



Case Number: 2301184.2017

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr T Redsell

and

Respondent

Ebbsfleet Printing Solutions Ltd

Held at Ashford on 24 August 2017

Representation

Claimant:

In Person

Respondent:

Mr J Vatcher

Employment Judge Kurrein

JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.
2. The Claimant contributed to his dismissal to the extent of 100%.
3. In all the circumstances of the case it is not appropriate, and would not be just and equitable, to make any award of compensation to the Claimant.
4. The Claimant was not wrongfully dismissed.
5. The Claimant was not owed holiday pay.
6. The Claimant is ordered to pay the Respondent the sum of £720.00 in costs.

REASONS

- 1 On 1 May 2017 the claimant presented a claim to the tribunal alleging unfair and wrongful dismissal and a failure to pay for accrued but untaken holiday. On 9 June 2017 the respondent presented a response in which it admitted that it had not followed any procedure regarding the claimant's dismissal but otherwise contesting the claimant's claims.
- 2 I heard the evidence of Mr Martin Cherry, managing director; Mr Jack Gibbs, studio manager; and Tanya Godwin, printer, on behalf of the respondent. The claimant did not challenge any of their evidence. Despite my advising him it was not in his interests the claimant declined to give any evidence.
- 3 I have considered the documents to which I was referred.
- 4 I make the following findings of fact: –
 - 4.1 The claimant was born on 13 May 1974 and started his employment with the respondent on 1 October 2011 as a driver/sign fitter.

- 4.2 The claimant, who is well built, is an experienced judo participant and was a personal friend of Mr Cherry.
- 4.3 Mr X was also an employee of the respondent. He is a slight young man who has ADHD, Asperger's and hearing and sight impairments. All staff had been made aware that Mr X was particularly sensitive to being touched.
- 4.4 On 27 January 2017 Mr X was working bent over a bench when the claimant approached him from behind and pinched his bottom. Mr X remonstrated with the claimant and told him not to do that again. The claimant then did so. Mr X then turned toward the claimant raised a fist and said, "If you do that again, I will hit you." He then turned back to the workbench.
- 4.5 The claimant was witnessed grabbing Mr X by the neck and then using what must be presumed to be a judo technique to throw Mr X in such a way that he ended up on his back on the bench with the claimant's hand to his throat making threats in a loud voice.
- 4.6 Mr Cherry was not at work at that time. When he returned later the claimant approached him to tell him that there had been some "horseplay" between him and Mr X, but they had sorted it out between themselves.
- 4.7 Later that day Mr Cherry spoke to other members of staff and learned the true nature of what had taken place. He decided that in light of the claimant's conduct toward a vulnerable member of staff he had no alternative but to dismiss him for gross misconduct.
- 4.8 Mr Cherry informed the claimant of his decision on the morning of 30 January 2017. As noted above, he accepts that he was wholly unaware that he should follow any procedure in dismissing the claimant. However, he paid the claimant one week's wages.
- 4.9 On 2 February 2017 the claimant obtained new employment at a slightly higher rate he enjoyed with the respondent. He was subsequently dismissed in May 2017 for failing his probationary period.
- 4.10 On 8 February 2017 the claimant wrote to Mr Cherry to complain about his dismissal. Having contacted ACAS the claimant sent a follow-up email on 21 February. Mr Cherry replied on 22 February setting out his reasons for dismissing the claimant and rejecting any claim for compensation in light of the claimant's conduct.
- 4.11 On 27 February 2017 the claimant wrote to complain that he had not been given a right of appeal. Mr Cherry responded on 1 March 2017 to offer the claimant an appeal. The claimant, by letter of 6 March 2017, declined the offer of an appeal.
- 5 I am satisfied, indeed it was effectively conceded, that this dismissal was procedurally unfair.
- 6 However, I also find, on the balance of probabilities, that in all the circumstances of the case:-

- 6.1 Had a fair procedure been followed the Claimant would have been fairly dismissed within the week following this incident, a week for which the Claimant was paid.
- 6.2 The Claimant contributed to his dismissal to the extent of 100% and that there should be no basic or compensatory award made in his favour.
- 6.3 The Claimant was guilty of gross misconduct and was not entitled to any payment in lieu of notice.
- 6.4 In all the circumstances of the case it would not be just and equitable to make any award in favour of the claimant.
- 6.5 The Claimant adduced no evidence that he was owed any holiday pay.
- 7 I also came to the conclusion, on the basis of the submission made by the Respondent (to which the claimant did not offer anything in response) that the manner in which the Claimant had conducted these proceedings was unreasonable.
- 8 My reasons are as follows:-
- 8.1 The respondent effectively conceded at an early stage that the dismissal was procedurally unfair.
- 8.2 The claimant rejected offers of settlement, made in *Calderbank* terms, in the sum of £3,000. Those letters predicted an outcome in almost the precise terms of this Judgment.
- 8.3 The claimant effectively played no active part in the hearing.
- 8.4 In all the above circumstances it was unreasonable for the Claimant to pursue his claim for a declaration that is effectively worthless.
- 8.5 I thought the sum of £720.00 including VAT, which was simply Counsel's brief fee and all the was sought, was entirely proportionate and reasonable.

Employment Judge Kurrein
24 August 2107