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EMPLOYMENT TRIBUNALS

Claimant

Ms T Somauroo

Respondent

Rational IP Limited

Heard at: London Central

On: 12 July 2017

Employment Judge: Miss A M Lewzey (sitting alone)

Representation

For Claimant: In person

For Respondent: Mr K Chaudhuri, Consultant

JUDGMENT having been sent to the parties on 13 July 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1 Ms Somauroo was employed by the Respondent from 28 October 2015 until 31 January 2017 as a Patent Lawyer. She claims unauthorised deduction from wages in respect of her February 2017 salary, holiday pay and damages for breach of contract in respect of expenses. There is also a counterclaim by the Respondent for damages for deletion of emails in the sum of £2,250 and a counterclaim of £385 in respect of expenses of hiring a car.

The Evidence

2 I have heard evidence from Ms Somauroo and also from Ms R Percy, an Associate Partner of the Respondent. I also have an agreed bundle to which I refer by reference to the page numbers.

The Material Facts

3 Ms Somauroo commenced her employment as a Patent Lawyer with the Respondent on 28 October 2015. She has a contract of employment (30-43), of which the most important clause for the purposes of the issues is Clause 15.2 which reads:

“You shall repay all or part of any fees paid by Rational IP for any courses, exams or professional qualifications (including but not limited to the QLTS) undertaken by you as follows:

- (a) 100% of such fees if you terminate your employment pursuant to Clause 2.2 within 12 months of the end of date of any such courses, exams or qualifications.”

During the course of Ms Somauroo’s employment the Respondent paid her Colorado Bar fees and Patent Licence fees, fees for her to attend CPD courses in the United States, including air fares and hire car hire expenses, and her EQE fees.

4 On 9 January 2017 Ms Somauroo gave three months’ notice of termination of employment expiring on 9 April 2017 (88). The parties reached an agreement for Ms Somauroo to leave earlier, and by a letter dated 27 January 2017 (44) signed by both parties the contract was varied as follows:

“The parties hereby agree to terminate the contract with effect from 31 January 2017 (the Termination Date).

We agree to pay your salary for the full month of February 2017 regardless of the contract having been terminated. We shall also reimburse you your car rental amounts set out in your email of 21 May 2016 and USPTO fees you paid for as set out in your emails of 20 and 21 May 2016.

All other terms of the Contract shall remain in full force and effect.”

The effective date of termination of Ms Somauroo’s employment was therefore 31 January 2017.

5 I consider the claims made by Ms Somauroo first followed by the counterclaim and then deal with the overall situation. The unauthorised deduction claim is a claim under section 31 of the Employment Rights Act 1996. Ms Somauroo claims the sum of £5,416.66 gross as her salary for February 2017. The net figure is £3,764.41. The Respondent agrees that these figures are correct, but argues that they are entitled to deduct £4,450 in respect of Colorado Bar Registration fees, Colorado Bar Association fees and two Patent Courses in Florida.

6 In order to determine this claim I must construe clause 15.2 of the contract. That clause states

“You should repay all or part of any fees paid by Rational IP for any courses, exams or professional qualifications undertaken by you as follows....”

The reference is to fees, that is fees for attending any courses, exams or professional qualifications. It does not specify that travel expenses may be recovered.

7 The matters at issue fall into three categories. The first of the Bar Association fees. These cover Ms Somauroo's licence to practice as a patent attorney. That is not a fee for a course or exam or professional qualifications undertaken. It is a licence to practice. There is no clear evidence that it is industry practice for this to be recovered and the evidence of both parties contradicts each other. Indeed, the contract is not explicit and there is nothing from which I can imply a term into the contract. Accordingly, the Respondent is not entitled to deduct that amount which comes to £529.27.

8 In relation to the CPD points these are fees for attending two courses in Florida. Ms Somauroo went on these two courses. The course fees are fees for any courses, but the travel expenses are not recoverable under paragraph 15.2 of the contract. The amount recoverable is the fee for the two courses which in total comes to £3,008.58. I am not satisfied that this amounts to a penalty as Ms Somauroo argues. It is merely the cost of the course for CPD points. It is a fee for a course and therefore does fall under clause 15(2).

9 The third aspect relates to the EQE fees of £125.81. This represents a pre-EQE exam registration fee. It is a fee for an exam. It is therefore fee paid for an exam under clause 15.2 and is recoverable by the Respondent.

10 Accordingly, Ms Somauroo is entitled to be paid the sum of £5,416.66 gross from which must be deducted £3,008.58 in respect of the CPD courses and £125.81 in respect of the EQE pre-exam fee. That leaves £2,282.27 gross from which must be deducted £158.73 already paid which leaves a figure of £2,123.54 gross in respect which tax and national insurance must be accounted for.

11 The second claim is the claim for holiday pay. The effective date of termination is 31 January 2017. There is only an entitlement to holiday pay up to the date when employment comes to an end. As a result, since the employment ended on 31 January there can be no claim for holiday pay in respect of February and that claim fails.

12 The third claim is the claim for breach of contract in respect of expenses. The Respondent agrees the figure of £845 in respect of the expenses and has now withdrawn their counterclaim in relation to £385. Therefore, Ms Somauroo is entitled to be paid damages of £845.

Counterclaim

13 The Respondent has withdrawn the counterclaim in relation to the car rental and flights, although flights do not seem to have been claimed. The counterclaim now only relates to the deletion of emails. This covers two periods prior to and after 25 November 2016. Ms Somauroo's evidence is that there was no policy, no induction, no specific instruction concerning good housekeeping concerning emails or deletion. Her evidence was that she always replied to emails, so all emails were in an email chain under sent items. The evidence is that the Respondent operated an unusual system which maintained its records in the individual employee's emails on their laptops or phones. It cannot be said that Ms Somauroo was in breach of a contractual duty of which she had no knowledge prior to 25 November.

14 On 25 November 2016 there was a conversation with Ms Percy. It was Ms Somauroo who spoke with Ms Percy. Ms Somauroo's evidence is that she had discovered that deleted items were automatically deleted after 30 days. I accept that she was alarmed and spoke to Ms Percy, who referred to the archive feature which Ms Somauroo then set up. The Respondent has not demonstrated that any of the email examples in the bundle (89-104) were deleted apart from one (89). They have not shown on the balance of probabilities that Ms Somauroo acted contrary to the instructions and deleted the emails. Her evidence is that the emails were archived. In those circumstances the counterclaim fails.

15 The Respondent is ordered to pay to the Claimant the sum of £2,123.54 gross in respect of an unauthorised deduction from wages and in respect of which tax and national insurance must be accounted for. The Respondent is ordered to pay the sum of £845 as damages for breach of contract for failure to reimburse expenses and the Respondent is ordered to pay the Claimant her Tribunal fees in the sum of £390.

Employment Judge Lewzey
20 July 2017