



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms J Grice

v

**Dr J Brown and Dr M Simoes
T/A Litcham Health Centre**

Heard at: Cambridge

On: 18 September 2017

Before: Employment Judge LB James

Appearances

For the Claimant: Ms G Leadbitter, Counsel.

For the Respondent: Mr J Ratledge, Counsel.

JUDGMENT

1. The Claimant was unfairly dismissed.
2. The Respondent shall pay the Claimant a Basic Award of £2,874.
3. The Respondent shall pay the Claimant a Compensatory Award of £4,729.64.

REASONS

1. This is a claim coming before the employment tribunal sitting in Cambridge. The Claimant says that she was dismissed as being redundant but that the dismissal was unfair because no proper procedure was followed. The Respondent denies unfairly dismissing the Claimant and asserts that she was never dismissed. They say that the Claimant was in the course of a redundancy process when they withdrew the notice and sought to reinstate her.
2. The issues have been extensively set out in a statement of issues contained in the bundle of documents. The relevant law is to be found at s.98, s.135 and s.141 of the Employment Rights Act 1996.

3. In the hearing I received evidence from Dr Julian Brown and Mr Antony Bailey on behalf of the Respondents, and from Dr Jennifer Grice the Claimant on her own behalf. I also had the benefit of an agreed bundle of documents comprising 92 pages.

Findings of Fact

4. I find the following relevant facts. The Claimant was employed by the Respondents as a general practitioner. On the 20 December 2016, following completion of her surgery, the Claimant had a meeting with Dr Brown, a partner in the practice and Mr Bailey, the practice manager. On his own admission Dr Brown did not handle the meeting well. He claims that his intention was to inform the Claimant that she was subject to a redundancy process. I have noted the evidence of the Claimant as to the language used by Dr Brown. Dr Brown has been unable to recall exactly what he said at the meeting. I accept the Claimant's version as correct. I find that Dr Brown informed the Claimant that she was being made redundant effective immediately. The Claimant was handed a letter on the same day which stated inter alia:
We are formally informing you of our intent to start the process of the withdrawal of your contract due to redundancy of your post and request that you go on garden leave with immediate effect until mutual acceptance of your redundancy package.
5. The Respondent's have argued that this was simply an expression of the start of a redundancy process. On examination I find that the letter is confirmation that the Respondents had made her redundant. The Respondent's have made much of the fact that there is no expression of concern or upset from Dr Grice, and that as a result they were entitled to assume that she had agreed to being made redundant. I disagree, an employer simply cannot abdicate his responsibilities by requiring an employee to raise an objection. An employer is responsible to adopt a fair and proper procedure when contemplating redundancies, and Respondents failed to do so.
6. The subsequent emails dated 21 December 2016 and 29 December 2016 reinforce my findings that the Claimant had been dismissed. The e-mail dated 21 December 2016 and sent to all staff stated that 'I am sorry to inform you that Dr Jenny Grice will no longer be working at Litcham Health Centre'. The e-mail dated 29 December 2016 is from Wendy Carter and addressed to the Claimant and states 'Your December payslip has been posted to you. So sorry not to see you at Litcham any more and I do hope everything will work out for you and your family in the future'. In addition the Respondent's allowed the Claimant to clear her desk and this is not something that would be contemplated and accepted by the Respondents unless they were satisfied that the Claimant's employment was ending and that she was not returning to work. The Claimant was placed on "garden leave". This is a process that I would not expect save during a notice period or a period immediately following termination of employment.

7. There came a time in January 2017 that the Respondents decided that due to increased workload they required the services of the Claimant and she was asked to resume her duties. She sought clarification of the basis on which she would be returning and was explicitly told that it was to serve out her notice period. There was no suggestion from the Respondents that they did not consider her to have been dismissed.
8. The Claimant returned in order to comply with her contractual obligations under her contract of employment. I have noted that on 31 January 2017 the Claimant was notified by the GMA that under the terms of her service with the NHS her redundancy entitlement amounted to £53,243.82. This information was passed to the Respondents. At this point the Respondents reconsidered their position and decided that they would like to keep the Claimant as an employee and avoid the contractual redundancy payment. I have no doubt that the decision to reconsider the Claimant's position was entirely due to being notified of the contractual redundancy payment. As a result the Respondents wrote to the Claimant on 2 February 2017 stating that following another meeting her position was no longer "at risk" of redundancy.
9. On 8 March 2017 the Claimant wrote to the Respondents saying that she would be leaving at the end of her notice period. The Respondents have sought to characterise this letter as the Claimant resigning her position. It is not. It is simply a statement that she would be leaving at the end of her notice period. In response the Respondents wrote to the Claimant on 13 March 2017 in an attempt to offer her reassurance on her return to work. That letter ignores the fact that the Claimant was serving out her notice period and simply expresses the hope that following a meeting the Claimant would be returning to work which appears to be taken for granted.
10. I am satisfied that the Respondents sought to dismiss the Claimant for redundancy on 20 December 2016 and gave notice to that effect. It was not until the Respondents recognised their liabilities for a redundancy payment under the BMA contract that they had any reservations about that dismissal. The Respondents sought to withdraw their notice of dismissal. They cannot do this without the consent of the Claimant and she gave no such consent.
11. Alternatively the Respondent has submitted that they offered suitable alternative employment to the Claimant. The offer was not of alternative employment. It was for the Claimant to return to the same employment. The Respondents have sought to dress their attempt to unilaterally withdraw the dismissal notice as an offer of suitable alternative employment. I reject that argument and as a result s.141 of the Employment Rights Act 1996 does not impact this decision.

Conclusions

12. I find that the Claimant has been unfairly dismissed because of the Respondent's failure to adopt any proper consultation procedure with her, in fact they offered virtually no process at all.

13. The Claimant claims statutory redundancy payment and compensation for the time by which her employment would have extended had a proper redundancy process been adopted. The Basic Award is agreed at £2,874. A net weeks' pay is agreed at £629.94 and the Claimant also seeks an award of £950 for loss of statutory rights.
14. The Respondent has argued that by not raising a grievance or making an appeal the Claimant's compensation should be reduced. In the same vein the Claimant submits that by not following a proper redundancy process her compensation should be increased. Neither party has acted in accordance with the requirements of the Code of Practice and as a result I balance them out against each other and make no uplift or reduction to the awards. I find that an appropriate sum for the loss of statutory rights in this case should be £950 which is approximately one weeks' gross pay.
15. I have considered how long it would have taken to undertake a proper redundancy procedure. I find that in light of the Respondent's acting immediately before the Christmas period there would have been delays not least of which would have been giving the Claimant sufficient time to contact the BMA for advice which might not have been possible over the holiday period. Further I have noted the time it took the BMA to respond to the Claimants inquiries in any event. I find that a proper redundancy process could have been undertaken in 6 weeks, but not less. Accordingly I award the sum of £3,779.64 as compensation for the loss of her employment. Together with the sum of £950 for loss of statutory rights the total Compensatory Award shall be £4,729.64.

Employment Judge James

Date: ...10.10.17.....

Sent to the parties on:

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For the Tribunal Office