal also considered POLKEY v AE Dayton Services – in order to assess whether, if a proper procedure had been followed, whether the outcome would have been any different. If the Claimant would still have been dismissed, then damages can be limited to the period in which a proper procedure would take place.

4.9. In relation to Holiday pay – the Tribunal is limited in considering a claim which stretches back a maximum of 2 years. The statutory requirement is to allow 28 days paid holiday per annum. Any holiday accrued, but not taken at the time of termination may be paid on termination.

4.10. Unpaid wages can be recovered where the Claimant can show she was entitled to the money, but was not paid, see s.13 ERA 1996. The Tribunal must be satisfied that the Claimant was entitled to the money and that it remains due and owing to her.

5. Decision

Unfair Dismissal

5.1. Firstly, I considered whether the Respondent has shown that the reason for dismissal was 'Some Other Substantial Reason'. It is clear from the evidence of both the Claimant and Mr Eliades that their personal relationship broke down around May 2023. Whilst both may have been of the view initially that their professional relationship could continue, it became increasingly difficult and more argumentative. There was evidence of an altercation in the café, in front of customers where the Claimant walked out. At the point where the Claimant was injured and therefore could not work at all, Mr Eliades concluded that the employment relationship could not continue, and the Claimant should be dismissed.

5.2. The evidence did not provide a written record of any such dismissal conversation other than WhatsApp messages on 24 May where the Claimant implored Mr Eliades to put the business up for sale and that she wanted to move on. I find that the Claimant did not understand at that time that she had been dismissed and that therefore no dismissal in fact took place at this time. Mr Eliades continued to pay the Claimant sick pay. A clear indication on his part of a continued employment relationship between them, contrary to any thoughts he may have had of ending the employment.

5.3. The messages of 3 August were different in nature and indicated that Mr Eliades believed that the Claimant had been dismissed that evening, or at the time when they had a big argument at home earlier in the year. The Claimant

did not understand there to have been dismissal in May, but clearly understood on 3 August that dismissal occurred. In order for dismissal to have taken place the Claimant must understand that the contract was being brought to an end. On 3 August it is clear from the evidence that the Claimant was aware that her employment terminated.

- 5.4. Taking into account the actions of Mr Eliades after 24 May, I find that the Claimant was not dismissed until 3 August. She had not worked since 24 May but had been paid sick pay (which I consider Mr Eliades would not have continued to pay if termination had occurred earlier). This was the point where both parties were clear the employee and employer relationship ended.
- 5.5. Mr Eliades had a genuine belief at that stage that their relationship had broken down so severely that he could not continue to employ the Claimant. This was not merely whimsical, as he had been of this view since May, although he had not made himself clear and had not taken steps which made that clear to the Claimant. Other matters had taken over his life between May and August and the Claimant had been injured in any event. At the point where it may have been possible for the Claimant to consider a return to work after her injury, it became clear to her that this would not be possible as Mr Eliades did not want her to continue. The fact that their personal relationship had broken down and that the business was essentially comprised of the Claimant and Mr Eliades, I find that Mr Eliades had a fair reason to dismiss as they could no longer work together.
- 5.6. What he did not do, was to carry out the dismissal in a fair manner. He did not have a face-to-face conversation with the Claimant, nor did he give her the opportunity to say anything in response to his comments. He also did not commit any of it to writing. He didn't follow up his messages with a letter as her employer. All of which would be good practice. The process used was therefore unfair.
- 5.7. However, I also consider what would have happened if a fair process had been carried out. I find that it would not have made any difference and therefore the Claimant would have been dismissed in any event. There is no evidence that anything which could have been said or done by the Claimant would have rectified the breakdown in their relationship and made it feasible for the Claimant to continue to work for Mr Eliades. Had a full procedure including a meeting have occurred, I am satisfied this would have happened before 17 August when the Claimant contacted ACAS. I therefore find that there was a procedural unfairness to the dismissal. I consider that the Claimant should have been given 11 weeks' notice.

5.8. I therefore limit the Claimant's compensation to the 2 weeks in which a fair process would have occurred, plus the 11 weeks' notice period.

5.9. My calculations are as follows: -

Notice pay 11 weeks x £423.84 = £4662.24

Basic award £540 x 11 = £5940

Compensatory award = £423.84 net pay x 2 = £847.68

Loss of Pension £12.60 x 2 = £25.20

Loss of Statutory rights £350

A total award of £11,825.12

5.10. I have also considered whether recoupment for Universal Credit applies and concluded that it does not, as the rules do not allow such a recoupment against notice pay and the benefit was not still being paid 11 weeks later when the notice period expired.

5.11. As a result of the decision that the employment would have ended in any event, no future losses are payable.

6. Unlawful deduction of wages

6.1. In relation to the claim for unpaid wages; The evidence of the Claimant's payslips indicated that between 25 April and 16 May 2023 the Claimant was not paid for full time work. I accept the Claimant's evidence that she worked full time hours during that period. However, I have not seen any evidence of what money she did or did not receive as I have seen no bank statements. I therefore cannot be certain on a balance of probabilities that she has not been paid money which was owed to her.

6.2. I therefore dismiss the claim for unlawful deduction of wages.

7. Holiday pay

7.1. I accept the evidence that the Claimant took holiday at the same time as Mr Eliades in the main. I have not been shown any evidence to suggest that she was not paid during periods of holiday. I was not shown any altered payslips, holiday records, bank statements or other evidence to prove these amounts had not been paid.

7.2. I therefore dismiss the claim for unpaid holiday pay.

8. Redundancy Payment

8.1. This was not a redundancy situation and therefore no redundancy pay is owed.

Employment Judge Cowen

3 April 2024

JUDGMENT SENT TO THE
PARTIES ON

3 April 2024

FOR THE TRIBUNAL OFFICE

P Wing

P Wing

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.