EMPLOYMENT TRIBUNALS

Claimant: Mr I George

Respondent: Zion Care Limited

HELD AT: Liverpool **ON:** 15 February 2017

BEFORE: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Claimant: Mr W Brown, Solicitor
Respondent: Mr A MacPhail of Counsel

JUDGMENT

The judgment of the Tribunal is that the claims for damages for breach of contract and unlawful deduction of wages fail and are dismissed.

The application for costs made by the respondent is refused.

REASONS

1. The only issue before me was whether the claimant knew he was dismissed in mid 2015 and if he did not did his employment contract continue through to September 2016. That was the moment when Mr George found out that he had been acquitted of the criminal charges relating to an incident during his employment which occurred in late spring/early summer of 2015. The claims generally are for unlawful deduction of wages and breach of contract.

The Facts

1. The undisputed facts are straightforward. There is nothing in the claimant's terms and conditions that suggest how information with regard to the claimant's employment should be communicated to employees or how letters or documents should be sent to those employees. The claimant was suspended from work on 9 June 2015 and that letters and emails were sent to him during his absence.

2. The letter of suspension was sent to the wrong address but it had been sent recorded delivery, not collected by Mr George and it was returned to the respondent. The respondent realised that Mr George was no longer at that address in North Wales. The letter was then emailed by Susan Threlfall, the Deputy Manager, to the claimant and the claimant received the copy letter as an attachment to the email some time shortly after 15 June 2015. The claimant was suspended on full pay.

3. After that there was some email traffic between the claimant and the deputy manager. Mr George notified the HR Manager, Mrs Kewley, of his new address, which was 63 Needham Road, Liverpool L7 0EF. That is the relevant address for the purposes of these proceedings.

4. When the claimant was charged with aggravated bodily harm in the middle of July 2015 the respondent decided to dismiss Mr George. No procedure was followed. The claimant did not have the statutory protection of two years' service. He was still on his probationary period and the respondent received advice from their employment advisers that a letter should be sent out to Mr George telling him that he was dismissed.

5. The offence that Mr George was alleged to have committed was deemed to be gross misconduct and he was summarily dismissed. He received no notice pay and only received his holiday pay and his wages up to July 2015.

6. The letter of dismissal was sent out. It was sent out by post but it was not emailed nor was it sent recorded delivery. It was sent to the correct address.

7. The claimant's P45 was also sent out to him at that address. It had been prepared by the respondent's payroll provider.

8. The claimant's last wage slip included a sum for holiday pay and is dated 18 August 2015. No other wage slips were produced after that by the respondent nor sent to the claimant. The claimant received no further monies from the respondent nor did he chase up the lack of payment over the coming year until he was acquitted of the criminal charges. He then made enquiries of the respondent about a return to work and he was surprised when he was told he was dismissed.

The Law

9. The law with regard to this claim is scanty. There are no decided cases that I could find on this issue. There are a number of well known cases, of course, with regard to the communication of dismissals which assist in pinning down the effective date of termination. That process is a statutory construct set out in the Employment Rights Act 1996.

10. The claimant cannot claim unfair dismissal. I considered the Interpretations Act 1978. Section 7 of the Act states that where an Act authorises or requires a document to be served by post, unless the contrary intention appears the service is affected by properly addressing, pre-paying and posting a letter unless the contrary is proved.

11. Conclusions

12. There are no other features of the law which assisted me. In coming to my conclusions I accepted that this claim turns on its facts and which evidence I preferred. In my conclusion below and for ease of presentation I have set out further pertinent facts.

13. I do not believe that either Mr George or Mrs Kewley were lying to me, but the claimant's evidence was confusing. It was difficult for me to establish what, when and how things happened when listening to him. On the other hand, there is documentary evidence to support what the respondent witness, Mrs Kewley, said. Whereas the claimant could not remember the telephone call in either July or August 2015 where Mrs Kewley confirmed to the claimant he had been dismissed, Mrs Kewley was very clear that the call had taken place. It was not put to her that she was lying. It would have been preferable for the respondent's letter of dismissal to have been sent by email and by recorded delivery post in the same way as other communications sent to Mr George. However, the explanation from Mrs Kewley was persuasive. She told me that it was only recently during the course of preparation of these proceedings that she noted that communication at the time in 2015 had been by email. She had not been involved with the claimant at that time.

14. I found it difficult on the evidence from the claimant to establish whether he received the dismissal letter or not. His actions thereafter, however smack of someone who knew that he had been dismissed. I came to that conclusion for the following reasons.

15. Firstly Mrs Kewley explained on the phone to him that he was dismissed – a telephone call he says he cannot remember. Secondly, he received his last payslip in August 2015 and received no more. Thirdly, he also received his P45. Fourthly he was looking for another job after August 2015. He did refer obliquely to the search for another job at the end of his cross examination and then when pushed seemed to row back. There is no reason why someone should not have two jobs, but the reason Mr George was looking for another job towards the end of 2015 was because he knew he no longer had a job with the respondent. Most tellingly, there is nothing to suggest that between August 2015 and September 2016 the claimant chased up the thousands of pounds of pay that, if he had not been dismissed, was clearly owing to him. If the claimant did not know that he was dismissed and still thought he was on suspension why did he not do that?

16. I do accept that the claimant may well have contacted the respondent from time to time towards the end of 2015. He was getting nowhere when communicating with Josh Hyde and the receptionists. If that was the case and he was owed the money he thought he was owed he would have emailed or telephoned someone more senior in the respondent's organisation in order to get a positive response rather than just leaving matters in abeyance.

17. On the basis of the above findings it is more likely than not on the balance of probabilities that the claimant did know that he was dismissed come August 2015. My view is that when the claimant was acquitted after the criminal trial ended he felt the injustice of losing his job ever more deeply and felt it was only right he should have his job back. He was told that he had been sacked the year before and the respondents would not take him back. Whether the claimant received the letter of dismissal is impossible to establish one way or the other. I do not disbelieve Mrs.

Kewley when she says it was sent. I do not disbelieve the claimant when he says he did not receive it. But it is the phone call between him and Mrs Kewley where he was told he was dismissed which informed him his employment had ended. Consequently all that was due to him in terms of money had been paid to him under his contractual provisions in August 2015.

18. In all of the circumstances of this case, the claimant's claim for breach of contract and unlawful deduction of wages fail and are consequently dismissed.

Application for Costs

19. Costs do not follow the event unless there are very specific reasons. I accept Mr MacPhail's application is based upon the claimant's application to the Tribunal being misconceived and/or his conduct was unreasonable during the course of the litigation. However I do not accept that. This was a decision that I had to take on my findings of fact after hearing both witnesses. Mr George had a right to bring these proceedings, he had the right to allow an Employment Judge to come to a judgment with regard to this matter, and to have all the evidence, both oral and documentary, tested. I have not heard any evidence to suggest that Mr George acted in an unreasonable way nor that his claim was misconceived.

20. The application for costs is refused.

21-03-17

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

23 March 2017

FOR THE TRIBUNAL OFFICE