



EMPLOYMENT TRIBUNALS

Claimant: Mr L Grochowicki

Respondent: Thornton Hall Hotels Limited

HELD AT: Liverpool

ON: 15 March 2017

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: In person

Respondent: Ms L Gould, counsel

JUDGMENT AT A PRELIMINARY HEARING

1. The tribunal has jurisdiction to consider claim 2406058/2016, despite the “ECC number objection”, namely the respondent’s objection that the early conciliation certificate number on the claim form matched the claimant’s certificate dated 19 September 2016 and not the certificate dated 21 October 2016.
2. The ECC number objection is not a ground for rejecting claim 2406058/2016.
3. The tribunal has not determined whether or not it has jurisdiction to consider claim 2401421/2017.

CASE MANAGEMENT ORDER

1. Claims 2406058/2016 and 2401421/2017 are combined and will be heard together.

2. Thornton Hall Hotels Limited is added as a respondent to both claims in substitution for "Mr Chris Spencer, Thornton Hall Hotel & Spa".
3. If it becomes relevant for any purpose to determine whether claim 2401421/2017 was presented within the statutory time limit, that question will be determined at the final hearing.
4. The tribunal will determine the complaints and issues set out in the following discussion.
5. The final hearing will take place before an employment judge sitting with lay members on **7, 8 and 9 August 2017**. **Three days** have been allocated to the hearing. The parties must be prepared to deal with all issues including remedy if appropriate.
6. The timetable for the hearing will be as follows:
 - 6.1 Day 1 – preliminary discussion, tribunal reading time, oral evidence of the claimant and oral evidence of his two witnesses;
 - 6.2 Day 2 – oral evidence of the three witnesses for the respondent and closing submissions if time allows.
 - 6.3 Day 3 – closing submissions, deliberation, judgment and (if appropriate) remedy.
7. If at any time a party considers that the timetable or time allocation needs to be varied, that party must immediately apply in writing to the tribunal.
8. No later than 4pm on 5 April 2017, each party must make a reasonable search for all relevant documents in that party's control and deliver a copy of all such documents to the other party.
9. A document is relevant if it assists a party's case or undermines a party's case.
10. The parties are reminded of their continuing obligation to disclose relevant documents.
11. The respondent must prepare the bundle of documents for use at the final hearing. The bundle must be contained in one or more files that can be opened flat. It must have an index. Pages must be consecutively numbered. They must appear in chronological order unless there is a good reason for them appearing in a different order.
12. No later than 4pm on 26 April 2017, the first respondent must send to the other parties a draft index for the bundle to be used at the final hearing. The parties must produce an agreed index no later than 4pm on 3 May 2017. The respondent must then immediately send a copy of the agreed bundle to the claimant.
13. By 4pm on 17 May 2017, the parties must deliver to each other signed witness statements from all the witnesses on whose evidence they rely. The claimant will comply with this paragraph in relation to his own evidence by delivering a copy of his own witness statement.
14. This order does **not** require the parties to exchange their witness statements simultaneously. If a party considers that another party has failed to deliver its witness statements on time, it must deliver its own witness statements to the

other party in compliance with the order and immediately inform the tribunal of the other party's non-compliance.

15. Witness statements must be full and complete and must set out all the evidence on which the party calling the witness relies. They must, however, be confined to the evidence that is relevant to the issues to be determined by the tribunal. They must be divided into separate numbered paragraphs. Evidence of communications covered by "without prejudice" privilege must not be included. If a witness statement refers to documents, it must indicate the page of the agreed bundle where each document can be found.
16. If the maker of a witness statement does not attend the hearing to be cross-examined, the tribunal may nevertheless consider the evidence contained in the witness statement, but is likely to give the statement reduced weight.
17. No later than 4pm on 24 May 2017, the claimant must deliver his updated schedule of loss to the respondents. The schedule must indicate what remedy the claimant seeks. If the remedy includes compensation, the schedule must indicate the amount sought and how it has been calculated. If the claimant seeks compensation for loss of earnings, he must set out any earnings from other employment and briefly describe what efforts he has made to seek other employment. Any claimed compensation for hurt feelings must be quantified by reference to the cases of *Vento v. Chief Constable of South Yorkshire Police* and *Da'Bell v. NSPCC*.
18. The respondent must ensure that, in addition to the parties' own copies, 4 copies of the bundle and 5 copies of the witness statements are brought to the tribunal no later than 9.15am on the first day of the hearing.

DISCUSSION

Complaints and issues

1. The claimant's two claim forms raise an identical complaint of automatically unfair dismissal. It is common ground that the respondent dismissed the claimant following just over 6 months' continuous employment. The dismissal is alleged to be automatically unfair, and exempt from the need for a qualifying period, under sections 104 and 108(3)(g) of the Employment Rights Act 1996 ("ERA"). It is the claimant's case that he asserted a relevant statutory right by complaining about underpayment of holiday pay.
2. The tribunal will have to decide whether the claimant can prove:
 - 2.1 that he asserted the statutory right in question; and
 - 2.2 that this was the sole or principal reason for his dismissal.
3. If the dismissal was unfair, the respondent raises a further issue. It argues that, regardless of whether the claimant was dismissed for asserting a statutory right, he would in any event have been dismissed for his attitude and behaviour.
4. There is, in theory, a prior issue to be determined in relation to claim 2401421/2017. That is whether the claim was presented within the statutory time limit. It is the claimant's case that his employment terminated on 10

October 2017 on the expiry of his notice period. If he is right, the claim was presented in time. Counsel for the respondent contended today that, whilst the claimant's dismissal letter purported to give notice of termination, the claimant was in fact orally dismissed without notice at the meeting on 3 October 2017 and he was compensated for breach of contract by being paid for his notice period. If that is the case, the second claim would be out of time. This argument is not to be found in the ET3 response, except for the bare assertion that the claimant's employment ended on 3 October 2017.

5. As things stand, the argument is wholly academic. The two claims are identical. As a result of this judgment, the tribunal has jurisdiction to deal with the first claim in any event. Jurisdiction in relation to the second claim would only become relevant if the respondent successfully appeals against the judgment.

Disputed and agreed decisions

6. I gave oral reasons for deciding that the tribunal had jurisdiction in respect of claim 2406058/2016. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date on which this judgment was sent to the parties.
7. Once the disputed issue of jurisdiction had been resolved, the case management orders were made by consent.

Documents

8. The first respondent helpfully volunteered to prepare the bundle, which is likely to fit comfortably into a ring-binder file.

Witnesses

9. The claimant will give oral evidence and will call two witnesses to testify that the respondent's supposed concerns about his behaviour and attitude are "a fabrication". The respondent will call three witnesses: one dealing with the holiday pay complaint, the dismissing manager and Mr Spencer who heard the appeal.

15 March 2017

Employment Judge Horne

SENT TO THE PARTIES ON

21 March 2017

FOR THE TRIBUNAL OFFICE