



EMPLOYMENT TRIBUNALS

Claimant: Mr J Priest
Respondent: Car Perfection Carcare Ltd
Heard at: Birmingham by CVP
Heard on: 15 November 2022
Reserved to: 24 March 2023
Before: Employment Judge Hindmarch

Appearances

For the claimant: In person (assisted by his father)
For the respondents: Mr Edge (Director)

JUDGMENT

The Complaint of automatic unfair dismissal under s100 Employment Rights Act 1996 is well founded and is upheld.

REASONS

1. This claim of unfair dismissal came before me for hearing on 15 November 2022. The case had been the subject of a Case Management Preliminary Hearing on 29 April 2022 where Employment Judge Broughton had listed the case for a 2-day hearing. The case was only in fact listed before me for one day and I did not have time to reach a decision, so I reserved my decision.
2. By a ET1 filed on 8 May 2021, following a period of ACAS early conciliation from 18 February 2021 to 18 February 2021, the Claimant brought a complaint of unfair dismissal for asserting a health and safety complaint. As Employment Judge Broughton recorded at the Case Management Preliminary Hearing the Respondent agreed that the Claimant had raised a concern about the toilets at work in January 2021 and that following a visit from the Council on 18 February 2021 the Claimant confirmed to the Respondent that it was he who had reported the toilet issue to the Council. The events that followed were the crux of the issue. Did the Respondent dismiss the Claimant on account of his complaints or did the Claimant resign?

3. The parties had not agreed a bundle. Instead, they had each sent in various documents which did make the documentation somewhat difficult to navigate. There were four witnesses who gave evidence; the Claimant and, for the Respondent, Wayne Edge (director), Claire Edge (company secretary) and Sylvester Kielczewski, an employee of the Respondent.
4. The Claimant commenced employment with the Respondent on 1 September 2016 as a Car Body Repairer. He initially did so as an apprentice and whilst attending college. There was no contract of employment. The Respondent is in business as a vehicle accident repair company employing 4 people. The Respondent's toilet facilities are one unisex toilet with a small handbasin situated in a separate block from the main premises. There is no hot water.
5. Since January 2020 there had been intermittent issues with the toilet which on occasion meant it was unusable. The Respondent's position was that because the toilets was outside it was prone to freezing in cold weather and had to be unblocked.
6. In January 2021, the Claimant reported problems with the toilet namely that it would not flush and there was no water. The Claimant then went on sick leave for a 3-week period with a shoulder issue. On his return to work on 17 February 2021, the Claimant needed to use the toilet and found it was still not working. It is common ground that the Claimant had a discussion with Mr Edge about the state of the toilet and Mr Edge said he would get it fixed by the end of the week. Mr Edge said a pipe had burst on 15 February 2021 and he was awaiting a plumber coming to fix it. The Claimant was dissatisfied and informed the Health and Safety Executive and Wolverhampton City Council about matters.
7. On 18 February 2021, the Council visited the Respondent regarding the complaint. The inspector explained they had received a complaint about the toilet and there being no hand sanitizer at work. The inspector firstly spoke with Mrs Edge who showed him hand sanitizer and face masks and then he spoke with Mr Edge who showed him the toilet and explained a plumber was awaited.
8. Mr Edge then called the Claimant and Mr Kielczewski into a meeting in the office. Mrs Edge was also present. This was at about 12:30pm which is around the time the Claimant would usually take his lunch break. It is common ground that Mr Edge told the Claimant and Mr Kielczewski that they should switch off their phones. He told them there had been a complaint made, the Council had visited, and an issue had been raised. It is also not in dispute that the Claimant admitted that it was he who had contacted the Council, and that Mr Edge asked why he had done so.
9. The issue of dispute is what else was said at that meeting. It is the Claimant's case that Mr and Mrs Edge were aggressive towards him. He said he was going to take his lunch and as he was collecting his lunchbox Mr Edge told him not to bother coming back as he was sacked. Mr Edge denies that. Mr Edge says the Claimant said he was not going to be spoken to like that and walked out. That account was supported by Mrs Edge and Mr Kielczewski. Mr Edge says that he followed the Claimant and found him in the unit collecting his belongings and says that the Claimant told him he would be back after he had spoken to a solicitor. He said the Claimant started shouting that he would see the Respondent in court for unfair

dismissal. Neither Mrs Edge nor Mr Kielczewski heard everything that was said in the unit, save Mrs Edge says she overheard the Claimant making reference to unfair dismissal and she shouted at him “you haven’t been sacked, you are walking!”

10. The Claimant produced a witness statement from Lee Jones who runs another business situated close to the Respondent’s business. He said he saw Mr and Mrs Edge shouting and gesticulating at the Claimant although he could not make out the words used. He says the Claimant came to his office and told him he had been sacked. Mr Jones did not attend to give evidence, so I give his account less weight, although I note the Respondent’s witness accepted the Claimant had gone straight to Mr Jones premises.
11. The Claimant did not return to work for the Respondent. He contacted ACAS that afternoon as the early conciliation certificate shows.
12. The Respondent says it had access to free legal advice through an insurance policy and so Mr Edge made a telephone call to these advisers on 19 February 2022 and was advised to send a letter to the Claimant. The Respondent composed a letter to the Claimant dated 22 February 2021, which the Claimant received on 24 February 2021. In this letter the Respondent asked the Claimant if he intended returning to work and stated that he was an ‘unauthorised absence’. The Claimant, by a letter dated 25 February 2021, replied pointing out his understanding that he had been dismissed. The Respondent did not reply.
13. It was normal for Mr Edge, of the Respondent, to communicate with the Claimant by text message. He did not however make contact with the Claimant after lunchtime on 18 February 2021. The only contact was the letter of 22 February 2021.
14. I heard short submissions from both sides. The Respondent’s position was that the Claimant resigned. It did not argue that if I found the Claimant was dismissed that it had any fair reason for dismissal. The Claimant’s position was that he had been dismissed either unfairly under s98 Employment Rights Act or under s100 Employment Rights Act (health and safety cases), or that he had been constructively dismissed.

THE LAW

15. s98 Employment Rights Act 1996 provides:

“(1) In determining for the purposes of this Part whether the 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 such as to justify the dismissal of an employee holding the position which the employee held.

(4) [Where] the employer has fulfilled the requirement of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) 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 (b) shall be determined in accordance with equity and the substantial merits of the case."

16. s100 Employment Rights Act 1996 provides:

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one the principal reason) for the dismissal is that –

(c) being an employee in a place where

(i) there was no such representative or safety committee, he brought to his employer's attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety.'

17. A dismissal under s100 is automatically unfair. It protects any employee who uses reasonable means to bring their employers attention to circumstances connected with their work that they reasonably believe are harmful or potentially harmful to health and safety representative or health or safety committee, or where it was not reasonably practicable to raise the matters through such parties.

CONCLUSIONS

18. The provision of working toilet and washing facilities is clearly a matter of health and safety in the workplace. The Claimant was right to complain when the facilities were not in good working order, firstly to his employer and then, when dissatisfied with the response, to the relevant authorities.

19. I have no doubt that Mr and Mrs Edge were surprised and upset when the Council visited. They called the Claimant and his colleague into a meeting, telling them to switch off their mobile phones which of itself was unusual in this workplace and must have put the Claimant on edge. It is not disputed that the Claimant and his colleague were told about the Council visit, the reason for that visit and I find that Mr and Mrs Edge were keen to establish if either of them had made the report. The Claimant admitted it was him.

20. On balance I prefer the Claimant's account of what happened next. I found him to be an impressive witness. He was well prepared, articulate and kept to his version of events throughout the proceedings. The fact he contacted ACAS that afternoon is telling.

21. I find that Mr and Mrs Edge were raising their voices at the Claimant and were confrontational. I find Mr Edge did follow the Claimant and did tell him he was sacked and that this was because he had reported the poor toilet facilities. Mr and Mrs Edge were aware the Claimant went to Mr Jones' premises. If there was any doubt in their mind as to his employment status, if they truly believed he had 'walked', they could

have allowed a cooling off period and gone to see him later that afternoon or texted him. The fact they did not communicate with him for a number of days supports my finding that he had been dismissed. The Claimant is a young man who had worked for them since leaving school and this must have been very distressing from him.

22. I find the dismissal was automatically unfair under s100 Employment Rights Act 1996. The Claimant had raised genuine health and safety concerns with both his employer and the relevant authorities. It was because of doing so that he was dismissed. The claim therefore succeeds, and a remedy hearing will be listed.

Employment Judge Hindmarch

25 March 2023