



# EMPLOYMENT TRIBUNALS

## Claimant

Jorge Urosa

v

## Respondent

Liqroo Ltd

**Heard at:** Watford by CVP

**On:** 3 December 2020

**Before:** Employment Judge Allen sitting alone

## Appearances

**For the Claimant:** Mr Urosa unrepresented

**For the Respondent:** Ms Kaur, Operations Director, Liqroo Ltd

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

**"This has been a remote / paper hearing on the papers which has been consented to / not objected to by the parties. The form of remote hearing was [insert the code and description from the list above]. A face to face hearing was not held because [insert e.g. it was not practicable and no-one requested the same or it was not practicable and all issues could be determined in a remote hearing / on paper]. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have recorded. The order made is described at the end of these reasons. [The parties said this about the process: [add]]"**

## RESERVED JUDGMENT

The judgment of the Tribunal is that the claim for unauthorised deduction from wages contrary to S13 of the Employment Rights Act 1996 is dismissed.

## REASONS

### The complaints

1. Mr Urosa presented his claim to the tribunal on 23 September 2019. The complaints within that claim as set out on form ET1 were:

- 1.1 unauthorised deduction from wages as regards notice pay arising from his summary dismissal on 12 July 2019;
- 1.2 unfair dismissal; Mr Urosa also ticked the boxes for Compensation for unfair dismissal and 'if claiming discrimination, a recommendation' - dismissed on 1 June 2020 by Judge Manley on the grounds Mr Urosa did not have 2 years qualifying service.

### **Claims and issues**

1. Issues were not previously defined and agreed with the parties.
2. In summary I find the issues are as follows: -
  - 3.1 Was the Claimant's conduct on 12 July sufficient to constitute gross misconduct justifying summary dismissal without notice?
  - 3.2 If not, was the claimant entitled to a payment in lieu of notice?
  - 3.3 What was the effective date of termination?
  - 3.4 If the effective date of termination was not 12 July 2019, was the claimant entitled to wages for the days which elapsed between 12 July and the effective date of termination?
  - 3.5 At the time of termination did the claimant have outstanding accrued holiday entitlement for which payment was due?

### **Evidence**

3. The claimant gave oral evidence. He had not prepared a witness statement but relied upon the account as set out in his ET1 claim form.
4. Mrs Kaur, Operations Director, Liqroo Ltd gave evidence for the Respondent. She had not prepared a statement but gave oral evidence.

### **Documents**

5. I have been provided with 2 bundles of documents; one prepared by the Claimant running to 138 pages (although every other page is blank) and one prepared by the Respondent running to 16 pages (again every other page is blank).
6. The claimant's documents include the contract of employment, signed by both the Claimant (3 March 2019) and Mrs Kaur (1 March 2019)] and other documents. The final page of his bundle includes a document the index describes as 'Claim'; whilst this is strictly only relevant to remedy it does however make plain the elements of his claim which are:
  - 7.1 - 7 days salary between 12 July and 20 July
  - 7.2 - 1 month notice and

7.3 - 13 days accrued holiday entitlement.

7. During the hearing Mrs Kaur sought to show me copies of bank statements. She stated they were not included in the Respondent's bundle because they showed all payments made from the company account not just those to the Claimant. I explained I could not look at them unless they were shared with the Claimant.
8. Mrs Kaur consented to share them with the Claimant and uploaded them via the CVP pdf function, Mr Urosa and I were able to view them on screen<sup>1</sup>.

### **Findings**

9. 1 March 2019 - claimant commenced work for the Respondent as Human Resources Manager.
10. On an unspecified date the Respondent concluded the Claimant's work was unsatisfactory and decided to dismiss him on 4 weeks' notice (as required by paragraph 14 of the contract). The grounds are set out in the initial letter and include failure to pay staff national insurance contributions, fill staff posts and provide analysis of company structure among others.
11. On 12 July 2020 Mrs Kaur, Operations Director invited the Claimant to a meeting. The purpose of the meeting was to:
  - 11.1. inform the claimant of the decision to dismiss with 4 weeks contractual notice. [Para 14 – contract of employment; Initial letter of dismissal sets out grounds for dismissal and effective date of termination, 11 August 2019]
  - 11.2. Hand over to another member of staff who also at the meeting, Ms I Youngah.
12. During the meeting the Claimant;
  - 12.1. Seated himself between Mrs Kaur and the door
  - 12.2. Stated he knew he was to be dismissed
  - 12.3. Behaved in a 'threatening and frightening' manner (Mrs Kaur's words in her email to police)
  - 12.4. Refused to leave the premises without immediate payment of any and all sums outstanding or a written guarantee of the same
13. His behaviour was such that Mrs Kaur was trapped in her office for up to an hour.
14. There are no formal signed agreed minutes of this meeting. Between 14 and 19 July Mrs Kaur set out her account of the meeting and Mr Urosa's conduct in the summary dismissal letter and emails to both the police and

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<sup>1</sup> The bank statements were shared by means of the PDF function within the CV platform and viewed by all parties. Rule 91 ET (Constitution & Rules of Procedure) Regs 2013 Sch 1

Mr Urosa. All accounts are in my view consistent and I note Mr Urosa has not challenged their accuracy. Mr Urosa sent many emails to the company at that time and it is reasonable to suppose that if the accounts sent to him were inaccurate, he would have said so. In the circumstances I find that the emails and summary dismissal letter contain accurate accounts of Mr Urosa's conduct.

15. The police were called to remove him from the building
16. Later that day the Claimant accessed the company computer systems and deleted data. His computer access was blocked that evening. I am satisfied this is so for the following reasons:
  - 16.1. email of 7.35pm 12 July from Ms Youngah to Mrs Kaur recounting a report from a former employee to whom Mr Urosa had apparently bragged about deleting data
  - 16.2. Mrs Kaur's email of 14 July setting out her account to the police of the events at the meeting and subsequent data interference
  - 16.3. email of PC Petya Sabeva on 29 July 2019. Whilst the officer states there is no evidence of data theft, he confirms the screenshots show files being 'unshared' and links deleted.
  - 16.4. email from Sunny Sandher dated 12 July 2019 5:21pm headed 'deleted files by Jorge' and containing Screen shots of computer activity logs to Mrs Kaur - the screenshots have not reproduced well in the pdf bundle and are blurred. However, I can see Mr Urosa's name appearing several times on 12 July; what I cannot see is the nature of the activity or the time. Apparently, the screenshots in question were clear enough to PC Sabeva and I see no reason to doubt his opinion that they showed Mr Urosa's interference with company computer data on 12 July 2019;
17. On 19 July Mrs Kaur wrote to the Claimant at his private email address resending an earlier email of 15 July 2019 which makes it plain the initial dismissal letter is included for information only and has been superseded by the summary dismissal letter. This email includes Mrs Kaur's account of the events of 12 July 2019 (both the meeting and alleged data interference by the claimant) and 2 letters of dismissal. The first being confirmation of summary dismissal for gross misconduct on 12 July and the second (referred to as the initial letter) setting out details of the original decision to dismiss on the grounds of poor performance.
18. I ignore Mrs Kaur's earlier email of 15 July 2019 in so far as the date is concerned since it was sent to the claimant's company email account which by that time had been blocked. The content is not affected since it was resent with its attachments on 19 July 2019.
19. The initial letter of dismissal states the intended effective date of termination was 11 August 2019.

20. 20 August 2019 Mrs Kaur sent P45 and final payslip to Mr Urosa's personal email account.
21. Paragraph 15 of the employment contract encourages employees to resolve grievances informally with their manager; sets out a right of appeal and refers to the Employee Handbook for further information. Neither party produced a copy of the Employee Handbook. Consequently, there is no written guidance within the contract as to what the Respondent company would consider gross misconduct.
22. Both parties agree that during the time the claimant worked for the respondent company he took days off, neither party stated how many. The Claimant stated any time off was in fact 'time off in lieu' of additional hours worked and should not be deducted from his holiday entitlement. There is no provision within the contract for such an arrangement and no email or other written evidence to show an informal arrangement was reached between him and the Respondent company; in addition, Mrs Kaur denies any such arrangement.
23. I find that the claimant was entitled to holiday as set out at paragraph 11 of the contract of employment as follows:
  - *Your annual holiday entitlement in any holiday year is 20 days which is exclusive of recognised public holidays.*
  - *In the event of termination of employment, you will be entitled to holiday pay calculated on a pro-rata basis in respect of all annual holiday already accrued in the current holiday year, but not taken at the date of termination of employment.*
24. I find that the time off Mr Urosa accepts he took and claims was 'time off in lieu' was in fact holiday entitlement in accordance with paragraph 11 of the contract of employment.
25. I reject Mr Urosa's calculation of accrued holiday entitlement on the grounds it is inaccurate being based on the date he commenced work to 20 August 2019, the date on which his P45 was sent to him. (5.6 months rather than the 4.4 months he was actually employed).
26. I find that the Claimant (and other staff) were paid 5 working days after the last working day of each month (with 1 exception – June/July 2019) as follows:
  - Month ending Sunday 31 March 2019 - paid by BACS transfer on Saturday 6 April 2019
  - Month ending Tuesday 30 April 2019 - paid by BACS transfer on Tuesday 7 May 2019

- Month ending Friday 31 May 2019 - paid by BACS transfer on Friday 7 June 2019
  - Month ending Sunday 30 June 2019 - paid by BACS transfer on Monday 8 July 2019
27. The contract of employment at paragraph 4 states that salary is *'payable on or around the last working day of each month'*. Consequently payment 5 working days after the end of the preceding month is not inconsistent with the contract term in this regard.

### **Conclusions**

Was the Claimant's conduct on 12 July sufficient to constitute gross misconduct justifying summary dismissal without notice?

28. I remind myself that the test to bring criminal prosecutions is different to that which I must apply. In the circumstances the police decision not to prosecute for any criminal offences arising out of the events of 12 July 2019 has no bearing on my decision in this matter.
29. I do not agree with the Claimant's assertion that his insistence on immediate payment of sums owed was justified on the grounds the company had consistently paid salaries late. At paragraph 5.14 above I have found that a delay of 5 working days after the last working day of each month is not inconsistent with paragraph 4 of the contract of employment terms. In the circumstances there were in my opinion insufficient grounds to justify the Claimant's demand for immediate payment.
30. Even if he had been justified in demanding immediate payment his conduct in this regard was inappropriate and excessive such as to warrant the police being called and removing him from the premises.

Given that:

- 30.1. Mrs Kaur felt trapped in her office for an hour by the claimant's behaviour; and
  - 30.2. The Claimant refused to leave the premises until any and all sums owing had been paid to him or a written guarantee of the same
  - 30.3. was removed from the premises by the police
31. I have no difficulty in concluding that Mrs Kaur genuinely believed the claimant's behaviour amounted to gross misconduct justifying summary dismissal without notice.
32. I note that Mrs Kaur treated the data interference as an event which compounded the situation and also amounted to gross misconduct justifying immediate dismissal without notice.
33. Had the Claimant not already been summarily dismissed earlier in the day I would agree and this does not affect the effective date of termination below.

34. If not gross misconduct, was the claimant entitled to a payment in lieu of notice?
35. I have concluded that it was gross misconduct consequently this issue does not arise and I do not need to consider it further. For the reasons given above I am satisfied that the claimant was summarily dismissed without notice on the grounds of gross misconduct and consequently no notice pay is due to the claimant.

What was the effective date of termination (EDT)?

36. I note that dismissal is only effective when it is known by the employee<sup>2</sup>.
37. The 12 July meeting was intended to inform the Claimant he was to be dismissed and provide him with contractual notice of 4 weeks in accordance with paragraph 14 of the contract of employment. It was also intended to facilitate handover of his duties to another employee. His conduct during the meeting made the handover impossible. It is apparent from Mrs Kaur's evidence that the Claimant was aware the purpose of the meeting was to inform him that his employment was to be terminated. Further his insistence that he be paid any outstanding sums immediately and refusal to leave the premises confirms this and is not disputed.
38. That he was physically removed from the premises by police in my view could leave him in no doubt that his dismissal was immediate, without notice and he should not return notwithstanding his repeated email demands for notice pay.
39. The Claimant's claim form to the tribunal also states his employment ended on 12 July 2019.
40. In the circumstances I conclude that the EDT should be taken as 12 July 2019 and that the initial reason for termination; namely performance was overridden by his behaviour at the meeting.
41. The following do not change my opinion:
- 41.1. 15 July 2019 Written confirmation of summary dismissal sent to the claimant's company email account
  - 41.2. 19 July 2019 Written confirmation of summary dismissal sent to the claimant's personal email account
  - 41.3. 11 August 2019 the date stated as the effective date of termination in the initial dismissal letter
  - 41.4. 20 August 2019 P45 sent by email to claimant

If the effective date of termination was not 12 July 2019, was the claimant entitled to wages for the days which elapsed between 12 July and the effective date of termination?

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<sup>2</sup> [Gisda Cyf v Barratt \[2009\] EWCA Civ 648, \[2009\] I.C.R. 1408](#)

42. Since I have concluded the EDT was 12 July 2019 this does not fall to be considered further.
43. The documents supplied by the Claimant include copy pay advices/slips; on the one headed 31 July 2019 is written 'only got paid for my 12 days of work no notice'.
44. In the circumstances I have no difficulty in concluding there are no sums outstanding and unpaid in respect of work performed for the Respondent under the Claimant's contract of employment between 1 March and 12 July 2019.

At the time of termination did the claimant have outstanding accrued holiday entitlement for which payment was due?

45. The claimant was entitled to holiday as set out at paragraph 11 of the contract of employment. However, his calculation is wholly inaccurate being based on an end date of 20 August 2019, the date on which his P45 was sent to him. Both parties agreed that he took time off during his period of employment and I reject the claimant's contention that this was time off in lieu. There is no evidence that such an arrangement ever existed. Since both parties agree he did take time off and have provided no other evidence as to the number of days there is insufficient information on which to make a determination on this point.

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Employment Judge Allen

Date: .....16/3/2021

Sent to the parties on: .....16/3/2021.

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For the Tribunal Office