



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr M Drever

AND

Respondent
Heritage Automotive Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth
BY TELEPHONE CONFERENCE

ON

2 December 2020

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person, assisted by his Father
For the Respondent: Mrs L Arnold, Head of HR

JUDGMENT

The judgment of the tribunal is that the claimant was wrongfully dismissed in breach of contract but has already been paid in lieu for his lost notice period, and no compensation is awarded.

REASONS

1. In this case the claimant Mr Mathew Drever brings a monetary claim for breach of contract (wrongful dismissal) and unlawful deduction from wages against his ex-employer Heritage Automotive Limited. The respondent denies the claim.
2. This has been a remote hearing telephone conference which has been consented to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing by telephone. The documents that I was referred to are in separate bundles provided by each party, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mrs L Arnold for the respondent.
4. There was a degree of conflict on the evidence. I have heard the various witnesses give their evidence and observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both

- oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The claimant commenced employment on 5 February 2019 with Blade Motor Group Ltd as a Sales Operative, selling motorcycles in Swindon. In April 2009 his employment transferred to the current respondent namely Heritage Automotive Limited. His employment was terminated summarily on 17 December 2019 by reason of “underperformance”, but he was paid an additional two weeks’ pay and benefits up to and including 31 December 2019. He was also subsequently paid his outstanding commission in January 2020.
 6. The claimant raised a number of complaints about what he perceived to be his unfair treatment, including the fact that he did not receive sufficient induction or sales training; that his performance was good and that there were no specific sales targets either explained or missed; and that the respondent did not follow its capability and/or disciplinary procedures before dismissing him. He appealed against his dismissal, and his appeal was rejected on 23 January 2020.
 7. The claimant was issued with a written statement of the terms of his employment when he commenced his employment with Blade Motor Group. He was subject to a probationary period of three months which was satisfactorily completed. His salary was £17,500 together with commission payable monthly in arrears. Following the completion of his probationary period, and for the first two years of his employment, the respondent was contractually obliged to provide one week’s notice of the termination of employment. The notice provisions also included this provision: “If you give notice to terminate your contract, or if the Company gives you notice to terminate, you may be asked not to attend work during any or all of the notice period. During any period that you are not required to work, you will continue to be employed by the Company and will continue to receive your normal pay and benefits, except that you will not receive any bonus or commission payment that is dependent upon work being undertaken or on sales or leads being generated.”
 8. The claimant’s written statement of his employment also incorporated by reference their Employee Handbook. This included the capability and disciplinary procedures. The capability procedure explained that concerns regarding capability would normally first be discussed in an informal manner and time given to improve. The procedure then envisages warnings, written warnings and ultimately dismissal. The procedure concludes with this provision: “We retain discretion in respect of the capability procedure to take account of your length of service and to vary the procedure accordingly. If you have a short amount of service you may not be in receipt of any warnings before dismissal.”
 9. There was also a disciplinary procedure which provided for a process of warnings leading to dismissal in the event of misconduct. That also included a provision to this effect: “We retain discretion in respect of the disciplinary procedure to take account of your length of service and to vary the procedure accordingly. If you have a short amount of service you may not be in receipt of any warnings before dismissal.”
 10. The claimant was dismissed with immediate effect on 17 December 2019. At that stage he was entitled to one week’s notice of the termination of his employment. This was not given. However, the respondent did pay the claimant his full salary and benefits up to and including 31 December 2019, effectively therefore paying two weeks’ pay and benefits in lieu of notice.
 11. Having established the above facts, I now apply the law.
 12. The claimant’s claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the Order”) and the claim was outstanding on the termination of employment.
 13. Normal contractual principles apply to claims under the Order, which includes the right of set-off, even in circumstances where the employer has not entered an employer’s counterclaim under paragraph 4 of the Order, see for instance Ridge v HM Land Registry [2014] UKEAT 0485/12.
 14. In my judgment the claimant was dismissed in breach of contract and technically therefore he was wrongfully dismissed. This is because the notice provisions in the claimant’s contract of employment do not allow the respondent to dismiss summarily and to pay notice

- pay in lieu. They do allow the respondent to dismiss an employee on notice, but send the employee home and not to attend work during the notice period, but that did not happen in this case. The claimant was dismissed summarily on 17 December 2019 and was wrongfully dismissed on that date.
15. The claimant is then entitled to his normal pay and benefits for his lost notice period, which is a period of one week. On the facts of this case the respondent decided to pay him double that amount when it need not have done so. The claimant has already been fully paid for his lost period of notice, and I therefore award no compensation.

Employment Judge N J Roper
Dated 2 December 2020