



EMPLOYMENT TRIBUNALS

Claimants: Mr A Springall
Mr J Wai

Respondent: BHC Limited

Heard at: Nottingham **On:** Monday 16 January 2017

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimants: In Person
Respondent: Mr K Ali, Counsel

JUDGMENT

The Employment Judge gave judgment as follows:-

1. Mr A Springall:-

1.1 The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £3,870.28.

1.2. The Respondent failed to provide to the Claimant a statement of initial employment particulars and the Respondent is ordered to pay to the Claimant the sum of £958.00.

1.3 The Respondent is ordered to pay costs to the Claimant under Rule 75(1)(b) in the sum of £390.00 in respect of the issue and hearing fee paid by the Claimant in these proceedings.

2. Mr J Wai:-

2.1 The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £4,601.02.

2.2 The Respondent has failed to provide a statement of initial employment particulars to the Claimant and is ordered to pay to the Claimant the sum of £958.00.

2.3 The Respondent is ordered to pay costs to the Claimant under Rule 75(1)(b) in the sum of £390.00 in respect of the issue and hearing fee paid by the Claimant in these proceedings.

REASONS

Background and Issues

1. The Claimants presented their claims to the Tribunal on 27 September 2016. They both worked at the Respondent's offices in Burton-on-Trent. They were the only employees there. Mr Springall was an estimator and had commenced his employment on 1 October 2015. Mr Wai was an engineer and commenced his employment on 20 July 2015.

2. The main claim for each of the Claimants relates to their notice pay. It is agreed that the Claimants were entitled to 3 months' notice under the terms of their contract and it was also agreed that they were both paid until 6 July 2016.

3. It was the Respondent's case that the Claimants had given notice on 7 April which expired on 6 July and so the Claimants had been paid for the notice period.

4. The Claimants said that they had not given notice and that their employment ended without notice on 24 May 2016 and were therefore each of them entitled to the balance of their notice period namely 7 weeks. It was not in dispute that this amounted to £3,870.28 in Mr Springall's case and £4,601.02 in Mr Wai's case. I agreed with Mr Ali that no law was in dispute in this case. It turned on the facts.

5. If I found for them in respect of the breach of contract, they also complained that whilst they received an offer letter it did not comply with the requirements of Sections 1 and 2 of the Employment Rights Act 1996 and that they should be compensated under the provisions of Section 38 of the Employment Act 2002.

Evidence

6. I heard evidence from each of the Claimants and also from the Respondents witnesses:-

- Richie Struthers, HSQE Manager
- Bryan Cathcart, General Manager

7. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

8. Where there was a dispute as to the evidence I preferred the evidence of the Claimants. Their evidence was consistent with the communications that I saw made at the time that the dispute arose.

For the Respondent's neither Mr Cathcart nor Mr Struthers had anything to do with the receipt of the notice. It was Mr Hewitt the Managing Director who allegedly acknowledged receipt of their notice to resign. He did not even provide a witness statement. His e-mail of 22 April which is at page 73 of the bundle is entirely inconsistent with a situation where it is said that 2 days earlier he had acknowledged receipt of the Claimants' resignation. Indeed no evidence at all was produced to me about any steps that the Respondent allegedly undertook to discuss the matter of the closure of the Burton office with the Claimants after their alleged notice was given.

The Facts

9. The Respondent is a structural steelwork fabricator and erector based in Scotland. The Managing Director of the company is Brian Hewitt. Its head office is in Carnwath in Lanarkshire.

10. The Claimant Mr Wai commenced his employment with the Respondent as an engineer on 20 July 2015 and Mr Springall commenced his employment as an estimator on 1 October 2015. They were the only 2 employees based at the office at Burton-on-Trent.

11. The offer letter to each of them was dated 27 June 2015 and from Mr Springall it is at pages 78-9 and Mr Wai's is at pages 80-1. In respect of each Claimant they were entitled to 3 months' notice.

12. By the end of March 2016 Mr Hewitt had concerns about how matters were going at the Burton office. This can be seen by the e-mail exchanges between himself, Mr Springall, Mr Wai and Mr Cathcart who was their Line Manager (pages 82-6). There were clearly stresses in the relationship as shown by Mr Hewitt's e-mail on 29 March saying:

“Constant whingeing about something or other. Boom how simple is that...”

13. It can be seen and it is accepted by both the Claimants that they had not been successful in winning projects but they were concerned about Mr Hewitt's attitude towards them which they regarded as being “unprofessional”. Mr Springall was to spend 4 days in Carnwath at the request of Mr Cathcart for a presentation to Strumis Software (a potential customer) at the beginning of April. They agreed that Mr Springall would take with him letters of resignation. They had drafted and dated them 7 April 2016 and are at pages 71-2. It was agreed between them that if Mr Springall's time in Carnwath “got untenable” that he would hand in their notice letters directly to Mr Hewitt.

14. Mr Springall flew to Edinburgh on the morning of 4 April but during the period that he was there between 4 and 7 April there were no communications between himself and Mr Hewitt. There was also no communication between himself and Mr Cathcart who was his Line Manager at the time. He decided not to hand in the notice letters and this was agreed with Mr Wai.

15. I am satisfied that letters of resignation were not handed over by Mr Springall whilst he was in Scotland. This is consistent with the fact that the Respondent says that the letters are date stamped 15 April. That certainly would not be consistent with Mr Springall handing them in and no one has given me evidence from the Respondent's side that they were handed in. Similarly no one from the Respondent's side has given me evidence that the letters of resignation were received in the post. All Mr Cathcart can say is that he had been told that they had been received on 15 April. The Respondent says that Mr Hewitt wrote acknowledging receipt of the resignation letters on 20 April. There is no evidence from Mr Hewitt confirming this. Those letters are at pages 69 and 70. I am satisfied with the Claimants' evidence that they did not send those letters. There is also no evidence that there was any discussion with the Claimants about their resignations and the effect that that would have clearly on the Burton office which would then be unoccupied. The picture is further compounded by Mr Hewitt's e-mail on 22 April some 2 days later which says:

"Andy

Disappointed we didn't get a chance to catch up when you were up, what did you think of the Strumis presentation on estimating. The meeting seemed very quiet with very little enthusiasm from our side. What are you working on?"

No mention was made in that e-mail about the resignation which he had allegedly received 7 days earlier and acknowledged just 2 days before he sent that e-mail. I am also satisfied that if the Claimants had handed in or sent resignation letters emails would have been sent that at least referred to them. There are none.

16. Mr Cathcart in his evidence to me said that between 15 April and 23 May the Respondent considered what they would do with the office after the resignations of the Claimants. There is no evidence to support any such contention and it is surprising, if that was correct, why that was not included in his original statement to the Employment Tribunal.

17. I am satisfied that on Monday 23 May Mr Cathcart was instructed by Mr Hewitt to close the Burton office and advise the 2 employees Mr Springall and Mr Wai of their intention to do so. He attended the offices at around 6 pm on 23 May after the Claimants had left and emptied the office of everything which must have included the resignation letters that had previously been prepared by the Claimants.

18. The Claimants had not been warned at all that this might happen.

19. Mr Wai attended for work on 24 May. He intended to start work early. When he arrived the door was unlocked and he found the office empty of all furniture and equipment including personal items and paperwork. He contacted Mr Springall to inform him of the position and then found Mr Cathcart sitting in the foyer of the office building.

20. On Mr Springall arriving at the office they were both informed by Mr Cathcart that the Respondent had decided to close the office as "it wasn't working out". Mr Cathcart agreed with the Claimants that they were free to pursue new employment without working their notice period and would be paid

their 3 months' notice entitlement as per their contract from 24 May. The Claimants asked for confirmation of this in writing. They received no confirmation.

21. They wanted to retrieve their personal items from the back of the van but could not do so because the van was full of furniture and it was difficult to access it and so they agreed that they would send a list of items that would be returned. That list was sent by e-mail on 24 May.

22. On that day the Respondent also gave 30 days' notice of termination of their rental agreement at Curzon House (page 63). This is consistent with the decision to close the office being taken immediately before the Claimants were told of their dismissal.

23. Mr Springall texted his partner to say what had happened and the text exchange is at pages 58-61. I have also seen texts that he sent to other friends and an ex-colleague (pages 41, 51-7) which confirmed the version of events that Mr Springall gave me at the Tribunal.

24. It was only after he was informed that the office was closed did he and Mr Wai seek alternative employment, quickly arranging interviews with a number of potential employers. There is no evidence of any activity by them of finding alternative employment prior to them being told that the office was closed. This is consistent with their version of the events and part of the reason why I prefer their evidence.

25. The Claimants heard nothing from the Respondent and on 13 June chased Kimberley Carson, a Personal Assistant, for notice letters and their P45's as by then they had alternative employment arranged with Adey Steel Group (page 32).

26. On 20 June an e-mail was sent to the Claimants from Richard Struthers saying they were not entitled to 3 months' notice from 24 May 2016 as it was claimed that they had received resignation letters from the Claimants (page 31). This was the first mention of the resignation. The Claimants immediately responded saying that no resignation letter had been sent (page 29). Mr Struthers responded, but says that they either posted the letters or handed them in. He does not say which.

27. Mr Wai then further explained the position in his e-mail to Mr Struthers of 28 June (page 29). Mr Struthers final response is on 30 June (pages 28-9).

My Conclusions

28. I prefer the evidence of the Claimants as to the events that led up to their dismissal. I am therefore satisfied:-

28.1 They did not resign by letter of 7 April 2016.

28.2 Mr Hewitt did not acknowledge their resignation on 20 April.

28.3 They were dismissed summarily on the closure of the office on 24 May 2016 by Mr Cathcart on the instructions of Mr Hewitt.

28.4 He agreed that they would be paid 3 months' pay in lieu of notice.

28.5 They have been paid for a period of 6 weeks and are therefore owed a balance of their notice pay as damages for breach of contract ie 7 weeks' net pay.

29. The net pay for Mr Springall for that 7 week period is £3,870.28 and for Mr Wai for the same period £4,601.02. These sums were agreed at the start of the hearing.

30. I am also satisfied that the Claimants did not receive a statement of terms and conditions of employment that complied with Section 1 and 2 of the Employment Rights Act 1996. Under Section 38 of the Employment Act 2002 I must therefore make an award of at least 2 weeks' pay. I can increase this to 4 weeks' pay if I think it would be just and equitable to do so. In this case an effort had been made to supply a contract and in the circumstances I am satisfied that it would not be just and equitable to make an award of 4 weeks' pay. The award is subject to the statutory maximum of £479.00 per week and so for each of them I award the sum of £958.00.

Costs

31. The Claimants have incurred Tribunal fees totalling £788.00 which they have shared between them. As they have been successful with the claim, Mr Ali agrees that I should make an award in their favour in the sum of £390.00 each.

Employment Judge Hutchinson

Date 16 January 2017