



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Sharif

**Respondent:** (1) R Hardaker & Co Limited  
(2) MNS Textiles Limited

**Heard at:** Leeds **On:** 24 April 2017

**Before:** Employment Judge Maidment (sitting alone)

## Representation

Claimant: Mr Ali, Counsel  
First Respondent: Mr S Akhtar, Director  
Second Respondent: Did not attend

**JUDGMENT** having been sent to the parties on 25 April 2017 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## 1. The issues

The Claimant's complaint is solely in respect of her entitlement to a redundancy payment from the First Respondent. Indeed, prior to today's hearing the Claimant had already withdrawn her complaint against the Second Respondent.

There is no dispute that the Claimant was entitled to a redundancy payment from the First Respondent. Mr Akhtar confirmed that to be the case. The issue is whether that ought to be based on two years continuous employment or the maximum reckonable number of 20 years continuous employment.

In terms of redundancy payment entitlement or calculation the exact start and termination dates of the employment of the Claimant with the First Respondent are not material. The issue is whether around the time of a share sale of the entire share capital of the First Respondent on 14 April 2014 there was a break in the continuity of the Claimant's employment such that entitlement to a redundancy payment ought to be based only on employment commencing at a date after such share sale when, it is said by the First Respondent, the Claimant was re-employed following a break in continuity.

## 2. The evidence

The Tribunal had before it an agreed bundle of documents numbering 350 pages. Before commencement of the hearing the Tribunal took time to read into the witness statements exchanged between the parties and relevant documentations such that when each witness came to give his/her evidence he/she could do so simply by confirming the accuracy of the witness statement and then be open to be cross examined on it.

The Tribunal heard firstly from the Claimant and then from Mr Akhtar, the majority shareholder of the First Respondent.

Having considered all relevant evidence the Tribunal makes the findings of fact as follows.

## 3. The facts

The Claimant was a director, small minority shareholder and longstanding employee of the First Respondent.

In November/December 2013 she was told by Mr Keith Hardaker, director and majority shareholder, of a proposal to sell the First Respondent company or its shares to Mr Akhtar. It was anticipated that the existing shareholders and directors would resign as part of the sale. Each would receive a small (in the Claimant's case a very small £2) consideration for their shares.

The Claimant and another employee were told that they would be re-employed in the business. The Claimant did not understand that to involve a formal termination of her employment and re-engagement. She just thought it meant that she would keep her job. She was not told that there would be any break in her employment.

The Claimant signed at that meeting with Mr Hardaker and at a later meeting in early 2014 a resignation document. One of those, in error, was for another employee. The other confirmed a resignation as director and employee of the First Respondent company. The content and intended effect of the documents was never explained to the Claimant and she had little understanding as to their purpose.

These documents were held by the First Respondent company's lawyers pending completion of the sale. No completion however took place until 14 April 2014. A share purchase agreement had been prepared in advance but was only dated on 14 April with that date. This document is purportedly also signed by the Claimant. She does not recollect signing it and says that the signature is not her usual one. The Tribunal does not reject the possibility that the Claimant did sign it, but it is clear, if so, she did so without any awareness of the content of the document. The document does not expressly in any event provide for her resignation as an employee but refers back to the resignation deeds mentioned above.

Minutes of a board meeting on 14 April 2014 confirm resignation as directors effective at that date and the execution of share transfers. The Claimant is noted as an attendee but she was not in fact present. She knew nothing about the meeting. She was unaware that the sale was to be or had been completed on 14 April 2014.

This was in circumstances where she had been absent on maternity leave from 25 February. She had no contact with the Respondent thereafter until

she phoned Mr Hardaker of the First Respondent in early May to say that she was coming back to work on 6 May 2014. The evidence is that she duly returned to work. She was not told about any break in her employment. The wage records are incomplete but payments made suggest that she was paid statutory maternity pay/salary throughout. She received no P45.

The Claimant said that if she had been told in April that her employment was at risk of not continuing she would have been very upset. She understood the sale gave her greater future job security – that is what she was told by Mr Hardaker when the possibility was first raised in late 2013.

Certainly Mr Akhtar had no conversation of the Claimant around this time about her being re-employed following her resignation. There is no evidence or such discussion with Mr Hardaker.

### **Conclusions**

The Tribunal concludes that the First Respondent envisaged that the Claimant would resign from her employment. The Claimant was presented with and signed a letter to effect this at some, as then undetermined, future date. The Claimant had no awareness at any point that 14 April 2014 was the date it was intended that she resign. That date was inserted at completion without her knowledge.

She never formed an intention to resign from her employment on 14 April and never herself communicated that to the Respondent. The letter is therefore ineffective in terms of bringing her employment at an end on that date.

The Claimant's employment continued beyond 14 April with no indication whatsoever of a break before the point of her return from maternity leave on 6 May 2014. The Respondent treated her as continuing without break. There was no break in payment, no P45 was ever issued. The Claimant was never offered or accepted new terms of employment. There was therefore no break in her continuity.

The Tribunal considers that Mr Akhtar has been straightforward in his evidence to the Tribunal. He expected and understood there to have been a break. However the outgoing shareholders and directors of the company did not achieve that for him given the Claimant's lack of consciousness in respect of the sale occurring on 14 April.

Of course it is not uncommon for outgoing shareholders to sign away rights as employees. There is nothing unlawful about that and it is easily done through termination agreements with the individual employees where they acknowledge a termination of employment at a particular date. The Claimant however signed no such agreement in this case and was never asked to.

### **The Second Respondent's costs application**

The Second

**Employment Judge Maidment**

Date: 5 June 2017