



EMPLOYMENT TRIBUNALS

Claimant:

Mr M White

v

Respondent

Eddis Transport (Consett) Limited

Heard at: Nottingham

On: 17 April 2024

Before: Employment Judge Fredericks-Bowyer

Appearances

For the claimant: Mr G Hales (Friend)

For the respondent: Mr J McHugh (Counsel)

WRITTEN REASONS

RULE 62 EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2013

Introduction

1. These written reasons are produced at the claimant's request following my oral judgment on 17 April 2024 which dismissed his claim.
2. At the outset of the hearing, Mr McHugh noted that the claimant appeared to have had his employment ended by his own resignation, with the dismissal about which he complains occurring after the resignation takes effect. If so, the claimant cannot sustain his claim of unfair dismissal.
3. There was, then, a discrete preliminary issue capable of being determined at the start of the hearing, which would end the claim if Mr McHugh's analysis was correct. Did the claimant's employment end upon his resignation, or did it continue long enough to get terminated by dismissal (which the claimant says was unfair).
4. I decided to hear evidence and submissions about how the employment contract came to an end as a preliminary issue.

The hearing

5. The claimant was represented by his friend Mr Hales and gave evidence in respect of the preliminary issue. The respondent was represented by Mr McHugh of Counsel. I heard evidence from respondent witnesses Mr Toner and Ms Hogarth but, ultimately, none of that evidence informed the finding of facts which led me to determine the issue.

6. I had access to a bundle of documents which ran to 281 pages. Page numbers in this judgment relate to pages in that bundle.

Relevant facts

7. The relevant facts as I find them, on the balance of probability, are as follows.
8. The claimant was employed by the respondent as an HGV Driver from 21 January 2019. His contract of employment requires him to give one week's notice should he wish to terminate his contract (page 38). The claimant says, and the respondent agrees, that his working day ended when his duties were complete. In practice, this is when his route is complete and he signs off his tachograph at the end of the day. He is unable to do his job role thereafter on the same day.
9. In cross examination, the claimant noted that the respondent is able to ask him to do other tasks under his contract. He did not give any examples of when this had happened, and I consider this is a point raised in the context of what he has since seen in his contract rather than occasions in practice. I accept Mr Toner's evidence that asking HGV Drivers to return to site for work tasks outside of their job role would be a near impossibility and was not a conventional practice.
10. On Wednesday 17 May 2023, the claimant's vehicle notified the respondent of a 'harsh event' whilst the claimant was driving and he was observed to have veered when driving he vehicle whilst opening a packet sandwich and eating it when driving. On Friday 19 May 2023, the respondent's Ms Hogarth wrote to the claimant to advise him of a disciplinary hearing which was to be held on Thursday 25 May 2023 (pages 18 to 19).
11. On Sunday 21 May 2023, the claimant resigns from his employment by e-mail. He wrote: "*So I give one week notice from today's date 21st May 2023 trust this will be acceptable*" (page 216). The claimant's work schedule ran from Monday to Friday. The claimant accepted that he knew his last working day would be Friday 26 May 2023.
12. On Tuesday 23 May 2023, Ms Hogarth wrote and e-mail to say that the respondent accepted that resignation (page 214). On Wednesday 24 May 2023, Ms Hogarth wrote a letter to the claimant (page 217) which records, relevantly:-

"I am in receipt of your e-mail dated 21st May 2023 giving your intention to resign from the Company's employ with effect from Friday 26th May 2023 and write to confirm your resignation. The effective date of termination of your employment is therefore Friday 26th May 2023.

Following your last shift, could you please ensure that you return all items of Company property in your possession to Gamston depot by Wednesday 31 May 2023...".
13. The claimant did not respond to the letter. He attended the disciplinary hearing on Thursday 25 May 2023.

14. On Friday 26 May 2023, the claimant made his first entry on the tachograph at 5:37am (page 204). He completed a full day of driving across the day until his final entry at 4:23pm, finishing his work at 4:26pm (page 205).
15. When giving evidence, the claimant confirmed that he knew this was his final shift. He said he got changed and handed in some items, finishing paperwork, and left the respondent premises at around 4:45pm. In cross examination, he said that the respondent may well have called him back after he left in an emergency or for additional work, on the basis that he would be employed until midnight (in his view). Upon further questioning, he also accepted that this was a hypothetical view and not a realistic possibility. He accepted that he would be unable to drive again, having driven all day, and so he could not perform his job role even if recalled.
16. At around 4:55pm on Friday 26 May 2023, the respondent sent the claimant a letter (pages 218 to 219) which said that he was summarily dismissed for gross misconduct with effect from 26 May 2023. Mr Toner had instructed the e-mail be sent when the claimant was still on shift, but that action was not completed until after the claimant had left. The letter was e-mailed to the claimant, and the claimant said the e-mail popped up on his phone and he would have seen it within minutes after it had been sent. The dismissal letter allowed the claimant seven days to appeal the decision.
17. The respondent queries whether the claimant was aware of the letter as soon as he said, because the claimant's appeal letter (pages 220 to 222) says: "*I write to acknowledge safe receipt of your letter dated 26 May 2023 and received on Thursday 1 June 2023*". The letter goes on to ask for the seven days to begin to run from 1 June 2023, rather than from 26 May 2023, on the basis this was when the claimant was notified about the dismissal. The letter was undated but I accept that the letter was not received by the respondent until 8 June 2023.
18. The claimant is challenged on his evidence that he knew of the dismissal within minutes of leaving the respondent site on 26 May 2023. This challenge was on the basis of what was written in the appeal letter about not receiving the dismissal letter until 1 June 2023. The claimant explained that he waited until the letter arrived in the post because he considered that level of formality was required in a letter such as a dismissal letter. Although this is probably not a correct approach to take, I accept that this is what the claimant did. I find that he knew of his dismissal on 26 May 2023, within minutes of the e-mail being sent as he said in his evidence.
19. The parties then go through an appeal process, which is not within the remit of this preliminary issue.

Relevant Law

20. Employment contracts come to an end under termination periods at the time which is agreed between the parties, either in writing or by conduct (*Palfrey v Transco Plc [2004] IRLR 916*). Generally, this is simply the date which is expressed to be the last working day.
21. Dismissal takes effect when it is communicated to the employee dismissed, or when it was reasonable for the employee to have been considered to have read the notice

of the dismissal (*Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood* [2018] UKSC 22).

22. Occasionally, a dispute arises about which particular moment on the last working day the termination takes effect. References to ‘final day’ and ‘effective date of termination’ are not always specific enough. Termination provisions refer to the employment contract. The employment contract terminates when there is no longer an employment relationship. For an employment relationship to be in place under s230 Employment Rights Act 1996, there must be what is often referred to as the “*irreducible minimum of obligation*” or, put simply, the obligation on the employer to provide work under certain terms and the obligation on the employee to do that work, or face sanction (*Carmichael v National Power Plc* [1999] IRLR 43 HL).
23. Following *Carmichael* and *Palfrey*, when the mutual obligation on each party under the contract ceases, and the parties understand that to have occurred, the employment contract has ended.

Discussion and Conclusion

24. I consider that the parties agreed that 26 May 2023 was the last working day for the claimant. He confirmed this to be the case. That was his effective date of termination. This means that his contract came to an end at the agreed termination point. In my judgment, the claimant considered his employment was at an end when he left the site by 4.45pm on that day. This is clear from his evidence and his actions, and the idea that he might be recalled was not a realistic thought in the mind of either party.
25. The claimant says that the respondent did not consider that the employment had ended because it sent him the dismissal letter after he had left. This does not account for the factual finding that the letter arrived after the claimant had left but that Mr Toner had asked that action be taken whilst the employment was on-going. I do not consider that the letter should be taken as an act which continued the employment contract for that ten minute period.
26. The employment contract ended when the claimant left the premises. There was no mutuality of obligation to perform the employment contract after the claimant finished his shift on his agreed last working day. In my judgment, the contract ended when the claimant left the premises on 26 May 2024, before he was purportedly dismissed. The contract ended by reason of his resignation. There was no contract in place for the respondent to terminate with summary dismissal. The claimant was not dismissed. His claim for unfair dismissal, which is not a constructive dismissal claim, is bound to fail and is dismissed.
27. There is no need to consider whether the respondent’s actions were fair because the respondent did not dismiss the claimant.

Signed:

Employment Judge Fredericks-Bowyer

Dated: 6 June 2024

Sent to the parties on:

...10 June 2024.....

For the tribunal office:

.....