Case Number: 3327941/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr P Harrisson	**v**	**(1) Devon Norse Limited** **(2) Norse Group Limited**

Heard at: Norwich **On:** 19 February 2018

Before: Employment Judge Postle

Appearances

For the Claimant: In person.

For the Respondent: Mr Ashley, Counsel.

JUDGMENT

1. The claimant is entitled to be paid for the 9 and 10 May 2017, in total four hours for training totalling £35.00, and the respondents are ordered to pay that sum.

2. The claimant is ordered to pay a contribution towards the respondent's costs in the sum of £1,000.

3. There was no claim before the tribunal in respect of automatic unfair dismissal claim.

REASONS

1. The claimant had made a number of claims in his claim form, particularly at paragraph eight. In particular at 8.1 the claimant indicated that he was claiming unfair dismissal and that he was owed "other payments". The claimant then gave a number of examples of his claims that he was pursuing in particular gross incompetence, contract breach, verbal contract breach, financial hardship burden pressures and debt, intimidation, health and safety breaches, damages to personal goods, safety practices not provided, inefficient trading, hours worked and not paid for, no duty of care, no uniform, no safety gear and no first aid provided.

2. It was therefore unclear precisely what the claimant's claims were.

3. On 13 October 2017 Employment Judge Smail rejected the claimant's complaint of unfair dismissal as the claimant did not have the requisite two years qualifying service to bring a claim.

4. The claimant then presented what appears to be a schedule of loss setting out extra hours that he'd worked over and above what he says were his contractual hours; damages and safety risks, ongoing burdens; debts and banks charges; stress, mental and health compensation; supply of his own tools and damage to his own clothes making a total of £4,545.50 claimed.

5. On 18 October 2017 the claimant submits an email to Employment Judge Smail headed automatic unfair dismissal but gives no details of that claim or how it is advanced.

6. A response is filed on 10 November 2017 in which the respondent confirmed the claimant was employed by the second respondent on 11 May 2017 in the position of caretaker, based at West Hill Primary School. He was dismissed with effect on 19 June 2017. The claimant was dismissed for going absent without leave and sending an inappropriate and troubling email to the school's head teacher.

7. The respondents indicated that the second respondent is the parent company of the first respondents. It is non-trading and employs no staff. The respondents indicated that the claim against the second respondent should be dismissed.

8. The respondents had noted that there was no claim for unfair dismissal and they were not sure what the claim for "other payments" amounted to.

9. So far as the respondents were concerned the claimant had been paid all outstanding wages and holiday pay.

10. In the response the respondents suggested the claimant's claim was vexatious, unreasonably brought and an abuse of the process. Further that it had no prospect of success. They therefore put the claimant on notice that they would be seeking to recover their legal costs in defending the claim.

11. On 11 December 2017 Employment Judge Postle gave the following directions in relation to the identity of the respondents, particularly for the claimant to comment on. Employment Judge Postle also requested the claimant:

> "Further the claimant is to provide precise details of the legal claims he is making against the respondent Devon Norse Limited including dates of any alleged acts or failure to act and by whom. The claimant is encouraged to take legal advice before replying by 21 December 2017. Any failure to reply or set out precisely legal claims being made could lead to the hearing in January 2018 being postponed."

12. On the last date for compliance the claimant submitted an attachment to an email of 21 December 2017, the attachment being dated 1 December 2017 which started off with a heading 'definition of employer' and sought to dispute what the respondents were saying about the claimant's employer. That communication towards the end stated:

> "I was automatically dismissed as soon as they could without any procedure for taking important stand to minimise risk if feels as there are no rights for employees anymore.
>
> I was automatically unfair dismissed my claim should be regardless of the length of time I have been employed. I do not need to have served two years' service."

13. The claimant had still not set out precisely what his claim was under the heading automatic unfair dismissal or how it was to be advanced.

14. The matter came before me today and when asked to explain what other payments the claimant was seeking he explained as follows; "That he had reached a verbal agreement with Chris Walker that there was to be 23.5 contractual hours per week". The claimant says that he was only paid for 21 hours. He therefore claims £144.26.

15. The claimant also says he undertook two full days training on 9 and 10 May 2017 and was not paid.

16. However, what the claimant has not advanced is any claim under automatic unfair dismissal and therefore the Judge makes it clear that there is no claim before this tribunal for automatic unfair dismissal.

17. The claimant has produced four envelopes containing a large amount of documentation. Unfortunately, there is no letter of appointment or contract given there was too small a period of employment for that to be engaged by the respondents.

18. Mr Ashley counsel for the respondents says that the claimant worked for 21 hours per week, that was his contractual hours. He has no instructions of any training prior to the commencement of work to which he was to be paid for.

19. Having regard to proportionality the Judge questions that there appear to be two main issues before him and they are; wages – what were the correct contractual hours per week? And whether the claimant should have been paid for two days training prior to the commencement of his employment. It is clear that without the evidence of Mr Walker it is difficult for the tribunal to resolve matters. Equally having regard to proportionality not only from the respondents' costs point of view, and also bearing in mind the claimant has come from Devon, the Judge is reluctant to postpone the hearing.

20. It is therefore suggested by Employment Judge Postle whether or not it is possible to get Mr Walker on the phone and to give evidence over the phone in order to resolve matters and avoid a postponement in the interests of proportionately.

21. A short adjournment is granted in order for Mr Ashley to make enquiries whether it is possible to get Mr Walker on the phone.

22. The parties returned, apparently Mr Walker will be available on the phone from 1.15pm.

23. The clerk to the tribunal therefore phones the number provided, Mr Walker identifies himself as Chris Walker of 13 Avon Close, Exeter, Devon. He is then asked to repeat the affirmation by the clerk.

24. Mr Walker tells the tribunal he was formerly employed by Devon Norse Limited, he was an area supervisor and was involved in the employment of Mr Harrison, the claimant. Indeed, he agreed the hours of work the claimant as a caretaker would be involved in and also his training. Mr Walker is quite clear in his evidence that the contracted hours per week were 21 hours split a number of hours in the morning as the school required and the balance after school finished. In particular there was to be 10 hours of cleaning per week and 11 hours of caretaking, maintenance and checking the premises in morning prior to the children attending school. Mr Walker was adamant that the contract provided for 21 hours per week and indeed recalls that originally the claimant was to start around 6.30am in the morning when they realised this would take him over his hours that was advanced to 6.45am.

25. Mr Walker gave further evidence that he particularly recalls the contract was 21 hours per week, it was not a normal contract for Devon Norse, they were unusual hours for a school, other schools it would normally be 15 hours or 20 hours.

26. In relation to training, Mr Walker's recollection was that the claimant was to be paid for training for two afternoon sessions, they were 3.15-5.45pm. The actual hours to be paid were for 2 hours each day, the other half an hour was merely paperwork for the position.

27. Mr Walker was then questioned by Mr Ashley and questioned by Mr Harrison who did not seem to challenge Mr Walker's evidence on the contractual hours he was required to undertake or the training hours he was required to undertake.

28. I therefore concluded that there clearly was a contact between the respondents and the claimant to undertake caretaking cleaning at the school for 21 hours per week, no more.

29. In relation to training, it was clear there was agreed 4 hours training on 9 and 10 May 2017 at £8.75 per hour which means there is a balance due to the claimant of £35.00.

30. Mr Ashley for the respondents then proceeded with an application for costs. This was on the basis that the claim was confused, it never had any clarity or clear what the claim was about. The respondents had made this clear in their response and had warned the claimant of the possibility of a costs application.

31. If the claimant had set out precisely what his claim was and the agreement he had reached with Mr Walker that could have been checked long ago and the matter been resolved and settled.

32. Mr Ashley reminds the tribunal Employment Judge Postle made a clear direction on 11 December 2017 about the claimant needing to set out precisely what his legal claims were, and encouraging the claimant to take legal advice. The claimant has had two months to get his house in order and has failed to do so.

33. The respondents have spent some £2,500 defending the claim about matters not within the tribunal's jurisdiction and being unclear as to exactly what the claimant was pursuing. We are then left arguing over £35.00 which could have been settled months ago.

34. Mr Ashley went on to say that the claimant did not challenge Mr Walker's evidence about the contractual hours or the training evidence. The claims were clearly vexatious, unreasonably pursued and therefore the tribunal is asked to make an award of costs summary assessed at £2,500.00.

35. Mr Harrison was given an opportunity to respond, he doesn't believe his claim was vexatious. He says Mr Walker was unreliable. Never told about changing hours. He accepts the matter could have been sorted out long ago if it was clear what his claim was about. He went to ACAS as a last resort.

36. The tribunal then questioned Mr Harrison on his means. He has not found alternative employment but is hopeful in the foreseeable future. He does not own his own house, he is living with his parents, no savings, no other assets save a car being a Volkswagen Golf year of registration 2001.

Conclusion on costs

37. The power to award costs is contained in rule 76 of the Employment Tribunal Rules of Procedure 2013, that states:

> "A tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:
>
> a) A party or that party's representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the

proceedings (or part) or the way the proceedings (or part) have been conducted; or

b) Any claim or response has no reasonable prospect of success;

In considering whether to make a costs order the tribunal may have regard to the paying party's means.

The tribunal reminds itself that it is a two stage process, firstly have any of the matters set out in rule 76(a) or (b) been found to exist, and if they do so should the tribunal exercise its discretion to make an order for costs?"

38. Having regard to the way this matter has been pursued by the claimant and having regard to some of the claims he made in his ET1 and the total lack of clarity and the fact that he was specifically asked to set out precisely the legal claims he was making and failed to do so the tribunal concludes that the claim is not only vexatious, it was unreasonable to bring the proceedings (save the claim for training costs) and the claims that the claimant was trying to pursue had no reasonable prospect of success.

39. Should the tribunal exercise its discretion having also an eye on the claimant's means. The tribunal conclude that this was a thoroughly vexatious and unreasonable claim and the discretion exercised. The claimant would have known even on the wages claim that his hours were 21 hours per week, that was what was always agreed with Mr Walker as his evidence today confirmed. That left only approximately £35.00 for training costs, again if he had made that clear that was the amount claimed and that had been agreed with Chris Walker I doubt very much whether we would be here today.

40. The tribunal has concluded that it is right, even allowing for the claimant's means that he should make a contribution toward the respondents' costs.

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Employment Judge Postle

Date: ……..

Sent to the parties on: ...16/03/2018..

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For the Tribunal Office