



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Wooler

**Respondent:** Ropewalks Leisure Group Ltd

**Heard at:** Manchester (by CVP)

**On:** 15 May 2024

**Before:** Employment Judge Phil Allen

## Representation

Claimant: In person

Respondent: Mr C Hird, HR Manager

**JUDGMENT** having been sent to the parties on 28 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. The claimant was employed by the respondent from August 2023 until 19 or 20 January 2024. He was the general manager of a new venue. He claimed unfair dismissal and breach of contract and asserted that the respondent had unreasonably failed to comply with the ACAS code of practice on disciplinary and grievance procedures. The respondent denied the claims.

## Issues

2. The position in the unfair dismissal claim is addressed below.

3. At the start of this hearing, after a brief discussion with the parties about the claims, I proposed that I would determine the following four issues, to which the parties agreed:

- a. Did the respondent breach the claimant's contract of employment?
- b. If it did, what damage was suffered as a result?
- c. Did the ACAS code of practice on disciplinary and grievance procedures apply?
- d. If it did, did the respondent unreasonably fail to comply with it and should any compensation be awarded as a result?

**Procedure**

4. The claimant represented himself at the hearing. Mr Hird represented the respondent.
5. The hearing was conducted by CVP remote video technology with both parties attending by video. I conducted the hearing from Manchester Employment Tribunal.
6. The claimant's contract of employment was provided.
7. No witness statements were provided in advance of the hearing. The claimant was sworn in and gave evidence. Mr Hird cross-examined him. The respondent chose not to call any witnesses.
8. After the evidence was heard, each of the parties was given the opportunity to make submissions. They each made their submissions orally.
9. I adjourned the hearing, before informing the parties orally of my Judgment A document recording the Judgment was sent to the parties. The claimant requested written reasons. Accordingly, the reasons for my Judgment are contained in this document.

**Facts**

10. The claimant worked for the respondent. I was provided with the contract of employment dated 18 August 2023. The contract said that his employment commenced on 15 August 2023. He was entitled to an annual salary. The contract provided that the respondent was required to give the claimant one week's notice of the termination of his employment.
11. The respondent relied upon the probationary period. The contract said that the claimant's post was subject to the completion of a six-month probationary period. It said that, at the end of the period, if the performance was of a satisfactory standard, the appointment would be made permanent. The end of the contract made reference to the company providing to the claimant any necessary on-the-job specific training required.
12. The respondent terminated the claimant's employment. It said that the claimant failed the probationary period (he was offered other work but declined to accept it). The claimant disputed the respondent's reason for doing so and contended that he was not given any notice about the proposed termination and/or no investigation was undertaken. He said that he believed that everything was going well until the day he was told that he had failed his probation. There were no probation review meetings. The respondent refused to allow the claimant to appeal.
13. The claimant was given one week's notice of the termination of his contract.
14. After the claim was entered at the Tribunal, on 23 April 2024, the Tribunal wrote to the claimant with a strike out warning. It highlighted section 108 of the Employment Rights Act 1996 and that the claimant appeared to have less than two years' service with the respondent. The letter said that there was a proposal to strike out the unfair dismissal claim unless the claimant gave reasons by 7 May

why his complaint of unfair dismissal should not be struck out. The claimant had not done so.

15. This Judgment does not seek to address every point about which evidence was heard. It only includes the points which were considered relevant to the issues which needed to be determined.

### **The Law**

16. Section 108 of the Employment Rights Act 1996 provides that an employee cannot claim unfair dismissal (section 94 of the Act does not apply) unless he was continuously employed for a period of not less than two years ending with the effective date of termination.

17. A breach of contract claim can only be brought in the Employment Tribunal if the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 applies. That Order only applies to claims by an employee and where the claim arises or is outstanding on the termination of the employee's employment.

18. It is not possible to state all of the law as it applies to claims for breach of contract and, in particular, claims arising from breach of an employment contract. However, what can be enforced is only the breach of a contractual term which is intended to create legal relations, and which confers contractual rights and obligations rather than standards of good practice. When termination is considered, a claimant cannot recover damages arising from the contended unfairness of the dismissal as part of a breach of contract claim, as an unfair dismissal claim (with the statutory rules which apply to it) is the relevant claim for pursuing those contentions.

19. The ACAS code of practice on disciplinary and grievance procedures says that it applies to disciplinary situations in the workplace and expressly provides that disciplinary situations include poor performance. It states that it does not apply in certain circumstances, but short service is not one of the circumstances in which it expressly says it does not apply. The ACAS code, in summary, requires the employee to be informed of the problem, for there to be a meeting before appropriate action is decided, for a decision to be reached, and for the individual to be given the opportunity to appeal (with an appeal meeting and decision).

20. Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 provides that if in certain proceedings (including a claim for breach of contract) the claim relates to a matter to which the relevant code of practice applies and the respondent has failed to comply with the code and the failure was unreasonable, the Tribunal may (where it considers it just and equitable to do so) increase any award by no more than 25%. However, that provision does not provide a free-standing right to a Judgment that the code has been breached, nor does it provide for a remedy on its own, where the individual has not otherwise succeeded in any other claim.

### **Conclusions – applying the Law to the Facts**

21. The claim included a claim for unfair dismissal. The right to claim unfair dismissal does not apply unless the claimant had two years' continuous employment with the respondent. The Tribunal wrote to the claimant and proposed that his unfair dismissal claim would be struck out as he did not have such length

of service. The claimant has provided no reason why that claim should be allowed to proceed. Accordingly, it was struck out.

22. The claim I actually needed to determine was one for breach of contract. That was not a claim for unfair dismissal. I was not deciding the fairness of the claimant's dismissal, or the fairness of the process followed.

23. The basic contractual entitlement provided for the claimant, was that he was entitled to notice of the termination of his contract. That was one week for the first two years of his employment. That right mirrored the minimum statutory notice entitlement. When the claimant's employment was terminated, he was given one week's notice.

24. I noted the parts of the employment contract which the claimant highlighted. The claimant highlighted that the contract provided that non-completion of the probationary period was linked to poor performance. He also highlighted what was said about training and that it would be provided. He contended that the termination in the probationary period was a breach of the former and he contended that insufficient (or no) training had been provided to meet the latter.

25. I decided that those matters did not give the claimant a claim for breach of contract. Even had they done so, they would not have been such a claim from which any loss arose or for which any remedy was due. The basic contractual principle was that the respondent was able to terminate the contract on one week's notice and, as I have said, they did so. The provisions relied upon were not those which led to a valid claim for breach of contract if not adhered to. The provision which applied to the notice period detailed when a probationary period would be satisfactorily completed, but did not fetter the respondent's contractual entitlement to terminate the contract. Even if the respondent had breached what was set out in the contract, the damages which would be awarded are for the loss which resulted. As the respondent was able to terminate the contract on the one week's notice, no loss followed from the breach. The provision with regards to training, was not one which could give the claimant a claim for breach of contract or a claim for damages as claimed, as it was not one which conferred contractual rights or obligations.

26. It did appear to be the case that the ACAS code of practice on disciplinary and grievance procedures applied and was not followed. The code says that it applies where there is poor performance. Whilst the claimant disagrees that there was poor performance, the reason that the respondent gave for terminating was performance (albeit within the probationary period). The code does not provide that it does not apply at the start of employment. I found that the respondent failed to follow it.

27. In some cases, choosing not to apply the ACAS code of practice on disciplinary and grievance procedures during the probationary period may not be unreasonable. In many cases that would be because a basic documented probationary procedure had been followed, albeit that may be a truncated or abbreviated one and not one as full as would apply for a longer server. That was not what occurred in this case. I did find that the respondent unreasonably failed to comply with the ACAS code of practice on disciplinary and grievance procedures in this case and for this dismissal.

28. However, the only remedy available for an unreasonable failure to follow the ACAS code, is to enhance another award made. There is not a free-standing claim or a free-standing award. As I have not found for the claimant on his other claims, he is not entitled to any Judgment or remedy as a result of my finding regarding the ACAS code.

### **Summary**

29. For the reasons explained above, the unfair dismissal claim was struck out, and my decision was that the breach of contract claim was not well-founded. The respondent did unreasonably fail to comply with the ACAS code of practice on disciplinary and grievance procedures, but, where the substantive claims did not succeed, there was no Judgment or remedy as a result.

Employment Judge Phil Allen

21 June 2024

REASONS SENT TO THE PARTIES ON

1 July 2024

FOR THE TRIBUNAL OFFICE