Case Number: 3347237/2016

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr R Taylor	**v**	**Constructive Future Training Limited**

Heard at: Watford **On**: 3 October 2017

Before: Employment Judge George

Appearances

For the Claimant: In person
For the Respondent: No attendance and no representation

JUDGMENT

1. The claimant was unfairly dismissed.

2. The respondent is to pay to the claimant compensation for unfair dismissal in the sum of **£3,592.50** calculated as follows:

   Basic Award 1.5 x 4 x £479.00 = £2,874.00

   PLUS 25% uplift pursuant to s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 for an unreasonable failure on the part of the respondent to comply with the ACAS Code of Practice in relation to disciplinary matters
   TOTAL AWARD FOR UNFAIR DISMISSAL = £3,592.50.

3. The respondent shall pay to the claimant **£1,784.65** as damages for breach of contract in relation to failure to pay full notice pay calculated as follows:

   3.1. The claimant was entitled under his contract of employment to four weeks' notice of termination of employment being four weeks @ £653.85 net p.w. or £2,615.40.
   3.2. He in fact received one week at that sum and two weeks were paid at the rate of statutory sick pay since he was absent from work due to ill health. The statutory sick pay rate for that period was £88.45. He was paid £830.75.

3.3. He is therefore owed £2,615.40 - £830.75 = £1,784.65.

4. This makes a total award, adding together compensation for unfair dismissal and breach of contract of **£5,377.15**.

REASONS

1. This is the claimant's claim for a redundancy payment and for unpaid notice pay and unpaid wages arising out of his termination of employment on 4 October 2016. He was employed as a trainer by the respondent company. In his claim form he states that he started work for them on 1 October 2013 and was made redundant by a letter given to him on 13 September 2016 giving notice of termination which would take effect on 4 October 2016. The respondent's case is that on that date, 4 October 2016, they summarily dismissed the claimant for gross misconduct and therefore they do not owe a redundancy payment.

2. In the claim form, the claimant stated that he was not given notice of termination for gross misconduct before his employment had terminated by reason of redundancy and denied the allegations. However, in the alternative, he stated that this purported termination of employment for gross misconduct would in any event have been an unfair dismissal. The claim was not coded as an unfair dismissal claim. Therefore, for the avoidance of doubt, I have allowed an application on his part formally to amend his claim to claim unfair dismissal as an alternative. It was clear on the face of the pleadings that that was something that he was in fact arguing and that would have been apparent to the respondent.

3. In this short case I heard evidence given by the claimant with reference to a witness statement which he signed on 19 February 2017 and he adduced in evidence a number of documents which he had put together in slim bundle to which I shall refer in the course of these reasons.

4. In his claim form he indicated that the start of his employment was 1 October 2013 and that date was accepted by the respondent. He produced to me a written contract of employment between him and a company with the title Maze8 Future Training, a former name of the respondent. He tells me that Maze8 Future Training subsequently changed its name to Constructive Future Training Ltd but was at all times the same company. The claimant's evidence to me was that this written contract was handed to him and he signed it. The date that he signed it on is 18 December 2013. That indicates that his employment commenced on 11 November 2013. However, according to his oral evidence, which I accept, the claimant had already been in employment by the respondent for some period at that time. His evidence was that he had started work, as he says in his witness statement, on 3 October 2012 initially on a probationary period. When that probationary period was successfully completed, he moved from three days a week to five days a week.

5. He continued to work five days a week for some time before he was issued with the written contract. He describes having asked for a written contract for some little time before it was provided. He did not notice that it gave a start date of his employment of 11 November 2013. I have taken into account his original statement, his evidence that in fact he started work in 2012 and the date in this document. I have also taken into account the respondent's acceptance of the date in the claim form which means that, on any view, the date in the written contract is inaccurate. Overall, the clamant seems to me to be overall a credible witness. I have come to the conclusion based on the above that his continuous employment with the respondent in fact started on 3 October 2012.

6. Therefore on the date of termination of his employment which was 4 October 2016 he had had four years' continuous service. The written contract provided at clause 11.2.1 that if the company terminated the employment they should give at least four weeks' notice.

7. The company had apparently been in some financial difficulties and this coincided with a period of ill health on the part of the claimant. The employees were warned that there were financial difficulties by letter of 9 September. Then, on 13 September 2016, the employees were given a letter, written by Mr James Windsor. That addressed to the claimant said that he was going to be made redundant with effect from 4 October 2016 and set out various calculations for redundancy payment and notice payment.

8. It is apparent that the respondent thought that the statutory redundancy calculation should be done on the basis that Mr Taylor had served three years' service and he was given three weeks' notice, although that was clearly contrary to the written terms and conditions. Outstanding holiday pay was also set out there.

9. Unfortunately, during the same period, Mr Taylor was due to go into hospital because of heart problems. He was absent due to ill health during the week beginning 19 September because of a planned procedure and then emailed the company on 22 September saying that he was still unfit to attend work because of his heart condition.

10. On 4 October 2016, the date on which the employment was due to terminate, after the end of his working day the claimant received a letter by email. The same letter was also a hand delivered by a courier. The letter is headed "Notice of Summary Dismissal" and it is signed by Mr Windsor. In it he says that, following an investigation into employee conduct and a review of the company admin computer, there was an allegation that Mr Taylor had been conducting himself in a manner which fundamentally undermines the trust and confidence between us.

    "In particular you are party to email correspondence which is derogatory towards me and against the best interest of the business. This sheds a new light on recent discussions between us in which you had been belligerent towards me and failed to follow reasonable instructions."

The company purported to terminate the employment immediately without notice for gross misconduct.

11. The explanation of the alleged gross misconduct in the letter of 4 October 2016 contradicts the explanation given in the ET3 for the summary dismissal. There the respondent states that examples of gross misconduct were put forward, the most serious of which was taking time off without permission. There is no mention in the ET3 of Mr Taylor being derogatory to Mr Windsor, acting against the interests of the company or failing to follow reasonable instructions.

12. According to Mr Taylor, the allegation in the letter of 4 October 2016 was news to him and also to four other individuals who all had their redundancy notices revoked and summary dismissal imposed at the same time. After early conciliation the claimant brought this claim by an ET1 presented on 15 November 2016 and the ET3 was entered on 14 December 2016. Mr Taylor says that no procedure was followed in relation to the alleged disciplinary matters. If the first he knew of the allegations was the statement contained in the dismissal letter then the failure to comply with any disciplinary procedure would appear to be total. It is also unexplained.

13. I have considered Mr Taylor's argument that because the notice of termination of summary dismissal was given to him on 4 October, the last day of his employment, but after the end of the working day his employment had already ended at the point that it arrived and therefore it was too late to change the basis on which his employment ended. It is my view that, as a matter of law, it was still possible for the respondent company to terminate the employment summarily at any time up to the end of 4 October 2016 and this they did.

14. However, there is a conflict between the reason they put forward in that letter and the reason they put forward in the ET3 as being the particulars of gross misconduct relied on. The respondent company did not attend the final hearing and was not represented. I am satisfied that it was properly served with notice of today's hearing and concluded that it was in accordance with the overriding objective of avoiding delay and saving costs to proceed in the respondent's absence. It is therefore not present in order to prove to me the reason for the dismissal. It seems to be clear on any view that no procedure was followed to investigate or to give Mr Taylor the opportunity to respond to whatever allegations were being made.

15. I am satisfied that the letter of 4 October 2016 was effective to terminate the employment, and therefore the respondent summarily dismissed the claimant alleging gross misconduct rather than on notice because of redundancy. However, because the respondent has not proved the reason for dismissal and, in particular, because of the total failure of procedure I am satisfied that it was an unfair dismissal. I therefore calculated the statutory entitlement to the basic award.

16. However, I also conclude that, had Mr Taylor not been unfairly dismissed on 4 October, his employment would have ended on that date by reason of redundancy and therefore he is not entitled to any compensatory award.

17. It is clear that the notice of termination of employment that was given on 13 September was too short. The respondent purported to give him three weeks' notice whereas he was contractually entitled to four. It also appears that he was not paid in full for some of those weeks because he was actually absent due to ill health during his notice period. However, in my view, he is entitled to be paid his contractual notice pay even if he is unable to attend to work because of ill health and therefore I consider that he has not been paid in full for the weeks that he was in fact paid statutory sick pay. I calculate the damages for breach of contract by failing to pay full notice pay on the basis that he should have been paid for four weeks at £653.85 p.w. gross but was in fact paid one week at that rate and two weeks at the normal rate for statutory sick pay which at the time was £88.45.

18. The respondent, as I said, has not made any attempt to comply with the ACAS Code of Conduct in relation to disciplinary matters. I can completely understand why the claimant regards this as a device to try to get out of paying redundancy pay and it is concerning that the respondent appears to have taken this tack with other members of staff as well. In those circumstances I conclude that there was an unreasonable failure to comply with the Code of Practice in relation to disciplinary matters and I apply the maximum 25% uplift to the award of damages for unfair dismissal.

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Employment Judge George

Date: ……30/10/2017……..

Sent to the parties on: .....

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For the Tribunal Office