



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

**Case No: 4104467/2022 Hearing by Cloud Video Platform at Edinburgh on 21
October 2022**

10

Employment Judge: M A Macleod

Ian Baird

**Claimant
In Person**

15

NewsTeam Group

**Respondent
Represented by
Mr J Kennett
Chief Operating Officer**

20

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The Judgment of the Employment Tribunal is that the claimant's claims fail,
and are dismissed.**

30

REASONS

35

1. The claimant presented a claim to the Employment Tribunal on 11 August 2022 in which he complained that he had been unlawfully deprived of a redundancy payment, notice pay, pay in respect of annual leave accrued but untaken and arrears of pay.
2. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.

3. A Hearing was listed to take place by Cloud Video Platform (CVP) on 21 October 2022. The claimant appeared on his own behalf, and Mr Kennett represented the respondent.
4. The claimant gave evidence on his own account, and called as witnesses Margaret Kennedy Allan McLeod, his partner; Colin Marshall; and Michael Daniel Pettigrew. The respondent called Paul Christian Goddard, Commercial Director, as a witness.
5. Based on the evidence presented and the information available, the Tribunal was able to find the following facts admitted or proved.

10 Findings in Fact

6. The claimant, whose date of birth is 28 May 1962, commenced employment with the respondent's predecessor on 14 May 1994. He was latterly the General Manager of News Direct Scotland Ltd, a company responsible for newspaper distribution, and he effectively ran that company on a daily basis.
7. The respondent took over responsibility for the claimant's employment in 2021.
8. On 6 December 2021, the claimant was asked to attend a meeting with Paul Goddard, one of the directors of the respondent, at their office in Saline Street, Airdrie. Mr Goddard had been concerned about the effectiveness of a project which the claimant had been responsible for in October and November 2021, and wanted to discuss this with him. The project related to the distribution of newspapers during the COP26 conference which took place in Glasgow at that time.
9. At the meeting, Mr Goddard informed the claimant that he was uncertain about the future role of the claimant given the way the business was evolving, and indeed whether the claimant had a role in the business in the future.

10. The claimant was shocked by this, and raised the question of whether he was to be made redundant. Mr Goddard replied that he was unable to make any decision about that, as he would have to take it to the Board to make a decision.
- 5 11. Mr Goddard was aware that the claimant's partner, Ms McLeod, had been undergoing medical treatment, and formed the impression that the claimant was himself not in the best of health. As a result, he advised the claimant not to attend work, and to take some time off. He assured him that he would continue to be paid his full salary while absent from work.
- 10 12. A further meeting was arranged, and took place, on 17 December 2021. Mr Goddard attended, and the claimant was accompanied to the meeting by Colin Marshall.
13. The issue of redundancy was raised at this meeting. Each person who gave evidence about this meeting gave a slightly different version.
- 15 14. The claimant's evidence was that he sat down and asked Mr Goddard how the respondent wished to "get rid of me". In response, Mr Goddard offered him redundancy, which he accepted. Mr Goddard then said that he would need to take it to the Board. There was no discussion about a redundancy payment or its amount.
- 20 15. Mr Marshall's evidence was that at the start of the meeting, Mr Goddard asked the claimant how he was, to which the claimant replied that he was fine. He said that Mr Goddard then asked where they were going to go from there, and the claimant replied "you tell me". His evidence was that Mr Goddard then asked the claimant if he was still interested in redundancy, to
25 which the claimant replied yes. Mr Goddard then said that he would have to take the matter to the Board. The claimant responded that "you said that the last time", to which Mr Goddard said that he still needed to do that.
- 30 16. Mr Goddard's evidence was that the meeting was convened to tell the claimant that he had not been able to push things through, because the scheduled Board meeting had been cancelled.

17. Mr Goddard went on to say that he did not recall anything being discussed about the claimant's health, but he did recall that Mr Marshall had driven the claimant to the meeting, and that he was using a walking stick when he arrived in the office.
- 5 18. My conclusion from these three versions is that there was mention of the possibility of redundancy for the claimant, but that it was not put in the form of an offer of redundancy to him and acceptance by him. It was mentioned, but subject to the agreement of the Board. This is supported, in my view, by the evidence given by Mr Marshall.
- 10 19. After that meeting, the claimant continued to be absent from work, and was paid in full.
20. A further meeting was convened on 20 April 2022. The claimant attended that meeting and was accompanied by Michael Pettigrew.
- 15 21. The claimant's evidence about this meeting was slightly confused, partly as he experienced difficulty with his recall of the dates on which the different meetings took place. However, he was able to remember a meeting at which Mr Pettigrew attended, though he thought it took place on 20 May 2022. I am satisfied that that was incorrect, and that it was on 20 April 2022.
- 20 22. The claimant said that Mr Goddard asked the claimant about his health. The claimant's evidence was that at that time, he was not experiencing any difficulties with his health. He said that he wanted to know where things were going, because this was the third meeting, and he knew he had been replaced. He wanted to establish what was happening about redundancy.
- 25 23. His evidence was that Mr Goddard confirmed that he would put the redundancy point to the Board.
- 30 24. Mr Pettigrew's evidence was that the claimant's purpose was to find out about his role and about redundancy. He said that Mr Goddard told him that he would look into it and put it to the Board, as it was not his decision. Mr Pettigrew said that he had to drive him to the meeting because the claimant was experiencing problems with his eyes, and had been having injections.

He did not know how long the claimant had been suffering with problems with his eyes.

5 25. Mr Goddard's evidence was that the meeting took place because the business had moved on significantly, and that since his role was still required he could not be made redundant. He asked the claimant to produce sick lines to cover his absence, as the respondent could not continue to pay him without medical certification of his absence.

26. Again, it is my conclusion that no offer of redundancy was made at that meeting, on the evidence of the people who were there.

10 27. In addition, Mr Goddard wrote to the claimant following the meeting on 5 May 2022. A copy of the letter was produced, the only production in this case. The letter stated:

"Dear Ian

15 *Thanks for coming in to see me on 20th April 2022 to discuss your return to work.*

As discussed in the meeting, I am keen for you to return as there is lots going on and plenty of work for you to do.

20 *Unfortunately, you stated in the meeting you are not fit to return to work, and you have not driven any form of vehicle since December due to an ongoing problem with your eyes. You stated you did not know when you would be able to return and that you were waiting for some medical appointments to be arranged.*

As you are aware, we have paid you in full since the beginning of your January this year, although you have not attended work.

25 *Following our meeting and given that you are not going to be able to return to work now or for the foreseeable future, I can confirm that from April and moving forward, Statutory Sick Pay (SSP) will be paid on production of a fit note/medical certificate from your GP.*

As such, could you provide Karen Dennis with a fit note from your GP, this will be required to pay any statutory sick pay that you may be entitled to.

Please note that I will review with you your condition and any updates on a regular basis to understand how we can move forward with this matter. in the meantime, if you do have any questions or queries, please do not hesitate to contact me in the first instance.

Yours sincerely,

Paul Goddard

Operations Director”

10 28. The claimant said that following the meeting he was supposed to receive a letter, but never did. It is understood that this refers to the letter quoted above dated 5 May 2022.

15 29. It is noted that the letter was addressed to the claimant at 19 Old Union Street, Airdrie ML6 9NF. The address given by the claimant in the ET1 is 14 Old Union Street, Airdrie, ML6 9NF.

30. It is not clear whether the claimant did in fact receive this letter. He maintains that he did not, and since it was incorrectly addressed it seems plausible that this is the case.

20 31. However, I accept that the letter is genuine and that it was sent. It is also helpful in providing a contemporaneous record of what was said at the meeting, and its terms support Mr Goddard's version.

25 32. The claimant's position before me that he had no intention of submitting medical certification for his absence, as he was not unwell at the time, and could not tell his GP that he was. This evidence conflicts with what both of the other attenders of the meeting said, namely that the claimant had confirmed that he had been having problems with, and treatment for, his eyes, which had prevented him from driving.

33. The claimant's evidence was very confused about this matter.

34. The final payment of salary which the claimant received from the respondent was on 10 April 2022, on the basis that he submitted no medical certificates thereafter, and accordingly could not be paid either occupational pay or SSP.
- 5 35. The claimant's employment status, on the evidence before me, remains entirely unclear. The claimant said that strictly speaking he believed that he was still employed by the respondent, as he had never been given an indication that his employment had been terminated. His last day at work was 6 December 2021, and his last payment date was 10 April 2022.
- 10 36. Mr Goddard's evidence was that the claimant's employment status was "certainly in limbo", but that the respondent had not dismissed him, and he had not resigned. As a result, he thought that the claimant was still employed by the respondent as well.

Discussion and Decision

- 15 37. This is an unusual case. The claimant is seeking payment of a redundancy payment from the Employment Tribunal. However, his claim is reliant upon his assertion that at the first meeting he had with Mr Goddard, on 6 December 2021, an offer was made to him that he should be made redundant, which he accepted.
- 20 38. That is the claimant's case at its highest. He did accept, however, that following that exchange, Mr Goddard advised that he would have to obtain the authority of the Board to confirm the position, and indeed that Mr Goddard consistently said this when the issue of redundancy was brought up.
- 25 39. Mr Goddard's evidence is different, to the effect that the possibility of redundancy was raised with the claimant, but that at no stage was an offer of redundancy made and accepted. At neither of the meetings which were attended by the claimant with a colleague or friend does the evidence demonstrate that a specific offer and acceptance took place.

40. I am bound, therefore, to conclude that Mr Goddard put forward the possibility of redundancy to the claimant to establish whether or not this would be acceptable to him, and that the claimant agreed that it would. However, this did not amount to an offer of redundancy, but the opening of a discussion, which would remain subject (as the claimant accepted) to the approval of the Board.

41. There is no evidence from any witness to the effect that approval was obtained from the Board, nor that Mr Goddard ever told the claimant that approval had been granted.

42. In order to be granted a redundancy payment, the claimant must have been dismissed on the grounds of redundancy. Section 139(1) of the Employment Rights Act 1996 provides the definition of redundancy, which applies to “an employee who is dismissed”.

43. There is simply no basis upon which I can conclude that the claimant has been dismissed in this case. It was not his evidence that any decision had been taken to terminate his employment at all. The respondent’s position is that his employment may indeed be continuing, but that no dismissal has been carried out, nor has the claimant resigned.

44. As a result, there is no entitlement on the part of the claimant to a redundancy payment in circumstances where the respondent has not dismissed him. At the very least, there is such ambiguity as to the claimant’s employment status that it is impossible to find that the circumstances in which entitlement to a redundancy payment would arise have any application in this case.

45. As to the other payments sought by the claimant, his main dispute is that the respondent was not entitled to stop paying him because of his failure to provide medical statements that he was unfit to attend work. Again, the circumstances in which this case arises are unusual, because the claimant was effectively told on 6 December 2021 not to return to work for the time being, and was paid while absent. At that stage, and until the meeting on 20

April 2022, the respondent continued to pay him in full, and not to insist upon him providing medical certification for his absence.

46. Thereafter, it was made clear, in my judgment, that the claimant required to provide medical certification for his absence. The claimant, before me, appeared to be slightly offended by this suggestion, as he maintained that he was not unfit for work. However, the evidence does demonstrate, in my view, that the claimant was not fit for work at that date, since Mr Goddard and Mr Pettigrew both confirmed that that was their understanding (in that Mr Pettigrew, while not expressing a broader view, stated that he had had to attend the meeting because the claimant could not drive due to ongoing problems with his eyes).

47. The claimant was paid in full until 10 April 2022.

48. Thereafter, the claimant was advised to provide medical certification to cover his absence. He did not do so. The respondent did not pay him at all, as they had indicated. He had been paid up to that point because the respondent had advised him not to attend work. From that point, however, it was made clear to him that the situation had changed and that his pay was dependent on his providing a medical basis for his absence.

49. What complicates matters considerably is that the claimant gave evidence to the effect that he went on to suffer two mini-strokes, some time in 2022. He was unclear as to when these incidents occurred. His partner, Ms McLeod, gave evidence to the effect that these strokes both occurred on the same day, on 30 May 2022. She said that he was fortunate not to have been seriously affected by the incidents.

50. I am not persuaded that the respondent has unlawfully made any deductions from the claimant's pay after 10 April 2022. In my judgment, the respondent had made clear to him that if he wished to receive pay after that date, he must submit medical certificates, and in their absence, he was not paid. He did not attend work, and without a clear medical reason for not doing so or the sanction of his employer which had been in place to that

date, he would only be able to receive pay in the event that he could certify his absence.

51. Accordingly, it is my conclusion that the claimant's claims must fail, and are dismissed.

5 52. I confess that I found the evidence in this case to be confusing and
unhelpful. I accept that the claimant was trying to assist the Tribunal, but his
evidence was confused, confusing and unclear. There is no doubt that he
feels that he was badly treated by the respondent, both before and after his
pay was stopped, and that sense of unfairness pervades the evidence.
10 However, he cannot prove either that he has been dismissed by the
respondent or that he has suffered any financial losses which were
unlawfully imposed upon him. It is incomprehensible that parties should
have reached a Hearing before the Tribunal without having a clear
understanding of the claimant's employment status, about which both sides
15 were, bizarrely, unsure.

53. However, while the claimant and his witnesses displayed courtesy to the
Tribunal and to their opponent, and the respondent did the same, there is
no alternative but for me to reach the conclusion that the claimant's claims
are without merit, and must be dismissed.

20

Employment Judge: Murdo Macleod
Date of Judgment: 11 November 2022
Entered in register: 15 November 2022
and copied to parties

25

I confirm that this is my Judgment in the case of Baird v News Team Group and
that I have signed the Judgment.