



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr J Szymaniak

v

**Respondent:**

Jason Hunt and Mardi Hunt t/a  
Crazy Bear Farm and Farm  
Shop

**Heard at:**

Reading

**On:** 17 January 2019

**Before:**

Employment Judge Lang (sitting alone)

**Appearances**

**For the Claimant:**

In person

**Assisted by:**

Mr W Talar (Interpreter in the Polish language)

**For the Respondent:**

Mr J O'Flaherty (Director – associate company)

## RESERVED JUDGMENT

1. The complaints of unfair dismissal, breach of contract, unauthorised deductions from wages, failure to provide an itemised pay statement and for unpaid holiday are well founded and succeed.
2. The complaint of failure to pay redundancy pay is not well founded and is dismissed.
3. The claim will proceed to a Remedy hearing on **4 November 2019** with a one day time estimate to deal with issues of remedy.

## REASONS

1. By a claim form issued on 6 March 2018, the Claimant brings complaints of unfair dismissal, for a redundancy payment, notice pay, unpaid holiday pay and arrears of pay and in relation to a failure to provide an itemized pay slip for February 2018.

### Issues

2. Unfair dismissal

- 2.1 Was the Claimant dismissed by the Respondent on 14 February 2018 (as the Claimant alleges) or did he resign his employment on 4 February 2018 (as the Respondent alleges)?
- 2.2 If the Claimant was dismissed, what was the principal reason for the dismissal and was it a potentially fair one? If a potentially fair one was dismissal fair or unfair in accordance with the Employment Rights Act Section 98(4)?
- 2.3 Issues of remedy are to be determined at a subsequent remedy hearing (if necessary).

3. Redundancy

- 3.1 If the Claimant was dismissed and the reason for the dismissal for redundancy, the Claimant is entitled to a redundancy payment.

4. Breach of Contract

- 4.1 If the Claimant was dismissed, to how much notice was he entitled? On the basis of his length of service, the statutory minimum notice period would be six weeks.

5. Arrears of Pay

- 5.1 Did the Respondent make unauthorised deductions from the Claimant's wages? The Claimant was normally paid at the end of each month.
- 5.2 Was the Claimant on or about 28 February 2018 paid less in wages than he was entitled to be paid and if so, how much was due to him?
- 5.3 The Respondent accepts that no pay slip was provided for February 2018 and the Claimant did not receive any payment for February 2018. On their own case, he was entitled to payment up to 4 February 2018 together with any accrued holiday pay and these figures were agreed at £270.00 gross for four days' pay and £202.50 for three days' holiday pay, being a total of £472.50. If the Claimant claim that he was dismissed on 14 February 2018 is correct , he was entitled to be paid up to the date of dismissal.

6. Itemised pay slips

- 6.1 It was accepted that no itemised pay slip was provided to the Claimant for February 2018.

7. Holiday pay

- 7.1 When the Claimant's employment came to an end, was he paid for all of the holiday to which he was entitled? The Respondent accepts that if their account is correct, the Claimant was entitled to three days' holiday pay as set out above.

### The Hearing

8. There was no agreed bundle. The Respondent provided a lever arch file with a number of documents. The Claimant provided some additional documents which I marked and included on the Tribunal file as C1-C4.
9. I heard evidence from the Claimant and his daughter, Barbara Kosmalska.
10. I heard evidence from the following on behalf of the Respondent:
- Jason Hunt (Respondent);  
John O'Flaherty (Group Commercial Director of Crazy Bear Group Ltd);  
Sally Mason (Administrator); and  
Alistair Tuffin (self-employed electrician).

### Findings of fact

11. The Claimant was employed by the Respondent as a farm labourer. His employment commenced on 1 May 2011. The Respondent's farm and farm shop operation was at one time part of a larger group employing 350 people and operating restaurants and hotels in the south east of England. However, from July 2017, the farm and farm shop operation were no longer part of the group and were operated by the Respondent as a partnership which employed only about 15 employees including the Claimant. I heard that the Respondent and indeed the wider group had no dedicated HR function. The Claimant's previous line manager had left in 2016 and the Claimant was expected to report to Jason Hunt. He contends that ,in practice, his line manager was an employee called Keith. The Respondent said that he was a butcher in the farm shop although accepted that he had taken on what they described as "light management" responsibilities. The Claimant regarded Keith as the go-between himself and Mr Hunt.
12. The Claimant normally took a two week holiday around Easter each year followed by another two week holiday at the end of October. He is a Polish national and was occupying staff house accommodation provided by the Respondent.
13. The Claimant contends that he applied for holiday in November 2017 and this was granted for the period 5 February to 15 February 2018. The request was approved by Keith. He says that Keith spoke to Sally Mason ,who is the company administrator, prior to approving this holiday. Although lambing season was approaching, the Claimant had calculated that he would return before the ewes on the farm gave birth.

14. The Respondent contends that on 2 February 2018, Mr Hunt was in a meeting with Sally Mason, Alistair Tuffin, a self-employed electrical contractor and Mr O'Flaherty. They were sitting on the porch outside of the farm shop when the Claimant approached them and said that he was leaving on 4 February as he was starting a new job. Mr Hunt says that he explained that the Claimant needed to give one month's notice and he could not reduce the period of notice as a lambing season was imminent. Mr Hunt says that he called a fellow Polish employee (Adrian Skowronski) to involve him in the conversation. He says that Mr Skowronski spent 10 minutes explaining to the Claimant that he was obliged to give one month's notice but that the Claimant was still insistent that he was going to leave.
15. On Monday morning, the Claimant was not at work and lambs were being born and had died due to cold weather. Mr Hunt says that he asked Adrian to phone the Claimant to find out where he was on the Monday but the Claimant did not answer the call and did not return subsequent phone calls. Mr Hunt did not consider sending a text to the Claimant to query his whereabouts.
16. The Claimant contends that on 14 February while he was still on holiday in Poland, he received a telephone call from somebody called Anna. He recorded the telephone number which it is accepted to be a telephone number connected to the Respondent. He was told by Anna (in Polish) that he was being dismissed because some animals had died and that it was his fault. He was told that he had been ejected from the accommodation he was occupying and that his personal belongings had been removed and had been placed in the corridor. Mr Hunt accepted that he had given instructions that the Claimant's belongings be removed and he described this as just some bits of rubbish that were removed from his room.
17. The Claimant's daughter telephoned the Respondent the next day and spoke to an employee called Julia who confirmed that the Claimant was no longer employed although she did not know the reason.
18. The Claimant says that on 16 February on his return from Poland, he went to the staff house to collect his belongings and met with Mr Hunt. Mr Hunt told him that he should leave the staff house within two hours. After some discussion, Mr Hunt agreed to an extension of this time until 23 February 2018. Mr Hunt says that this did not take place and that he was on holiday skiing in St Anton from 15 February 2018 for 10 days.
19. Mr Hunt was unable to provide documentary evidence to confirm the dates of his trip.
20. On 17 February, the Claimant's daughter and her husband attended at the Respondent's premises with the Claimant. They were told that Mr Hunt was on holiday but did speak to Keith. Keith confirmed that the Claimant was no longer an employee and wished him luck. The Claimant's daughter was given an email address (which is actually Mr O'Flaherty's email address ) to correspond with Mr Hunt. The Claimant contends that he gave

Keith a letter on 17 February 2018 for Keith to pass on to Mr Hunt which stated:

*“As followed our last verbal conversation which I had with you on 16 February 2018, I am writing with a request of written statement and reasons of my dismissal. I would appreciate it if you would include all terms and conditions of redundancy of me from the Crazy Bear Stadhampton. Also as I have been work [sic] for the Crazy Bear Stadhampton for more than six years, I am entitled to my redundancy pay. Please accept this letter as official request.*

*Please reply within seven days in case of any delate [sic] of your replay [sic] I will report this case to ACAS and employment tribunal.”*

21. The Claimant sent an email to Mr O’Flaherty on 18 February 2018 and says that he attached this letter to the email. In the email, he stated:

*“Dear Mr Jason Hunt*

*I am writing with regards our last verbal conversation which I had with you on Friday 16 February 2018. During that conversation I received from you verbal dismissal from the position farm labourer. Firstly I have been informed about my dismissal on Wednesday 14 February 2018 by phone whilst I was still on holiday and when I have back to UK from holiday you demand to pick up all my belong and leave rented property immediately. It upset me very badly. In my opinion I have been treated very unfair having worked on this seven years for the Crazy Bear Stadhampton. Moreover the contract which I had from the Crazy Bear Stadhampton clearly stated that I have right to receive one month’s written notice. On Saturday 17 February I have handle the letter addressed to you with a requesting of written statement and reason of dismissal. I have been told that you are currently away and I have been instructed to contact you through this email so I am taking this opportunity to inform you about my request. Please see attached letter. Please could you replay through this email address as I no longer live in one of the business’ residential properties.”*

22. Mr O’Flaherty responded to that email on 19 February and said: *“I acknowledge your email but will have to wait for Mr Hunt to return from his holiday to discuss the matter with him and then I will revert back to you.”* Mr O’Flaherty said that he did not contradict the Claimant’s version of events in this email because he was not engaged by the Respondent, he was engaged by the Group and it was not his place to do so.

23. He says that he did not discuss the email with Mr Hunt when he returned from his holiday but then in evidence said that he could not remember having discussed it with Mr Hunt on his return from holiday. Mr Hunt returned from his skiing holiday on or after 25 February. I find that Mr O’Flaherty discussed the Claimant’s email of 18 February 2018 with Mr Hunt and Mr Hunt decided not to respond. The Claimant chased a response from Mr O’Flaherty by email of 27 February 2018 but received no reply.

24. On 6 March 2018, the Claimant sent a further email, this time to the email address of Mr Hunt. He referred to his letter of 17 February and referred to his dismissal from the job position of farm labourer. He complained that he had not been paid for work in February and he had not received a P45. He said:
- “Please do not ignore me or hide away from me. As you know I have worked for you for more than six years and you have never had problems from me. Suddenly you have started treating me very badly. As a matter of fact the way how you dismiss me upset me very badly and affected my health issue. As you know I had major operation nearly two years ago and I am almost 60 years old. You not treat people as disposable thing. I do not wish to be treated in bad manner by you. I wish peacefully move on. New job but your behaviour caused more stress and affect my health in all aspects.”*
25. Mr Hunt responded to this email the following day, 7 March 2018. He said:
- “I fail to understand why you are emailing me regarding your February salary and ridiculous claim for redundancy. You gave me your verbal resignation at the end of December 2017 and left my employment at the end of January 2018 which you have been fully paid for.”*
26. Mr Hunt made no reference to the alleged meeting on 2 February 2018. He said that he had a lot going on and was an incredibly busy man. I considered it remarkable that Mr Hunt did not take up the opportunity presented here to set out his account of the 2 February meeting. If the meeting on 2 February had taken place as he alleges then this would have been the obvious response to the Claimant’s email of 6 March 2018 together with the fact that animals had died because of the Claimant’s absence. He did not respond in those terms. Instead he referred to the Claimant giving one month’s notice at the end of December 2017. This is entirely inconsistent with his account. I find that the Claimant’s account is correct. There was no meeting on 2 February 2018 as alleged. The Claimant was dismissed by telephone on 14 February 2018.
27. The Claimant responded on 8 March 2018:
- “I wish to inform you that I totally disagree with your claim about me giving you verbal resignation from job position as a farm labourer in December 2017. I have never given you any termination of employment contract neither verbal or written in December 2017.....I have already made a claim to an employment tribunal”*
28. Mr Hunt made the decision at the end of February 2018 that the Claimant would not be paid anything for February and would not be issued with a pay slip. He gave instructions to this effect to Sally Mason.
29. On leaving the Respondent’s accommodation on or about 22 February, the Claimant stayed in Oxford until 26 February when he went to stay with

his daughter and her husband in West Sussex. On or about 23 March, he returned to Poland and still lives there.

## **The Law**

### Unfair dismissal

30. The law in relation to unfair dismissal is set out at section 98 of the Employment Rights Act 1996. Subsection 1 states:

In determining for the purpose of this part whether dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) The reason (or, if more than one the principal reason) for the dismissal; and
- (b) That it is either a reason falling within subsection 2 or some other substantial reason of a kind to justify the dismissal of an employee holding the position which the employee held.

31. Subsection 4 states:

Where the employer has fulfilled the requirements of subsection 1, the determination of the question whether the dismissal is fair or unfair having regard to the reason shown by the employer depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

### Redundancy Payment

32. Section 5 of the Employment Rights Act 1996 states:

An employer shall pay a redundancy payment to any employee of his if the employee is dismissed by the employer by reason of redundancy.

### Notice Pay

33. Section 86 of the Employment Rights Act 1996 states:

The notice required to be given by an employer to terminate the contract of a person who has been continuously employed for one month or more is –

- (b) Not less than one week's notice for each year of continuous service if his period of continuous employment is two years or more but less than 12 years

### Unauthorised Deductions

34. Section 13 of the Employment Rights Act 1996 states:

An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) the deduction is required or authorised to be made by virtue of statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

### Holiday Pay

35. Regulation 14 of the Working Time Regulations 1998 states:

This regulation applies where –

- (a) the worker's employment is terminated during the course of his leave year and
- (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

And that sets out in the subsequent subsections how compensation-related to entitlement to leave should be calculated.

### Itemised Pay Statements

36. Section 8 of the Employment Rights Act 1996 states:

An employee has the right to be given by his employer at or before the time at which any payment of wages or salary is made to him a written itemised pay statement

And Section 11 states:

Where an employer does not give an employee a statement as required by section 1, the employee may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.

### **Conclusions**

- 37. The key issue in this case is whether the meeting that the Respondent's witnesses say took place on 2 February 2018 occurred and whether the Claimant indicated that he intended to leave to go to work elsewhere. I conclude that it is more likely than not that this meeting did not take place as alleged by the Respondent and its witnesses. It is very surprising that Mr O'Flaherty did not respond to the Claimant on 19 February 2018 to refer to this meeting.
- 38. I think it more likely than not that Mr O'Flaherty did discuss the Claimant's email with Mr Hunt on his return from holiday. Once again, it is surprising that Mr Hunt or Mr O'Flaherty did not then correspond with the Claimant to refer to the meeting which would have been the obvious response to the 18 February email.
- 39. Even when Mr Hunt did respond to the email of 6 March 2018, he failed to refer to the meeting and his explanation as to why this did not take place was not credible. He did not refer to the meeting or the fact that animals had died on the farm. Even when the Claimant told him on 8 March that he



was proceeding to an employment tribunal, Mr Hunt did not mention the 2 February meeting or the animals.

40. In the circumstances, I consider it more likely than not that the Claimant's version of events, which has been consistent throughout, is more likely to be correct. I consider it is more likely than not that the Claimant was dismissed by telephone on 14 February 2018 as he alleges.
41. The Respondent has obviously not shown any reason for the dismissal (having denied that the dismissal took place at all) and it is not for me to speculate as to the reason for the dismissal. The Respondent has failed to show either the reason for the dismissal or that it is either a reason falling within section 98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held. It follows that the dismissal was unfair.
42. It is necessary for me to consider whether the reason for dismissal was redundancy when considering the Claimant's complaint for a redundancy payment. I do not consider it likely that the reason for the dismissal was redundancy. No evidence has been adduced to suggest that the requirements of the Respondent's business for employees to carry out work of a particular kind had ceased or diminished. I do not consider that the claim for a redundancy payment is well founded.
43. The breach of contract claim succeeds having regard to my finding in relation to the dismissal and the Claimant is entitled to six weeks' notice pay.
44. In relation to arrears of pay, the Claimant is entitled to be paid up to the date of termination being 14 February 2018 and a determination must also be made in relation to the holiday pay due to the Claimant on termination.
45. The claim is listed for a remedy hearing on 4 November 2019 to determine remedy issues and separate directions have been issued to the parties with regard to the necessary steps to prepare for that hearing.

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**Employment Judge Lang**

Date: 1 / 12 / 2019

Sent to the parties on: 12 / 2 / 2019

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For the Tribunals Office

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