

THE INDUSTRIAL TRIBUNALS

CASE REF: 328/13

CLAIMANT: Mark Skillen

RESPONDENT: Robert Harrison and Simon Knox t/a K&H Joinery

DECISION

The unanimous decision of the tribunal is as follows:-

1. That the claimant was automatically unfairly dismissed and the respondent is hereby ordered to pay the claimant compensation in the sum of £4210.
2. The claimant's claim for a redundancy payment is subsumed within the basic award for unfair dismissal.
3. That the claimant is entitled to 2 weeks notice pay and the respondent is hereby ordered to pay to the claimant the sum of £712 (net).
4. That the claimant is entitled to unpaid wages for 61 hours and the respondent is hereby ordered to pay to the claimant the sum of £439.20 (net).

Constitution of Tribunal:

Chairman: Ms J Turkington

Members: Mr B Schofield
Mr T Wells

Appearances:

The claimant appeared and represented himself at the hearing.

The respondent did not appear at the hearing.

The Claims

1. The claims were a claim of unfair dismissal, a claim for a redundancy payment, a claim in respect of notice pay and a claim for unpaid wages.

The Issues

2. The issues to be determined by the tribunal in relation to the claim of unfair dismissal were:-
 - (a) whether the respondent had complied with the statutory dismissal procedure pursuant to The Employment (Northern Ireland) Order 2003 and The Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 and therefore whether the dismissal of the claimant was automatically unfair; and, if appropriate;
 - (b) the compensation to be awarded to the claimant.
3. In respect of the claim for a redundancy payment, in the event that the tribunal found in favour of the claimant on the unfair dismissal claim, this claim would be subsumed by the basic award for unfair dismissal.
4. The issues to be determined by the tribunal in respect of the claim for notice monies was whether the claimant had received the required period of notice of termination of his employment. If not, had he received pay in lieu of notice and, if not, the sum to which the claimant was entitled.
5. The issues to be determined by the tribunal in relation to the claim for unpaid wages were whether the respondent failed to make payment to the claimant in respect of the wages claimed and if so, the amount due to the claimant.

The Respondent

6. The title of the respondent was amended to read 'Robert Harrison and Simon Knox t/a K & M Joinery' as this was the correct employer of the claimant.

Disposal of the claim in the absence of the respondent

7. The respondent did not appear at the hearing. The respondent had not lodged a response form and, in accordance with rule 9 of the Industrial Tribunal Rules of Procedure, the respondent was therefore not entitled to take any part in the proceedings at the hearing. Accordingly, the tribunal decided that it was appropriate to proceed to hear the claim in the absence of the respondent.

Sources of Evidence

8. The tribunal heard oral evidence from the claimant and considered a number of documents submitted by the claimant. The tribunal also considered and took account of the content of the claim form submitted by the claimant.

Facts of the Case

9. Having considered the claim form submitted by the claimant, and having heard the claimant's evidence and considered the documents submitted by the claimant, the tribunal found the following relevant facts:-

10. The claimant was employed by the respondent as a joiner from 1 February 2010. Initially, the claimant was paid £8.50 per hour. He worked 42 ½ hours per week.
11. At the beginning of his employment, the claimant worked a “lying week” and it was agreed that he would receive the pay for this week at the end of his employment.
12. From time to time, the claimant had problems with his pay cheques being received late, but before the events which are the subject of this claim, the claimant always received his pay eventually.
13. In August 2011, the claimant received a pay rise with his pay rising to £9.50 per hour.
14. The claimant was on holiday from 27 December 2012 for 2 weeks for the Christmas break. He returned to work on Monday 7 January 2013. On that day, the claimant and a colleague were at a job together. They had to wait for Mr Harrison, one of the partners in the respondent, to arrive. He told the claimant and his colleague that he had no money for materials. Mr Harrison told them to go on home.
15. The next day Tuesday 8 January 2013, the claimant and his colleague worked as usual. That evening, the claimant received a voicemail message from Mr Harrison saying that the respondent’s business was being closed up, that was it. The claimant phoned Mr Harrison back and talked to him. The claimant clearly understood from this conversation that his employment had ended with immediate effect. A number of other employees were also dismissed at this time.
16. The claimant has not received any pay for the pay week commencing Friday 21 December nor did he receive any pay for the 1 ½ hours he worked on Mon 7 January 2013 nor the full day worked on Tuesday 8 January.
17. The claimant contacted the respondent a week later to try to get his P45 because he had started a new job. He was told by the respondent that it would be the end of January before he would receive his P45.
18. The claimant did not receive any letters regarding the termination of his employment. He was not invited to any meeting. He was not given any right of appeal.
19. Following his dismissal from the respondent, the claimant claimed benefits for a few weeks. The claimant started a new job on 24 January 2013, but this lasted for 2 weeks only so that the claimant was out of work again in February. The claimant did not claim benefits at this stage. He then started another job at the beginning of March and remained in this job at the date of hearing. The claimant’s earnings in his new job were comparable to those in his job with the respondent.

Statement of Law

20. The statutory dismissal procedure introduced by the Employment Rights (Northern Ireland) Order (“the 2003 Order”) applies in this case. In basic terms, the statutory procedure set out in Schedule 1 of the 2003 Order requires the following steps:-

Step 1 – written statement of grounds for action and invitation to meeting – the employer must set out in writing the grounds which lead the employer to contemplate dismissing the employee.

Step 2 – meeting – the meeting must take place before action is taken. The meeting must not take place unless –

- (a) the employer has informed the employee what the basis was for including in the statement the grounds given in it, and
- (b) the employee has had a reasonable opportunity to consider his response to that information.

After the meeting, the employer must inform the employee of his decision and notify him/her of the right to appeal against the decision.

Step 3 - appeal – if the employee informs the employer of his/her wish to appeal, the employer must invite him/her to attend a further meeting. After the appeal meeting, the employer must inform the employee of his final decision. The employee must be afforded the right to be accompanied at any meetings under the statutory dismissal procedure.

- 21. By article 130A (1) of the Employment Rights (Northern Ireland) Order 1996 (“the Order”), where the statutory dismissal procedure is applicable in any case and the employer is responsible for non-completion of that procedure, the dismissal is automatically unfair. A tribunal is required to consider whether the dismissal is automatically unfair under article 130A even where this issue has not been specifically raised by the claimant – see **Venniri v Autodex Ltd (EAT 0436/07)**.
- 22. By article 154(1) (a) of the Order, where the employer is responsible for the non-completion of the statutory dismissal procedure, the basic award must be increased to 4 weeks pay unless the tribunal considers that this would result in injustice to the employer.
- 23. Pursuant to Article 17 of The Employment (Northern Ireland) Order 2003, where it appears to the tribunal that the non-completion of the statutory dismissal procedure was wholly or mainly attributable to the employer, it shall increase any compensatory award made to the employee by 10 per cent and it may, if it considers it just and equitable in all the circumstances to do so, increase the award by a further amount up to 50%.
- 24. By article 118 of the 1996 Order, the notice required to be given by an employer to terminate the contract of employment of an employee is one week where the claimant was employed for a period between one month and two years and an additional week for each completed year of continuous employment thereafter.
- 25. By Article 45 of the Employment (Northern Ireland) Order 1996 (“the 1996 Order”), an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised by statute or a relevant provision of the worker’s contract or the worker has previously signified in writing his consent to the making of the deduction. A complete failure to pay wages on any occasion constitutes a deduction from wages.

Conclusions

Unfair dismissal

26. In light of the facts found, the tribunal had no hesitation in concluding that none of the requirements of the statutory dismissal procedure were complied with in this case. In effect, the claimant's employment was terminated by voicemail message. This was a clear breach of the statutory dismissal procedure as described at paragraph 18 above. None of the requirements of the statutory dismissal procedure were complied with in this case. The tribunal was satisfied on the basis of the facts found that the non-completion of the statutory dismissal procedure was wholly attributable to the respondent. The tribunal therefore concluded that the dismissal of the claimant was automatically unfair. In the circumstances, it was not therefore necessary for the tribunal to consider whether the dismissal was fair in all the circumstances.
27. Accordingly, the unanimous decision of the tribunal is that the claimant was unfairly dismissed and that the claimant is entitled to compensation for such unfair dismissal.

Redundancy payment

28. Since the tribunal has concluded that the claimant was unfairly dismissed, any claim for a redundancy payment will be effectively subsumed by the basic award for unfair dismissal.

Notice pay

29. It is clear from the facts found that the claimant received no notice of dismissal. He was dismissed with immediate effect. The claimant had been employed for a continuous period of 2 years at the date of his dismissal and he was therefore entitled to 2 weeks notice.

Unpaid wages

30. The tribunal found as a fact that the claimant did not receive any pay for the lying week worked at the commencement of his employment in respect of which he should have received pay at the end of his employment. He also received no pay for Friday 21 December 2012, for 1 ½ hours worked on Monday 7 January 2013 and a full day worked on Tuesday 8 January 2013.

Compensation for unfair dismissal

31. Having determined that the claimant was unfairly dismissed, the tribunal went on to consider the appropriate remedy. The claimant did not seek reinstatement or re-engagement. The tribunal therefore considered that the appropriate remedy was compensation.
32. The claimant was out of work for the period between 9 January 2013 and 24 January 2013 and from 11 February to 1 March 2013. The tribunal considered it appropriate to award the claimant his loss of earnings for those periods.

33. The tribunal considered the appropriate uplift to the compensatory award for unfair dismissal pursuant to article 17 of the 2003 Order as described at paragraph 19 above. The respondent in this case failed to comply with any of the requirements of the statutory dismissal procedure. The claimant was effectively dismissed by voicemail. Accordingly, the tribunal considered that the respondent's non-compliance with the statutory dismissal procedure was extremely serious. The tribunal concluded that the uplift should be at the higher end of the scale between 10 and 50%. Therefore, the tribunal determined that it was just and equitable in all the circumstances for the award to the claimant in respect of unfair dismissal to be increased by 50%.
34. The tribunal considers that the appropriate compensation in this case in accordance with article 152 to 158 of the Employment Rights (Northern Ireland) Order and article 17 of the Employment (Northern Ireland) Order is as follows:-

(A) Basic award

Minimum of 4 weeks pay due to breach of the statutory dismissal procedure

£9.50 x 42 ½ (gross weekly wage) X 4 = £1615

(B) Compensatory award

Immediate loss to date of hearing:-

5 weeks x £306 (net weekly wage) £1530

Future loss of earnings: - NIL

Loss of statutory rights £ 300

Total compensatory award for unfair dismissal (B) = £1530

Increase in monetary award of 50% ADD £ 765

TOTAL compensatory award after increase = £2295

Prescribed element = £1530

The tribunal considers that a reduction for contributory fault is not appropriate in this case.

Accordingly, the tribunal hereby orders the respondent to pay to the claimant compensation for unfair dismissal in the total sum of **£4210**.

35. The claimant is also entitled to 2 weeks pay in respect of notice pay calculated as follows:-

Award in respect of notice monies 2 x £306 (net weekly pay) = £ 612

36. In addition, the claimant is entitled to payment in respect of unpaid wages calculated as follows:-

Lying week	= 42 ½ hours		
21 December	= 8 ½ hours		
7 January	= 1 ½ hours		
8 January	= 8 ½ hours		
Total	= 61 hours		
Net pay for 42 ½ hours		=	£ 306
Net pay for 61 hours	= 61/42 ½ x £306	=	£ 439.20
Award in respect of unpaid wages		=	£ 439.20

37. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Chairman:

Date and place of hearing: 11 June 2013, Belfast.

Date decision recorded in register and issued to parties:

**INTEREST NOTICE
INDUSTRIAL TRIBUNALS
INTEREST ON AWARDS IN NON DISCRIMINATION
CASES**

The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provides that interest shall accrue on a sum of money payable as a result of a decision of an industrial tribunal (not being an award to which the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996 applies) where that sum remains unpaid in whole or part 42 days after the day the decision of the tribunal was issued to the parties. 'Decision day' in this context means the day the decision of the tribunal was issued to the parties and 'calculation day' means the day immediately after the expiry of the period of 42 days from (and including) the decision day. The 'stipulated rate of interest' is the rate of interest in force on amounts awarded by decree in the county court on the decision day. Interest does not accrue on costs or expenses awarded by the tribunal.

In this claim, please note that -

1. the decision day is 2nd August 2013 being the day the decision was sent to the parties;
2. the calculation day is 13th September 2013 being the day immediately after the expiry of the period of 42 days from and including the decision day; and
3. the stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.



Secretary of the Tribunals

