



EMPLOYMENT TRIBUNALS

Claimant: Mr Tony Michael Jones

Respondent: Electrical Supplies (Anglesey) Ltd

Heard at: Wrexham **On:** 5 March 2018

Before: Employment Judge S J Williams (sitting alone)

Representation:
Claimant: Mr Winrow
Respondent: Mr Lloyd Williams

JUDGMENT

The judgment of the tribunal is that:

- 1 the claimant was wrongfully and unfairly dismissed;
- 2 the claimant contributed to his dismissal to the extent of one half;
- 3 the respondent is ordered to pay to the claimant

(i)	a basic award for unfair dismissal	
	16.5 x £442 = £7293, reduced by one half	£3,646.50
(ii)	for loss of employment rights	
	Two weeks' pay, £884, reduced by one half	£ 442.00
(ii)	for failure to give a statement of employment particulars, four weeks' pay	£1,768.00
	Total	£5,856.50

REASONS

1. The claimant claims constructive unfair dismissal, wrongful dismissal (though this was not formally pleaded) and failure by the respondent to provide him with a statement of employment particulars pursuant to section 1 of the Employment Rights Act 1996.
2. The tribunal heard the evidence of the claimant, and of Messrs Brian Jones and Trevor Jones, both of whom are directors of the respondent company. The tribunal received a bundle of documents containing pages 1-48.

The facts

3. The respondent, managed by Mr Brian Jones, supplies electrical equipment and appliances. Mr Trevor Jones, the brother of Brian, runs a kitchen fitting company from adjacent premises. The businesses were started by the parents of Brian and Trevor Jones who still retain a financial interest though they are not involved day-to-day in the running of either business. The respondent is a very small business employing some three employees in addition to the directors. It is a member of the Sirius Buying Group through which it obtains more advantageous prices from manufacturers and wholesalers.
4. Until he left on 21 July 2017 the claimant was employed by the respondent for 18 years as a counter assistant and was responsible for

dealing with customers, representatives, stock-taking, stock ordering, pricing, monitoring incoming emails and ancillary duties.

5. On 29 March 2017 the claimant opened an email from the Hoover/Candy group inviting Sirius members to enter a draw to participate in a promotional GT race day at Bedford Autodrome. The claimant entered the draw, was ultimately successful and was booked to attend the event on 14 June 2017. It never occurred to the claimant that he should not have entered.
6. The respondent company, and not any individual, was the member of the Sirius group.
7. The claimant had already booked some days' holiday commencing 13 June in order to attend a family wedding on 16 June in Kent.
8. The claimant did not mention to Brian Jones, or to Trevor Jones or to their parents that he had entered the draw and was going to attend the event. There was not a particularly close relationship between the claimant and Brian Jones and the latter, as he acknowledged, tended to keep himself to himself. The claimant did tell two work colleagues that he was going and also had conversations in the respondent's premises, in sight but not earshot of Brian Jones, with the Hoover/Candy representative who was co-ordinating the event. The claimant did not go out of his way to act covertly.
9. At the end of work on 12 June, the last day before the claimant's booked holiday, Brian and Trevor Jones asked the claimant into the office. Brian Jones asked the claimant about the 'competition' and why he had not told them about it. The claimant frankly said what he had done, said that he did not realise he had to inform the respondent or

that he should not have entered the draw, apologised and said that he would not now be attending. Brian Jones said that the claimant should not have entered the draw because it was for Sirius members only, suspended the claimant on full pay and told him that he, Brian Jones, would contact him in due course. Trevor Jones made brief notes of the meeting and the claimant was required to sign those notes, which he did (page 44). The claimant did not read the notes carefully before signing them and disputes the first sentence recording that he 'admits to taking something that he wasn't allowed to'. I accept the claimant's evidence that Brian Jones told the claimant that he had been wrong to enter the draw and the claimant admitted having done so. He did not attend the event. The only further investigation carried out by the respondent was to ascertain the value of the event; on 14 June Brian Jones was informed that it was £1,300/1,500.

10. The respondent did not contact the claimant again until a letter was sent dated 7 July, almost four weeks later. Brian Jones said that in the meantime he was considering what to do and that he didn't know what to think. He said that he regarded taking what the claimant was not his as theft. He said that if the claimant had said he was going only to the family wedding, and not to the promotional event, then he would have 'left it at that', meaning that he would have taken no further action. The claimant wrote a letter dated later on 12 June, delivered by his wife, in which he apologised and again said that he had not realised he was not entitled to enter the draw.
11. Correspondence was later entered into by the parties' representatives with a view to negotiating an agreed departure of the claimant from the

respondent. These communications are protected under section 111A of the 1996 Act. I therefore heard nothing of their content, merely that the negotiations were not successful.

12. The claimant's preference would have been to return to work for the respondent but, having heard nothing, he became concerned for his job and employment prospects. He had a new baby and was in the process of buying a house and could not afford to be out of work. The claimant made some enquiries and, I accept with some reluctance, accepted a job offer with a local builders' merchant at a lower rate of pay. He commenced that new job on 24 July 2017. The claimant felt that his trust and confidence in Brian Jones had disappeared, though he remained loyal to Mr Jones senior.

13. The respondent accepts that it did not provide the claimant with any statement of employment particulars.

14. I was not assisted by evidence that Brian Jones, unlike his brother, did not attend the claimant's wedding. There were personal reasons for that and, in any case, the claimant's relationship with Trevor Jones was clearly much closer.

The law

15. The Employment Rights Act 1996 provides:

1(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

95(1) For the purposes of this Part an employee is dismissed by his employer if ...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

Discussion and conclusions

16. Mr Winrow put the claimant's case on the basis that the suspension of the claimant by Brian Jones breached the implied term of trust and confidence between the parties and therefore amounted to a fundamental breach of the contract of employment. There was no need to suspend in the circumstances, said Mr Winrow, and to do so was therefore a breach. Such investigation as was required could have been done while the claimant was on leave.

17. In my judgment Mr Winrow pitches the case too high. The respondent was entitled to consider how it would proceed, whether it thought there was a case of possible dishonesty or whether it accepted the claimant's explanation of innocent misunderstanding. The respondent was entitled to suspend the claimant for a period, no longer than reasonably necessary, to make further enquiries and come to a decision on how to proceed. If he had not been suspended, the claimant would have returned to work after his holiday on 19 June. That might conceivably not have been sufficient time for Brian Jones to complete his investigation; but it the result it was sufficient.

18. The claimant had hitherto been a long-serving, loyal employee with no disciplinary record. To leave the claimant suspended for three further weeks, until 7 July, without any form of communication was in my

judgment likely to result in the relationship of trust and confidence between the parties being seriously undermined. Mr Brian Jones's explanation that he was paying the claimant and that the latter would have some time with his new baby did not appear to me to focus on what was required. It was not right to leave the claimant effectively in 'limbo', with no communication from the respondent for that period when no further inquiry was being undertaken by the respondent.

19. I take into account the fact that the respondent is a very small company with little in the way of internal administrative resources. No great formality would be expected of such a company – a simple telephone call might well have sufficed to keep the claimant informed about what was going to happen. But in the period to 7 July the respondent made no contact whatsoever.
20. For the reasons given above I consider that the respondent fundamentally breached the claimant's contract of employment by leaving him suspended without any form of communication for almost four weeks. I do not place similar importance on the subsequent period of suspension, up to 21 July, because there was correspondence in that period about which I have not been told and I therefore make no finding about it. Faced with the respondent's conduct the claimant was entitled to resign and treat himself as dismissed. The respondent has not advanced any reason for dismissing the claimant and his dismissal was therefore unfair.
21. I turn to the claimant's part. The respondent and not the claimant was a member of Sirius. I found it impossible to accept the claimant's evidence that he considered that he was entitled to enter the draw on

his own behalf and take the benefit of the promotion without discussing it with his employer. In part, his explanation for so doing was his difficulty in communicating with Brian Jones. I cannot accept that that can relieve the claimant of the obligation to keep his employer informed about communications relevant to the business, in which his employer had an obvious interest. In any event, there were others, namely Trevor Jones and Mr Jones senior to whom he could have spoken. It was for the respondent to decide whether to take part in the promotion and, if so, who should attend. Had the claimant turned his mind to the matter, as he should have done, he would have realised that he must consult his employer on the matter. To fail to do so was culpable conduct on his part which directly contributed to his dismissal. In my judgment the claimant contributed to his own dismissal to the extent of one half.

22. The claimant chose not to give evidence about his differential loss of pay in his new job compared with his job with the respondent. He makes no claim for loss of earnings. He commenced his new job on 24 July, immediately after he left the respondent. He therefore substantially mitigated any loss which resulted from the respondent's breach of his contract by reason of its failure to give him the notice to which he was entitled or pay in lieu of such notice. I am therefore unable to determine what, if any, differential loss he suffered. Accordingly I have to dismiss the claim for pay in lieu of notice.

23. The claimant is entitled by reason of his unfair dismissal to a basic award, the calculation of which is agreed by the parties, and to the conventional award of two weeks' pay to compensate for the loss of his

employment rights. Both of those awards will be subject to a reduction by fifty percent to represent the claimant's contribution to his dismissal.

24. For the respondent's admitted failure to provide the claimant with written particulars of employment, section 38 of the Employment Act 2002 provides that the tribunal must increase the award for unfair dismissal by two weeks' pay, and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks' pay. There are no circumstances in this case which would make such an increase unjust or inequitable.

25. This was a very long employment and the difficulty which brought it to an end was precisely that the duties and obligations of the claimant were not clearly set out by the respondent. In those circumstances I consider it just and equitable to increase the award by four weeks' pay. This additional award is not dependent on the dismissal and it is therefore not appropriate to reduce that award by reason of contribution.

Employment Judge S J Williams
Dated: 17 March 2018

JUDGMENT SENT TO THE PARTIES ON

28 March 2018

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS