



EMPLOYMENT TRIBUNALS

Claimant: Mr A Cuthbert

Respondent: Rephouse Europa Limited

HELD AT: Liverpool **ON:** 12 March 2018

BEFORE: Employment Judge Grundy

REPRESENTATION:

Claimant: Mr J Chambers, Solicitor

Respondent: Mr D Jones, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claimant was dismissed in breach of contract, the claimant claims for notice pay and car allowance for a three month period succeed. The respondent shall pay £11,924.79 to the claimant.

The Tribunal orders that there shall be a 25% uplift upon the sum awarded, the respondent shall pay a further £2,981.20 and the total award the respondent shall pay the claimant is £14, 905.98.

REASONS

1. The claimant was employed by the respondent from 15 July 2016 until 9 August 2017 as UK Sales Manager. He brought a Tribunal claim on 8 November 2017 in respect of notice pay for the period of three months to include a car allowance. The claim was brought by means of breach of contract by the respondent and an uplift in respect of the award was sought in the claim form.

2. The respondent originally defended that claim in the ET3 that was filed. As the Tribunal began this hearing today on 12 March there was no issue in respect of breach of contract and there was no issue in respect of the award of £11,924.79. The issue before this Tribunal has been that of the uplift. The documents before the

Tribunal have been the claimant's written submissions, the statement of the claimant Mr Cuthbert, the claimant's list of documents, a bundle of documents regarding the jurisdictional issue, within that bundle of documents the Tribunal has been assisted by a helpful commentary from Harvey on Section 207A of the Trade Union and Labour Relations Consolidation Act 1992.

3. The Tribunal also heard unchallenged evidence on oath from the claimant and he within that evidence confirmed his statement and the Tribunal obtained a flavour of the disciplinary process which was in place within the respondent at the time of the claimant's dismissal.

4. So far as the law to be applied is concerned the Tribunal retains the power of uplift in cases of failure to follow proper disciplinary procedure, that procedure is usually that contained in the ACAS code of practice regarding disciplinary and grievance procedures. Schedule A2 of the Act cited above shows the jurisdiction to which Section 207A applies and this includes in Schedule 2 by means of the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 breach of employment contract and termination. That then includes matters such as raising and dealing with issues promptly, employers and employees acting consistently, employers carrying out any necessary investigations to establish facts and informing employees of the basis of the problem and giving them an opportunity to put their case. It also includes employers allowing employees to be accompanied at any formal disciplinary or grievance meeting and employers allowing an employee an appeal against any formal decision made. It is clear and it hasn't been in dispute that the respondent's case is that the claimant was dismissed for a reason relating to conduct, so in all the circumstances I am satisfied that I have jurisdiction to apply an uplift and I do so on the basis of what I find to be just and equitable in this case.

5. So far as that aspect is concerned the claimant has the feeling that the respondent acted in bad faith, in reality he feels that the employment contract was set up to establish a warehouse base in the UK, the respondents being a Maltese based company and not really to further his employment in the sales role, he is fortified in that belief as he was not issued with sales targets and not originally given a three month notice period in his original contract, he later negotiated and signed a contract with a three month notice provision. In my view having set out those provisions of the ACAS code which appear relevant it seems that the respondent has failed to follow the ACAS code in practically all material particulars before conducting a conduct disciplinary and dismissal. In fact other than holding a meeting the respondents failed in all of the particulars that I have just listed. I have heard submissions from both parties and I have reconsidered the submissions made on behalf of the respondents, Mr Jones on the respondent's behalf asked me to consider that this was essentially a breach of contract claim and therefore I should treat the matter so far as damages are concerned and view that in the civil context, he also submitted that as the respondent company are Maltese based they may not be fully au fait with UK provisions of employment law and he gave the submission that there were ten reasons given for the claimant's employment ending although the claimant disputed those reasons in his witness statement.

6. I can find nothing in those submissions which lead me to reduce the uplift from 25% and in that regard having applied that amount to the figures given it

amounts to £2,981.20 giving the total sum awarded of £14,905.98 and that is the award made

Employment Judge Grundy

14 March 2018