



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103721/2022

Held in Glasgow by Cloud Video Platform (CVP) on 10 October 2022

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Employment Judge S MacLean

Mr T Butler

**Claimant
In Person**

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Bidvest Noonan UK Limited

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

15 The judgment of the Tribunal is that:

(1) the Tribunal does not have jurisdiction to consider the complaint of unfair dismissal under section 94 of the Employment Rights Act 1996 as the claimant has not been continuously employed for no less than two years and has not been automatically unfairly dismissed; and

20 (2) the claim in respect of unpaid holiday pay due on termination is dismissed.

REASONS

Introduction

1. The claimant sent a claim form to the Tribunal's office on 4 July 2022. He complains of constructive unfair dismissal and says that he is owed holiday pay. The claimant has less than two years' continuous employment with the respondent. He resigned with effect from 24 April 2022 because the respondent did not permit him to continue to bring his dog to work.

2. The Tribunal did not receive a response from the respondent. There was insufficient information to issue a judgment under rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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3. The final hearing was conducted by Cloud Video Platform. The claimant appeared on his own account. There was no appearance by or for the respondent. No documents were produced.

Relevant Law

- 5 4. Section 108 of the Employment Rights Act 1996 (the ERA) provides that section 94 (the right not to be unfairly dismissed) does not apply to an employee unless he has been continuously employed for a period not less than two years ending with the effective date of termination. Section 108 of the ERA does not apply if section 100 of the ERA applies.
- 10 5. Section 100(e) of the ERA provides that an employee shall be regarded as unfairly dismissed if the reason or if there is more than one reason, the principal reason for the dismissal is that in circumstances of danger which the employee reasonably believed to be serious and imminent he took appropriate steps to protect himself or others from danger.
- 15 6. Section 23 of the ERA provides that a worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages in contravention section 13 of the ERA.
7. Regulation 30 of the Working Time Regulations 1998 provides that a worker may present a complaint to an employment tribunal that his employer has failed
20 to pay him the whole or any part of the amount due to him under regulation 14(2) (the payment in lieu of holidays accrued but not taken at the date of termination of employment).

Issues

8. The following issues were identified:
- 25 a. Does the Tribunal have jurisdiction to consider the claim of unfair dismissal where the claimant has less than two years' service?
- b. If so, was the claimant unfairly dismissed?
- c. If so what compensation is just and equitable to award the claimant?

d. Is the claimant owed pay in lieu of untaken holidays, if so how much?

Findings in fact

9. The Tribunal makes the following findings in fact.
10. Axis Security employed the claimant as a security guard from 10 December 2020 at client's premises located at Logan Road, Motherwell. The claimant earned £1,700 gross per month. This equated to £1,350 net per month. The claimant's wages were paid directly into his bank account (RBoS).
11. The claimant's contract of employment transferred to the respondent around August 2021 under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
12. The claimant complained to the respondent about treatment he received at work (violence and threats). He also complained to the respondent about lack of Police help. The claimant did not consider that the respondent did anything to help him.
13. Around March 2022 the claimant informed the respondent of a change to his bank details (TSB). The claimant received payment of his monthly salary into his new account on 7 April 2022.
14. Around April 2022 the claimant was told that he was no longer allowed to bring his dog to work. He had been bringing his dog to work for over a year. The claimant felt that he had no option but to resign. His employment with the respondent ended on 24 April 2022. He received payment of his salary into his new account on or around 7 May 2022.
15. The claimant found new employment on 2 May 2022. He earns £1,900 per month.
16. On 7 June 2022 the respondent paid the claimant holiday pay of £489. The payment was made into the claimant's RBoS bank account. The bank account was open but was overdrawn.

Observations on the evidence

17. The claimant gave his evidence candidly. The claimant did not provide any contemporaneous documents. He said that most of his communication with the respondent was by email. Unfortunately he no longer had access to his previous email account as this had been hacked. He had since created a new email account.

Decision

Does the Tribunal have jurisdiction to consider the claim of unfair dismissal where the claimant has less than two years' service?

18. The claimant accepted that he had less than two years' continuous employment with the respondent. The claimant did not have sufficient qualifying service to bring an unfair dismissal under section 94 of the ERA.
19. The claimant resigned because he felt that he could not work if he was not allowed to bring his dog to work with him. The claimant referred to raising concerns with the respondent about treatment received at work and neither the respondent nor the Police assisting him. No details were provided about the incidents; when they occurred; and what difference bringing his dog to work had given that he had been doing so for over a year. There was no evidence provided of the claimant being in serious and imminent danger when he was told in April 2022 not to bring his dog to work.
20. The Tribunal was not satisfied on the evidence before it that it had jurisdiction to consider the complaint of unfair dismissal.

Is the claimant owed pay in lieu of untaken holidays, if so how much?

21. The Tribunal then considered the claim for holiday pay. The claimant did not dispute that the respondent had made a payment of £489 which was the amount to which he was entitled. The claimant accepted that the payment had been made into a bank account (RBoS) belonging to him.
22. Given that the claimant had previously advised the respondent that his wages were to be paid into a different bank account (TSB) the Tribunal could appreciate the claimant's resentment that the respondent disregarded this

instruction and made payment into claimant's bank account (RBoS) which was overdrawn.

23. The Tribunal was satisfied that the respondent had paid to the claimant the holiday pay to which he was entitled on termination of his employment. Accordingly, the Tribunal had no alternative but to dismiss the claims for non-payment of holiday pay.

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Employment Judge: S Maclean
Date of Judgment: 11 October 2022
Entered in register: 13 October 2022
and copied to parties

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