



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Rohit Pareek

v

D. Delta Ltd t/a Mira Boiler

Heard at: Watford

On: 4 & 5 January 2022

Before: Employment Judge Bedeau
Mrs J Costley
Ms L Durrant

Appearances

For the Claimant: Ms N Gyane, Counsel
For the Respondent: Ms P Hall, Employment Consultant

RESERVED JUDGMENT

1. The claim of unfair dismissal is well-founded.
2. The claim of health and safety detriment is well-founded.
3. The claim of health and safety dismissal is well-founded.
4. The claim unauthorised deductions from wages is well-founded.
5. If not settled, the case is listed for a Remedy Hearing on **Wednesday 25 May 2022 at 10.00am at Watford Employment Tribunals**, with a time estimate of one day, in person unless otherwise stated.

REASONS

1. This is a claim brought by the claimant on 21 January 2021 in which he claims that he had been dismissed and suffered detriments because of raising concerns about health and safety. In addition, that he had been unfairly dismissed by the respondent. In the response presented on 22 February 2021, the claims are denied.

The respondent's postponement application

2. At the commencement of the hearing, Ms Hall, Employment Consultant, representing the respondent, renewed the respondent's application for a postponement of the hearing.
3. On 20 June 2021, the Tribunal sent a Notice of Hearing to the parties listing this case for a final hearing on 4 & 5 January 2022. Case Management Orders were also issued. Of concern is the exchange of witness statements by 27 September 2021 and the service by the respondent of the joint bundle of documents by 31 August 2021. We were given an account from Ms Gyane, counsel for the claimant, of discussions between the parties in relation to varying the orders in respect of the joint bundle of documents, but of importance was the exchange of written statements. She told the Tribunal that the date for the exchange of witness statements was varied by agreement to 13 December 2021. However, on that date Ms Hall, Employment Consultant acting on behalf of the respondent, wrote to the claimant's solicitors stating that she would be unable to comply by the agreed date.
4. The claimant served his witness statements on 17 December 2021 but the access to the documents were password protected until the respondent served its witness statements on the claimant's representatives. Ms Hall wrote to the Tribunal on 20 December, requesting a postponement of the hearing. She stated that the owners of the business, Mr & Mrs Dhinjan, were suffering from Covid-19 and other infections affecting them both physically and mentally. They were unable to manage their business and family life. Further, she wrote that Mr Dhinjan was due to travel abroad to India to escort his elderly mother back to the United Kingdom as she was unwell and unable to travel unaccompanied. Following his return, he would be required to self-isolate. Ms Hall requested an extension of time for the mutual exchange of witness statements to 31 January 2022. She stated that a postponement would be in the interests of justice.
5. That application was considered by Employment Judge Hyams on 29 December 2021 and was refused. The Judge stated that the parties should have exchanged witness statements by 27 September 2021 which could be approved remotely. There was no justification for postponing the hearing unless the respondent's witnesses were unable because of ill-health to attend and give evidence.
6. The application was renewed by Ms Hall on 29 December in which she again referred to Mr Dhinjan's travel to India and returning with his mother. She stated that Mrs Dhinjan remained in the United Kingdom but suffering the effects of Covid and having child care responsibilities. There was a problem with connectivity in India making it difficult for a hearing to be conducted with Mr Dhinjan participation from there.

7. We have seen the flight details. Mr Dhinjan had booked a flight to India on 13 December and was due to fly out on 23 December, returning on 15 January 2022.
8. The respondent's application for a postponement was opposed by the claimant's representatives who gave an account of the history of proceedings; the difficulty in obtaining witness statements from the respondent's witnesses; they questioned the issue about Mrs Dhinjan struggling with childcare and the effects of Covid. They invited the Tribunal to reject the application and for the case to proceed.
9. What the claimant's representatives did in response to the more recent renewed request for a postponement, was to attach several photographs purporting to show that on 30 December 2021, Mr Dhinjan was in this country going about his business as the joint owner of the respondent company and was in India. The claimant told us, and we accept what he said as credible, that he was going to visit a friend of his on 30 December when he noticed Mr Dhinjan outside of his business premises. He was disembarking from his car. He was joined, separately, by his wife, Mrs Dhinjan, who had travelled to the shop in her own vehicle. He observed both from a distance across the width of the road, between 20 to a maximum 50 feet away. It was not raining or snowing. Visibility was clear. He has known Mr Dhinjan for many years and had visited home in connection with a social event.
10. The photographs taken by the claimant depicts both Mr Dhinjan and Mrs Dhinjan, the side and full-frontal profiles.
11. He was questioned as to whether he might have been mistaken, in that he had mistaken Mrs Dhinjan's brother for Mr Dhinjan, as they are Sikh men wearing a turban and full beard. The claimant was quite adamant that he was not mistaken. It was Mr Dhinjan he saw, and he had taken photographs of him and his wife.
12. He said that Mr Dhinjan arrived in his own vehicle and on more than one occasion got inside the vehicle and drove off. He gave us the registration number and told us that it carries Mr Dhinjan's initials. He also gave us the description of the vehicle, an Audi Q7, but was not sure about its colour.
13. Under cross-examination, the claimant gave a consistent and credible account of what he observed. We have accepted his evidence as reliable and credible. We, therefore, find that Mr Dhinjan was in the United Kingdom on 30 December 2021 and was not in India at that time. Any statements that he was in India at the material times are false. As such statements form, to a large extent, the basis of the respondent's application for a postponement, they amount to an attempt by Mr Dhinjan to mislead the Tribunal to grant the application on a false premise.
14. In relation to Mrs Dhinjan, we have seen a fit note and read a letter from Dr ZA Moghul, dated 30 December 2021. The letter is dated the day after the date of the fit note. In it Dr Moghul wrote:

“I am the general practitioner to the above mentioned patients for whom I can confirm were all tested positive for Covid in December 2021.

Ms Dhinjan reports that since her diagnosis that she is still having symptoms of a continuous cough and temperature. She has three young children and is looking after the two young children who were also diagnosed with Covid at the same time.

As such, Mrs Dhinjan will not be able to attend the court hearing on 4 January 2022.”

15. What is significant here is that the doctor was simply recording and reporting what Mrs Dhinjan told him, that she was still having symptoms of a continuous cough and temperature. The doctor was not saying that following the diagnosis of Covid on 1 December 2021, as at 30 December 2021, Mrs Dhinjan was still suffering from Covid and there is no indication that the doctor personally examined or assessed Mrs Dhinjan on or around 30 December 2021.
16. Mrs Dhinjan approved her witness statement which was not sent to the claimant’s representative. She is at home caring for her children but as of 4 January 2022, we were not shown any medical evidence of her or the children’s conditions.
17. We have concluded that the postponement should be refused. The application based on Mrs Dhinjan’s circumstances do not suggest that she is unable to participate in these proceedings. According to the claimant, and we accept his evidence, she attended the work premises on 30 December. She was able to leave her home to visit her workplace. Furthermore, she was able to draft a witness statement pertinent to the issues in the final hearing.
18. We queried her circumstances and whether she is unable to participate in these proceedings. She could participate by Cloud Video Conference from her home.
19. More importantly, the conduct of Mr Dhinjan, as we have already found, was such that he had attempted to mislead this Tribunal. He has not engaged in Tribunal proceedings. There is not witness statement from him. There was ample time between 13 and 23 December 2021 for him to do so. As we have found that he was in this country he had ample time to prepare a witness statement and serve that statement on the respondent. There was no credible basis for granting this application for a postponement and we will proceed to hear evidence relevant to the issues.

The issues

20. The parties have not prepared a list of the legal and factual issues in dispute. We have, however, considered the issues in this case.

21. In relation to section 44(1) Employment Rights Act 1996, "ERA", had the claimant suffered any detriments by any acts or any deliberate failure to act, by the respondent, on the ground that:
- 21.1 he brought to its attention, by reasonable means, conditions in the workplace which he reasonably believed were harmful or potentially harmful to health or safety, s.44(1)(c); or
- 21.2 in circumstances of danger which the claimant reasonably believed to be serious and imminent, refused to return to his place of work or any dangerous part of his place of work, s.44(1)(c); or
- 21.3 in circumstances of danger which the claimant reasonably believed to be serious and imminent, whether he took appropriate steps protect himself and others from the danger?
- 22 Regarding s.100 ERA, was the reason, or the principal reason for the claimant's dismissal that he behaved in one of the more ways as set out in s.100(1)(c) to (e), which is similarly worded to s.44(1)(c) to (e)? If so, the claimant will be regarded as having been unfairly dismissed.
- 23 In respect of unfair dismissal, s.98 ERA:
- 23.1 the Tribunal has to decide what was the reason for the claimant's dismissal?
- 23.2 If misconduct, did the respondent act reasonably in all the circumstances in treating that reason as a sufficient reason to dismiss the claimant?
- 23.3 Were there reasonable grounds for that belief?
- 23.4 At the time the belief was formed, had the respondent carried out a reasonable investigation?
- 23.5 Had the respondent otherwise acted in a procedurally fair manner?
- 23.6 Was dismissal within the range of reasonable responses?
- 24 In relation to unauthorised deductions from wages, s.13 ERA:
- 24.1 were the wages paid to the claimant less than the wages he should have been paid?
- 24.2 Was any deduction required or authorised by statute?
- 24.3 was any deduction required or authorised by a written term of the contract of employment?
- 24.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

24.5 Did the claimant agree in writing to the deduction before it was made?

24.6 If the deductions were not authorised, how much is owed to the claimant, if any?

The evidence

- 25 We heard evidence from the claimant who called Mr Ramanjit Singh Puar, former employee; Mr Benjamin Peter Downey-Wallis, former employee; and Ms Hina Trivedi, partner.
- 26 On behalf of the respondent no-one was called to give oral evidence. The Tribunal had a statement by Mrs Kam Dhinjan, manager.
- 27 In addition to the oral evidence the Tribunal was referred to a joint bundle of documents comprising of 303 pages. References will be made to the documents as numbered in the joint bundle.

Findings of fact

- 28 The respondent is a boiler, heating, and installation service. At all material times the claimant worked for the respondent as an Administrator at its premises in Potters Bar, Hertfordshire, from 1 August 2017 to 16 September 2020.
- 29 The owner and director of the respondent company is Mr Gurpreet Singh Dhinjan. Mrs Kamaljit Kaur Dhinjan, in her witness statement, described her position in the company as Manager.
- 30 At the Potters Bar office, the claimant was part of a team of three full-time staff. He, along with his two full-time colleagues worked Monday to Friday 9am to 6pm. One member of staff worked Saturday 9am to 4pm. From time-to-time temporary members of staff were engaged to work in the office.
- 31 The claimant's main duties were dealing with customer enquiries; organising and ensuring customer bookings were kept; making sure that the respondent had the required stock to complete the jobs; and ordering supplies as and when required. He would also monitor the payment of invoices and bills. He would train all new members of staff and would deal with staff enquiries when Mr and Mrs Dhinjan were not available.
- 32 On 23 March 2020, because of the Government's announcement, the nation was in lockdown to prevent the spread of the Covid-19 virus. To assist businesses suffering from the effects of the lockdown, the Government established the Job Retention Scheme which provided to an employer, funding covering the salaries of employees up to 80% initially. It was up to the employer to decide whether they would pay the employee the 20% making up their full salary. To benefit from the scheme the employee must

be on furlough, that is, not working but at home. They were not required nor were they obligated to carry out any work for their employer while on furlough.

- 33 On 3 April 2020, the claimant, and staff in the office, were asked to sign a furlough leave agreement to enable the respondent to claim the financial benefits under the Coronavirus Job Retention Scheme, "CJRS".
- 34 It is the respondent's contention that from 1 March 2020, there was an informal agreement with the claimant that he would be placed on furlough. We do not accept that contention. What we do accept and do find was that the claimant signed the furlough agreement on 3 April 2020, but the benefits were backdated to 1 March 2020. The agreement stipulated that he would not be required to attend work, but the respondent would pay him 80% of his salary subject to a maximum gross salary payment of £2,500 per month. His furlough leave was to end when the CJRS expired, or that either he or the respondent became ineligible for funding under the scheme, or the respondent had decided to cancel furlough leave.
- 35 The claimant was on a gross monthly salary of £1,726.72. His monthly nett salary was £1,469.08. (279)
- 36 The furlough agreement we have read. (page 37)
- 37 This case revolves around the issue of whether the claimant and those within the office, were required to attend work to carry out their normal duties during normal office hours, while on furlough?
- 38 He told the Tribunal that upon signing the furlough leave agreement, he was still required to attend work and carry out his duties during normal office hours. He worked in a very small office, the dimensions given by the witnesses vary, but it was small enough to accommodate three desks, a microwave oven, and a printer. There was no other furniture in the room.
- 39 Considering the Government's advice on social distancing by keeping two metres apart, that was not followed in the office due to the size. Further, neither hand sanitisers nor face masks were provided by the respondent. Those working in the office were left to buy their own. The claimant said what was provided and we do find this as fact, were baby wipes.
- 40 We heard evidence from the claimant's witnesses. We were satisfied that their evidence was both consistent and credible.
- 41 Mr Puar commenced employment with the respondent in 2017 as a Gas Safety Engineer, installing boilers. He resigned in September 2021. He told the Tribunal that on many occasions he would call at the office to pick up his payslips. While there and during furlough, he said that the respondent did not provide any masks and sanitisers. They were not provided to him when he visited customers' homes to carry out his work. He had to buy his own

masks and hand sanitisers. He said that the office where the claimant and his two colleagues worked was 10ft x 12ft with three desks, 2 to 4ft apart.

- 42 He further stated that the Covid lockdown did not have any effects on the respondent's business as the office was running as normal, and the claimant appeared to be working his normal weekly hours in the office. He, that is Mr Puar, continued to receive work messages from the claimant who would check up on the progress of the jobs Mr Puar would be engaged in. It appeared to him that the claimant was not on furlough because when he turned up at the office, about once a month, the office staff were still working during lockdown. There was no social distancing in place and that the three office staff would sit quite close to each other. They wore no masks, and the ventilation was inadequate.
- 43 The evidence given by Mr Benjamin Wallis was that he commenced employment with the respondent in March 2020 as a Receptionist. He was trained by the claimant in the respondent's systems and procedures. His basic responsibilities were to answer customer calls and in assigning jobs to the engineers. He had little involvement with Mr and Mrs Dhinjan.
- 44 He told the Tribunal that Covid-19 lockdown and the Government restrictions were not followed in the office. Staff worked their normal contractual hours. He was not provided with the Covid-19 policy or guidance. There was no discussion on how to make the workplace safe. The only product provided was a packet of baby wipes. There were no hand sanitisers, no social distancing, and no mask mandate. The office window could only be opened if the temperature was uncomfortably high. They could not do anything to re-arrange the small office. If that did happen, Mr Dhinjan would change everything back.
- 45 He was dismissed in May 2020 by Mr Dhinjan due to his alleged poor performance. He denied being a disgruntled employee because his employment was terminated after two months. He said that he was giving evidence on behalf of his friend, the claimant, to achieve justice.
- 46 Ms Hina Trivedi is the claimant's partner, and they live together and have children. She has never worked for the respondent. She said that the claimant would arrive home from work and put his clothes in the laundry basket before taking a shower. She would prepare his lunch for work during the lockdown. She was clear that during furlough, he worked normal hours in the office. On one occasion she picked him up from work while on furlough.
- 47 During her evidence she broke down and was upset and crying at having to recount the events leading up to the claimant's dismissal and thereafter. It was a particularly stressful time for both, emotionally and financially, as well as having a young family.
- 48 We accepted the accounts given by the claimant's witnesses including the claimant's own account.

- 49 The claimant told the Tribunal that following the Covid outbreak in March 2020, he and his two work colleagues were told that it was still necessary for them to work in the office. The three continued to work in the office keeping the business running as normal. They expressed their concerns to Mr and Mrs Dhinjan about the absence of safety precautions and asked to work from home following the Government guidelines but were told that they were “key workers” and were required to work in the office.
- 50 We were satisfied that both the claimant and his two work colleagues continued to work while on furlough in the office as normal. This is further supported by the information on the staff rota which the claimant managed. (81-86)
- 51 The claimant went on sick leave due to problems with his knee and was signed off from work on 1 July returning to work on 20 July 2020. (69)
- 52 The respondent asserted that it introduced a Covid-19 policy on 15 July 2020, but the claimant denies knowledge of it. (73-78)
- 53 We find that the policy was prepared by Peninsula, the respondent’s human resources advisers, but was not implemented on or around 15 July 2020 or at any time during the claimant’s employment.
- 54 The claimant requested repeatedly of Mr Dhinjan to provide necessary masks and hand sanitisers, and to ensure that there was social distancing, all to no avail.
- 55 There is in the bundle what purports to be a letter from Mrs Dhinjan to the claimant dated 3 August 2020. Unusually it does not have the claimant’s address. It states the following:
- “Dear Rohit
- I hope you are keeping well. This is to confirm that we are ending your furlough at the end of this month and happy to have you back to work from 1 September 2020. Looking forward to seeing you soon. If you have any question please feel free to ask me. Thank you.”
- 56 Unsurprisingly, the claimant denied that he had ever received this letter. (87)
- 57 On 3 September 2020, the claimant had a conversation with Mrs Dhinjan in the office during which he informed her that it was not safe as there were not enough safety measures in place. She then gave a mask each for him and the other two in the office to wear. There were no hand sanitisers nor was there any social distancing.
- 58 On that day his work colleague, Amit, came into the office with a bad cough. As he was coughing most of the time and were working in the same office and it appeared that Amit was displaying Covid-like symptoms. The

claimant became concerned for his health and safety and suggested to Amit that he should go home. He then spoke to Mrs Dhinjan explaining the situation to her and said that staff needed a health and safety policy. Her response was that she was too busy. If he felt uncomfortable then he should go home, and she would contact him in due course. As he did not feel safe and suspected that Amit may have Covid-19, he decided to leave the office sometime between 11.30am and 1pm that day. He, thereafter, worked from home as he had the company's laptop.

- 59 On 12 and 14 September he contacted Mr and Mrs Dhinjan by phone, but his calls were not returned. On the morning of 16 September 2020, Mrs Dhinjan answered his call and they agreed that he should attend the office that day to have a meeting.

Meeting on 16 September 2020

- 60 Between 1 o'clock and 2 o'clock the claimant attended at the respondent's premises in Potters Bar and met with Mr and Mrs Dhinjan. Mr Dhinjan opened the meeting by asking him what he wanted to say whereupon the claimant raised the issue that he had heard from his work colleagues that Mr Dhinjan had accused him of stealing. This appeared to anger Mr Dhinjan and the conversation escalated to a shouting match between them. We find that during the meeting Mr Dhinjan began to insult the claimant by calling him "a cunt". The claimant responded by asking Mr Dhinjan why he was using such an offensive word. The claimant was offended because he had said it in the company of Mrs Dhinjan. Mr Dhinjan then took off his watch and threw it at the claimant. At the end of the meeting the claimant asked what he was supposed to do, whether to work from home or in the office, to which Mr Dhinjan replied by saying he should go home and that he, Mr Dhinjan, would call him in a couple of days' time.
- 61 The claimant felt ashamed and embarrassed at the way he had been spoken to by Mr Dhinjan and feared for his job.
- 62 Ms Trivedi said that on 18 September 2020, Mr Dhinjan was outside their home when he called the claimant asking him to gather the office keys, laptop, and printer and to bring them back to the office. The claimant collected the items and put them in Mr Dhinjan's car. Together they drove to the respondent's premises. After the claimant had returned the items, he never received any further correspondence or calls from the respondent to confirm when he could return to work. We were satisfied that he made several attempts to contact the respondent by phone to get an understanding of his situation and be given a return to work date. However, calls went unanswered, and no one got in touch with him.
- 63 In the bundle of documents there purports to be a letter dated 1 October 2020 from Mrs Dhinjan to the claimant. This time bearing the claimant's full address, in which she wrote:

"Dear Rohit

I hope you are keeping well. This is to catch up with you upon our meeting on 16 September. I have not heard back from you since then. As we discussed you were supposed to return to work straight after 16 September. Unfortunately, you did not come or send me any response as it has been more than two weeks now. We would like you to come back to us so we can move on. If I do not hear from you in the next 14 days means by the end of 15 October, I take this as a resignation from you. Looking forward to hearing from you soon.

Thank you.” (188)

- 64 The claimant said that he did not receive that letter and there was no evidence in the documents purporting to show that the letter was sent either by recorded or registered post, email or otherwise.
- 65 On 16 October 2020, he wrote to both Mr and Mrs Dhinjan, by email, referring to the discussion and events on 3 September 2020 and the meeting on 16 September 2020. He stated that attempts were made to contact them but there had been no reply and his calls went unanswered. He asked for a copy of the furlough agreement signed on 3 April 2020. He further stated that he had not been paid since 11 October. (189-190)
- 66 There purports to be a letter from Mr Dhinjan dated 20 October 2020, to the claimant to which the claimant denied ever receiving. In it Mr Dhinjan wrote that:
- “Since the beginning of the pandemic, we provided mask and gloves to the office staff as well as disinfectant sprays and sanitisers. I have other team members who are witness to this statement. In addition, they constantly buying whatever they need from the petty cash. You all are over 18 and during working hours if you feel like not wearing a mask that is not our problem. In fact, on 3 September you made me shock when you just left after letting Kam know that you are going home now, you will talk to me via phone, and you said to Cam, “If you want me back get Mr Dhinjan to call me.” How rude and disrespect is that....”
- 67 Mr Dhinjan then wrote that he disagreed that the respondent owed the claimant wages. As he gave the claimant the opportunity to return to work and as he had not received a response within the timeframe, he thanked him for his support. (191)
- 68 As a result of the lack of response from either Mr or Mrs Dhinjan, the claimant emailed Mr Dhinjan on 21 October 2020 referring to his earlier email on 16 October. He asserted that Mr Dhinjan was withholding his wages and that he, the claimant, was in touch with the Employment Tribunal. (192-193)
- 69 The letter was sent initially by email and followed by post which was signed for by the respondent on 22 October 2020. (196)
- 70 Not having heard from the respondent, the claimant began to look for work in October 2020. After making several unsuccessful applications he finally

secured employment on 27 September 2021, working as a Customer Service Assistant on a salary of £19,494 gross per annum.

- 71 During the furlough period he received 80% of his salary, although he worked his full-time contractual hours and carried out his normal duties at the Potters Bar premises.
- 72 The WhatsApp messages, attendance spreadsheets, call logs, show that the claimant was working during the period of furlough contrary to the provisions of the CJRS. (39-80, 81-86, 87-100, 101-187)
- 73 There purports to be a Covid risk assessment carried out on 25 November 2020 on the respondent's premises, but this is at odds with the Covid policy which, according to the respondent, was implemented on 15 July 2020, prior to risk assessment being carried out. (73-78, 197-202)
- 74 Although there is a P45 in the bundle showing that the claimant left the respondent on 31 August 2020, the claimant told the Tribunal that he had never received this document. There was no evidence provided by the respondent as to when this document was sent to the claimant. (295-297)
- 75 After the claimant closed his case, the Tribunal gave Ms Hall time to contact Mrs Dhinjan to find out whether she would be willing to give evidence. After 20 minutes, Ms Hall informed the Tribunal that she had been in contact with Mrs Dhinjan who advised that her doctor has said that her blood pressure was too high. She would be attending hospital in the afternoon. She suffers from diabetes and has a high cholesterol level.
- 76 The Tribunal did not receive any medical evidence in support of what the Mrs Dhinjan told Ms Hall.
- 77 Ms Hall also told the Tribunal that Mr Dhinjan had only contacted her once to give her his flight details.

Submissions

- 78 We have considered the submissions by Ms Gyane, Counsel on behalf of the claimant, and by Ms Hall, on behalf of the respondent. We have also considered the two authorities Ms Gyane referred us to in relation to the interpretation of imminent danger. We do not propose to repeat their submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

The law

- 79 We have taken into account the sections as summarised under above the Issues, namely s.44; s.100; s.98(4); and s.13 ERA.
- 80 In addition, we have considered the authority we have been referred to on imminent danger, Sinclair v Trackwork Ltd UKEAT/0129/20/00(V). Judgment delivered in December 2020

by Mr Justice Choudhury President, as he then was. In that case his Lordship followed the guidance given by HHJ Richardson in the case of Oudahar v Esporter Group Ltd [2011] IRLR 730:

“25. Firstly, the tribunal should consider whether the criteria set out in that provision have been met, as a matter of fact. Were there circumstances of danger which the employee reasonably believed to be serious and imminent? Did he take or propose to take appropriate steps to protect himself or other persons from the danger? Or (if the additional words inserted by virtue of Balfour Kilpatrick are relevant) did he take appropriate steps to communicate these circumstances to his employer by appropriate means? If these criteria are not satisfied, section 100(1)(e) is not engaged.

26. Secondly, if the criteria are made out, the tribunal should then ask whether the employer's sole or principal reason for dismissal was that the employee took or proposed to take such steps. If it was, then the dismissal must be regarded as unfair.”

Conclusion

- 81 There are four claims to consider, namely s.44 ERA 1996, health and safety detriment; s.100 automatic unfair dismissal for a health and safety reason; s.98(4) ordinary unfair dismissal; and unauthorised deductions from wages.

Unauthorised deduction from wages

- 82 Dealing with the unauthorised deduction from wages claim, we are satisfied having regard to our findings of fact, that the claimant worked as normal from 3 April 2020 to 16 September 2020 but had only been paid 80% of his normal salary. He had the right to be paid his full salary. He is, therefore, entitled to the balance of 20% making it 100% of his salary. As he had not been paid the 20% element, there had been unauthorised deductions from his wages. The respondent received the benefit of 20% by paying him 80% of his salary and was in breach of the CJRS.

- 83 In addition, the claimant had not been paid three days from 1-3 September 2020.

Health and safety detriments, s.44 ERA

- 84 In relation to health and safety detriments, no steps were taken to safeguard the claimant and his work colleagues while at work in the office at Potters Bar from lockdown to 3 September 2020. He raised health and safety issues with Mrs Dhinjan when he told her that Amit was coughing quite a lot and may have Covid, if not, he exhibited Covid-like symptoms. Having raised these concerns which he reasonably believed were harmful or potentially harmful to health and safety, such as no masks being provided, no sanitisers and no social distancing and inadequate ventilation, he suffered detriments, in that his calls to the respondent after 3 September

2020 remained unanswered and he was subjected to a hostile meeting on 16 September 2020, s. 44(1)(c), has been satisfied.

- 85 We were also satisfied that he reasonably believed that he and his work colleagues were in danger of contracting Covid-19, a serious and potentially fatal infection which was serious and imminent. He left his place of work because steps were not taken by the respondent to address his reasonably held concerns about health and safety. Section 44(1)(d) has been made out.
- 86 He took appropriate steps by informing Mrs Dhinjan of the danger of contracting Covid-19 in circumstances where the Government restrictions were not followed. Section 44(1)(e) mis also made out.
- 87 He was instructed to return his keys, laptop, and printer to the office, as he was no longer needed by the respondent. There were no replies to his correspondence dated 16 September and 21 October 2020, and after 18 September 2020, his calls were ignored.
- 88 The claimant previously had a good working relationship with Mr and Mrs Dhinjan. What had changed was the fact that he raised health and safety concerns on 3 September 2020. The detriments he suffered are causally connected to the health and safety concerns. We are satisfied that his s.44 claim is well-founded.

Health and safety dismissal, s.100 ERA

- 89 In relation to the s.100 claim, having been satisfied that the claimant had raised health and safety concerns and had suffered detriments, it ended with him no longer being required by the respondent to work as Mr Dhinjan requested the return of the respondent's property. The concern raised by the claimant regarding, Amit's coughing was legitimate and reasonably held, as he had exhibited Covid-like symptoms. Covid-19 is an airborne virus which is highly transmissible causing millions of deaths worldwide. There was a real possibility that Amit might have had the virus, therefore, working in close proximity with the claimant and his other work colleague, meant that they were at risk of catching the virus. We repeat what we have concluded in the above paragraphs and do take into account the guidance in Oudahar. This claim is well-founded.

Unfair dismissal s.98(4) ERA

- 90 As regards ordinary unfair dismissal, s.98(4), it is academic whether that claim is well-founded as we have found that the reason for the claimant's dismissal was that he had raised health and safety concerns.
- 91 If we are in error in relation to our conclusions in respect of s.100, we find that the onus was on the respondent to show the reason for the claimant's dismissal. If he had received the letter of 1 October 2020, which he did not, he would have returned to work. As he did not, he wrote his letters dated 16 and 21 October 2020, seeking a return to work date. The respondent did not give him the opportunity of doing so. If he was written to and given the

opportunity of returning to work by 15 October 2020, he would have responded the following day on 16 October 2020, as he was keen to return to have an income to support himself and his family. Having worked for the respondent for three years, it was reasonable for the respondent to have invited him on 16 October to a meeting to discuss his return to work. To have, instead, dismissed him was not within the range of reasonable responses.

- 92 If conduct, we were not given any evidence from the respondent on how and why the claimant was dismissed.
- 93 Accordingly, the claimant's dismissal was both substantively and procedurally unfair. This claim is also well-founded.
- 94 We do not find that he had contributed towards his dismissal.
- 95 The case is listed for a Remedy Hearing on **25 May 2022 at 10.00am at Watford Employment Tribunals, with a time estimate of one day**, in person unless stated otherwise.

ORDERS

- 96 The claimant shall serve his application for costs following the respondent's unsuccessful application for a postponement, together with a costs schedule by no later than **4pm 26 January 2022**.
- 97 The respondent shall reply to the application by no later than **4pm 16 February 2022**.
- 98 The parties shall agree, and the claimant shall serve a joint bundle of documents relevant to the issues of the Remedy Hearing by no later than **4pm 25 April 2022**.
- 99 All witness statements relevant to the issues of remedy, are to be exchanged on or before **12 May 2022**.
- 100 The claimant shall include in the remedy bundle an updated schedule of loss.

Employment Judge Bedeau

Date: 15 March 2022

Sent to the parties on: 16 March 2022

L TAYLOR-HIBBERD

For the Tribunal Office