

JERSEY / JUDGMENT

Christopher Allinson v Trinity Joinery Ltd T/A Joseph Bourke Building Contractors

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IN THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER: BETWEEN CHRISTOPHER ALLINSON CLAIMANT AND TRINITY JOINERY LTD T/A JOSEPH BOURKE BUILDING CONTRACTORS RESPONDENT TRIBUNAL JUDGMENT Reference: [2020] TRE 183 Hearing Date: 6 May 2021 Before: Mr M Salter, Deputy Chair Appearance: For the Claimant: In person For the Respondent: Mr J Bourke, Director RESERVED JUDGMENT 1. The Claimant was wrongfully dismissed. 2. The Claimant's claims for payment for bank holidays succeeds insofar as it relates to the amount of rolled up pay for bank holidays during the two-week period he would have received as his notice period. 3. The Claimant's claims concerning minimum rest periods and for working on bank holidays fail and are dismissed 4. The Respondent's counterclaim fails and is dismissed. 5. The Respondent shall therefore pay to the Claimant 2 weeks net pay. The agreed weekly sum is £880.37, so two weeks is £1,760.74.

REASONS

References in square brackets below are unless the context suggests otherwise to the page of the bundle. Those followed by a with a § refer to a paragraph on that page and references that follow a case reference, or a witness' initials, refer to the paragraph number of that authority or witness statement. References in round brackets are to the paragraph of these reasons or to provide definitions.

INTRODUCTION

1. These are my reasons for the above judgment. In accordance with Article 38 of the Employment and Discrimination Tribunal (Procedure) Order 2016 these reasons are recorded in writing.

BACKGROUND

The Claimant's case as formulated in his Claim Form 2. The Claimant's complaint, as formulated in his Claim Form, presented to the Tribunal on 21st October 2020 is, in short, he was wrongfully dismissed and that at the end of his employment was owed rolled up holiday pay for his notice period; had been deprived of minimum period of rest and had not been paid or working on bank

holidays [2]. The Respondent's Response 3. In its response, dated 11th November 2020, the Respondent denied the claims, alleging the Claimant had resigned by his conduct of not returning to work, had received rolled up holiday pay, had never worked a bank holiday and that it had not been in breach of the provisions relating to minimum rest periods [10]. Relevant Procedural History 4. The matter came before Deputy Chair Whelan on 1st March 2021 for a Case Management Hearing [17] during which a list of issues was produced and this Final Hearing was ordered [19 §10-13]. The Deputy Chair also, as is usual, gave a set of directions to ensure that, in compliance with the overriding objective, the matter was ready to proceed at the Final Hearing. 5. Unfortunately the Claimant did not comply with Advocate Whelan's order and supply a witness statement. The Tribunal were required therefore to issue an unless order. In compliance with this order a statement was provided and emailed to the Tribunal and Respondent on 30th April 2021. TODAY'S HEARING General 6. The matter came before me today for the Final Hearing. The hearing had a three-hour time estimate. The Claimant represented himself, the Respondent was represented by Mr J. Bourke, its director. 7. The matter was conducted as a hybrid hearing: the parties were in attendance at the Tribunal whilst I joined the hearing via Starleaf. Neither party objected to this approach and I am satisfied that, despite the technical issues that beset the hearing, the quality of the evidence was not adversely effected by this format. 8. Despite the hearing being beset by technical difficulties the hearing was completed within the time allocation Particular Points that were Discussed 9. Both parties were unrepresented and so I explained to them that: a. I had read the papers; b. their witness statements would be their evidence-in-chief to me; c. they would be subject to cross-examination by the other party; d. they would need to challenge all parts of the other parties' evidence they disagreed with; e. they would have the opportunity at the end of the hearing (if they so wished) to address me as to why they should win the claim and why the other party should lose. However this was not an opportunity for them to introduce new evidence so they needed to ensure that I had all the evidence they wished me to hear before submissions; f. I would not conduct their case for them and would not cross-examine the other party for them. DOCUMENTS AND EVIDENCE Witness Evidence 10. I heard evidence from the Claimant and Joseph Bourke the Respondent's director. 11. Both witnesses gave evidence by way of written witness statements that were read by me in advance of them giving oral evidence. Both witnesses were cross-examined. Bundle 12. To assist me in determining the application I have before me today an agreed bundle consisting of some 63 pages prepared by the Respondent. The bundle was unpaginated. I make reference to the bundle throughout this judgment and references in squared brackets are to pages in my version of the file.

SUBMISSIONS

General 13. Despite my explanation at the outset of the hearing both parties in submissions sought to introduce new evidence into their submissions. As explained when this occurred I have not taken into account any of this new material. Respondent 14. In submissions the Respondent, understandably, repeated the evidence I had heard and asked me to dismiss the Claimant's claims. Claimant 15. The Claimant's submissions were that he was seeking payment for his two week notice period. That is all he wanted and he did not think the matter would have got to this

stage. He pointed out that the Respondent had admitted that it had terminated his employment without notice MATERIAL

FACTS

General Points 16. From the evidence and submissions I made the following finding of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by both witnesses in evidence, both in their respective statements and in oral testimony. Where it has been necessary to resolve disputes about what happened I have done so on the balance of probabilities taking into account my assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the evidence including the documentary evidence. In this decision I do not address every episode covered by that evidence, or set out all of the evidence, even where it is disputed. Rather, I have set out my principle findings of fact on the evidence before me that I consider to be necessary in order to fairly determine the claims and the issues to which the parties have asked me to decide. 17. Surprisingly, many of the relevant facts in this matter are uncontroversial. The Claimant was employed by the Respondent as a steel fixer. The parties agree his contract of employment is inaccurate when it describes him as a Carpenter. He was paid hourly for the hours he worked. 18. The Claimant commenced his employment on 28th January 2020. It ended in October 2020. 19. The Claimant received a contract of employment. There is some dispute as to when this was received, but received it was and is signed and dated by the Claimant [31]. The Contract of employment states: “holiday will be paid for as it is earned on the basis of an additional 4% pay for each contracted hour worked. You have opted to waive your entitlement to be paid for statutory bank holidays and instead have opted to receive an additional 4% in your hourly rate which is paid for each contracted hour worked You are not obliged to work statutory bank holidays but should you chose to do so, you shall be paid at your normal hourly rate” [29] And Your employment may be terminated:

1. By either party giving to each other 2 weeks’ notice in writing (or such longer period of statutory minimum notice as may be applicable) [30] And further Appendix 4 – Sickness Leave You must call your Manager by 8:00am on the first day of your absence from work, and keep them informed of the expected date of your return to work. If your absence is of more than one day’s duration you should maintain regular contact with them. You are required to visit your Dr for absences of more than three days and to obtain a doctor’s certificate for absences of more than three days that must be sent to your manager. A copy will be retained for our records and then you should submit it to the Social Security Department so you can claim Social Sickness Benefit. [33] 20. The Claimant contends he worked Good Friday. This was Friday, 10th April 2020. However there is no record of work being undertaken in the period 3rd April 2020 until 14th April 2020 owing to the COVID pandemic [61 records this]. The Respondent paid all of its employees £600 for that period despite them not being required to work. The Claimant’s witness evidence on this was lacking. In cross-examination he accepted this was a mistake and that he did not work Good Friday. There was no other evidence given about any other bank holiday working. 21. The

Respondent offers its employees overtime as and when they have it. The Claimant did not address this point in his evidence and did not challenge the Respondent's account of events. I find as a fact that the only time the Claimant worked more than 7 days consecutively without a break was in the period week commencing 13th July 2020 as he requested overtime during this period, and undertook that overtime. 22. The Respondent's position is that the Claimant had taken extended periods of absence from work without giving any reason to the Respondent [62, and 63 records this] and that over this period of his employment the Claimant had over 50 days absence. The Claimant highlights that this is incorrect and that he received his payments for period of time he is supposed to have been absent. It is unnecessary for me to determine this issue as no claims turn on it. However, the Claimant accepts that upon his return from a period of absence he was told that he must notify the Respondent of any absences. The Claimant also accepted he said to the Respondent "do I still have a job?" when he returned from a period of absence. 23. The Claimant has not presented any claim concerning a shortfall in wages during his employment. 24. On Thursday, 1st October 2020 the Claimant left work as normal. He became unwell and did not return. He did not contact the Respondent to inform them of any reason for his non-attendance. 25. It is an agreed fact at some point the Claimant's partner attended the site and she spoke to Tony Watts, one of the Respondent's employees, informing him that the Claimant was unwell and giving Mr Watts the Claimant's new telephone number. The Claimant contends this was on Tuesday, 6th October, the Respondent does not know the date. On the balance of the evidence I have heard I am satisfied this was on the 6th October 2020. 26. It is an agreed fact that on Friday, 9th October 2020 Mr Bourke called the Claimant and told him that his services were no longer required. Mr. Bourke agreed in evidence before me that this call took place and that he told the Claimant he was no longer required. 27. It is agreed that the Claimant never received written notification of his dismissal. 28. On Monday, 12th October 2020 the Claimant attended the site with his contract of employment to show Mr Bourke he was entitled to two weeks' notice in writing of termination of employment. Mr Bourke thought the Claimant was there to collect his tools. A discussion took place in which JACS were mentioned. Who said what, does not appear to me to be a relevant matter I need to determine. THE LAW 29. So far as is relevant the Employment (Jersey) Law 2003 ("E(J)L") states: PART 6 TERMINATION OF EMPLOYMENT 56 Minimum period of notice

- (1) Subject to paragraph (9), the notice required to be given by an employer to terminate the employment of an employee who has been continuously employed for one week or more shall be not less than –
 - (a) one week's notice if his or her period of continuous employment is less than 2 years; 30. Part 3 of the E(J)L also provides for minimum rest periods and for annual leave. Because of my factual findings it is unnecessary for me to consider these provisions, so for purposes of brevity and in line with the Overriding Objective I do not set them out here. CONCLUSIONS ON THE ISSUES General 31. Having regard to the findings of relevant fact, applying the appropriate law, and taking into account the submissions of the parties, I have reached the

following conclusions on the issues the parties have asked me to determine. Findings on the Issues Claim 1: Notice pay (Issues 10(1-5) Case Management Order) 32. I will deal with issues 10(1)-(2) together, I find that, on the balance of probabilities, the Claimant has satisfied me that he was dismissed by the Respondent, indeed it is not in dispute that, at the time of the phone call the Respondent was aware that the Claimant was off work and was claiming this was because of ill health. 33. That dismissal was summary and was in breach of contract as it was not in writing as the contract requires. Pursuant to his contract the Claimant is therefore entitled to two weeks' pay. 34. It is an agreed fact that the Claimant's net pay each week was £880.37, making a total of £1,760.74 for two weeks. Claim 2: Unpaid Annual Leave (Issue 11 of the Case Management order) 35. The Claimant's claim here is for the 4% he would have earned on the two weeks' notice pay had he not been wrongfully dismissed. The terms of the Claimant's contract are clear, his holiday pay is rolled up into the pay rate he receives. Therefore, the amount awarded for his notice period will include this award for his notice period. Claim 3: Unpaid Bank Holidays (Issue 12 of Case Management Order) 36. In answering issues 12(1) and (2) of the Case Management Order, I have borne in mind that the Claimant produced no evidence to support the contention he had worked any bank holidays. Indeed in cross-examination he confirmed his assertion he had worked on Good Friday, was incorrect. The Respondent produced a work record that showed the Claimant had not worked any bank holiday. From the evidence I have seen and read the Claimant did not work any Bank Holidays in the period of his employment. He, therefore, is owed nothing for such holidays. 37. In light of the above findings, I do not need to proceed to consider issues 12(3-10). Claim 4: Rest Periods (Issue 13 of Case Management Order) 38. In answer to issues 13(1), the Claimant produced no evidence he had been deprived of any rest period. The Respondent produced a record that showed the Claimant had worked one period of overtime that meant he had worked without a break. This was voluntary overtime. The Respondent did not "require" the Claimant to be in attendance at work. 39. I consider therefore, that the Claimant has failed to satisfy me on the balance of probabilities the Respondent has breached Part 3 of the E(J)L. Counterclaim 40. The Case Management Order (paragraph 7) identifies a counterclaim. The Respondent produced no evidence to support this claim and so I do not consider they have proven, on the balance of probabilities, they suffered any loss. 41. Accordingly I dismiss their counter claim Conclusions on the Complaints 42. The Tribunal orders that the Respondent shall pay to the Claimant a monetary award of £1,760.37 for wrongful dismissal. Mr M. Salter, Deputy Chairman Date: 7 May 2021

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