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EMPLOYMENT TRIBUNALS

Claimant: Ms S Emmanuel

Respondent: Clapton Park Management Organisation

Heard at: East London Hearing Centre **On:** 16 October 2017

Before: Employment Judge M Martin (sitting alone)

Representation

Claimant: In person

Respondent: Mr P Livingston (Counsel)

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that the Claimant's complaint of breach of contract (enhanced redundancy payment) is not well-founded and is hereby dismissed.

REASONS

Introduction

1 The Claimant gave evidence on her own behalf. Councillor Sharon Patrick gave evidence on behalf of the Respondent. The Tribunal were provided with a bundle of documents marked Appendix 1. The Claimant produced a number of additional documents which were added to the bundle throughout the hearing.

The law

2 The Tribunal considered The Employment Tribunals Extension of Jurisdiction Order 1994 in particular:-

Article 3:

“Proceedings may be brought before an employment tribunal in respect of a

claim of an employee for the recovery of damages or any other sum if:–

- (c) the claim arises or is outstanding on the termination of the employee's employment"

Article 10:

An employment tribunal shall not in proceedings in respect of a contract claim ... order the payment of an amount exceeding £25,000."

The issues

3 The issues which the Tribunal had to determine were whether the Claimant was entitled to an enhanced redundancy payment.

4 In that regard the Tribunal had to consider whether there was a contractual entitlement to an enhanced redundancy payment.

5 The main issue in this case was which was the relevant contract which was applicable to the Claimant's employment at the time of her dismissal for redundancy, namely whether it was the 2005 or the 2006 contract.

Findings of fact

6 The Respondent is a tenant management company established in the 1990s to provide housing management services for the London Borough of Hackney.

7 The Claimant commenced employment with the Respondent as a Housing Manager in 1999.

8 The Claimant's contract of employment for that role is at pages 30-51 of the bundle.

9 The contract provides inter alia that the Claimant will commence employment at a starting salary of £22,170 per annum within the salary scale SO2. She will be entitled to 25 days holiday plus 8 Bank Holidays. The holiday will be prorated if she works part-time. The contract also refers to the Claimant being required to work extra hours and attend evening meetings. It states that she will be paid overtime for those additional hours or be provided with time off in lieu. There are no details with regard to sick pay. The Claimant said in evidence that she was entitled to six months full pay whilst on sickness absence.

10 The contract does not make any reference to an enhanced redundancy payment.

11 The Claimant said in evidence before the Tribunal that during the time that she worked as a housing manager she worked with employees seconded from the London Borough of Hackney. She said that those employees were entitled to enhanced redundancy payments which had been incorporated into their contracts as part of the London Borough of Hackney's policies and procedures. Councillor Patrick said in

evidence before the Tribunal that some council employees, including housing managers, were at one stage entitled to enhanced redundancy payments, but those were provided for some years previously. She said that she understood that those terms were more than the statutory entitlement, but were not as generous as the terms which the Claimant was now claiming.

12 In 2005 the Claimant commenced working part-time, so her salary and holiday pay entitlement were prorated accordingly.

13 In November 2005 the Respondent decided to outsource their housing management services. As part of this outsourcing programme, employees were transferred to another provider who was going to manage those services. Those employees who were seconded from the London Borough of Hackney returned to their previous employer.

14 The Claimant was the exception. She wished to remain with the Respondent and was appointed as PA to the Chief Operating Officer. A new Chief Operating Officer, a Mr Darren Willoughby, was appointed in or around October 2005.

15 Part of the Claimant's role was to manage the outsourcing of the housing contract and assist the Chief Executive. She said that she was effectively continuing the role which she had previously held. The Claimant's job description for the role is at pages 65-67 of the bundle. The job summary is at page 65. It states that she is to provide secretarial and administrative support to the Chief Operating Officer and members of the Board, as and when required. It also states that she is responsible for the day-to-day administration and clerical functions of the housing office. The Claimant says that she was largely undertaking the role which she had previously undertaken. Councillor Patrick said that part of the Claimant's role would be to manage and administer all internal files including personnel files.

16 The Claimant said in evidence to the Tribunal that, following a meeting between Mr Willoughby and Michael Debell, who was then the Chair of the Board, she was issued with a new contract of employment. She said this meeting took place towards the end of 2005. That contract is at pages 45-50 of the bundle.

17 The 2005 contract provides inter alia that the Claimant would be paid a salary of £15,500. It states that the date of commencement of employment is 24 November 2005. Her previous employment counts towards her period of service. It states that her working hours would be 17½ and that she would be entitled to 15 days holiday plus 8 Bank Holidays. It also states that she will be entitled to six months full pay and six months half pay for any certified sickness absence. The contract also includes an enhanced redundancy provision at page 48 of the bundle. It states:

“An enhanced redundancy package applies to this post following the completion of one year's service.

The package shall be calculated on the basis that payment shall be made for each year of service at the rate of 10 week's pay for each year worked up to a maximum of 10 years (100 weeks).”

18 The contract is not signed by the Respondent and there is no place for the Respondent to sign the contract. At the back of the document there is an acknowledgment slip which the Claimant says she signed on 24 November 2005, and returned as is noted at page 50 of the bundle. The Claimant said in evidence before the Tribunal that she could not recall who she gave the signed acknowledgement slip to, but thought it must have been Mr Willoughby.

19 Mr Willoughby was given a new contract which Councillor Patrick said was put before the Board in late 2005. She could not remember the details of the contract, but believed it included an enhanced redundancy payment. She said that an investigation had been conducted into Darren Willoughby which included an investigation relating to the terms of his contract of employment, including the provision relating to the enhanced redundancy terms. Councillor Patrick said Mr Willoughby resigned from his employment before the matter had been concluded. The Claimant and Councillor Patrick indicated that Mr Willoughby had brought Employment Tribunal proceedings.

20 Councillor Patrick said in evidence before the Tribunal that the Claimant's contract of employment dated 2005 had not been put before the Board. She said that the Respondent was a not for profit organisation and would not agree to a redundancy package for administrative staff which was similar to that for a Chief Operating Officer. She said that the organisation was responsible for public money and that she would expect any contract of that nature to be presented before the Board for approval.

21 On 20 December 2005, Mr Debell, the Chair of the Board, wrote to the Claimant regarding her appointment as personnel assistant (PA). That letter is at page 51 of the bundle. The letter states that the post would become effective from 1 January 2006 at the Claimant's current salary of £13,518 per annum. It goes on to state that he encloses a new contract and a job description for the Claimant to sign and return. He also states that he would be grateful if the Claimant could confirm her acceptance upon receipt of the letter.

22 The 2006 contract is at pages 52 to 59 of the bundle. The Respondent says that this is the document which was sent with that letter.

23 The 2006 contract states that the Claimant would be paid a salary of £13,518 and that she would be working part-time, namely 17½ hours a week. The contract goes on to indicate that the Claimant may be required to work extra hours or attend evening meetings and that she would be paid overtime or given time off in lieu for any extra hours which she was required to work. The contract also states that the Claimant would be entitled to 25 days holiday as a full-time employee which would be prorated for part-time employees together with all the public holidays. The contract also states that the Claimant would be entitled to statutory sick pay if she was off sick absent. The contract does not make any reference to any enhanced redundancy payment. The contract includes an updating statement which states at page 58:

"This statement updates and takes the place of all previous agreements and arrangements (if any) relating to your employment by the Organisation."

24 The final page of the document includes an acknowledgement receipt in relation

to the contract of employment and a provision for the same to be signed by the employee and employer. However, the document is not signed by either party and is not dated.

25 In evidence before the Tribunal the Claimant said that she had never received this document nor had she signed it.

26 The Claimant has produced a bank statement for January 2006. It shows that she was paid the sum of £1,150.82 on 13 January by her employers – page 143 of the bundle.

27 The Respondent has undertaken a calculation of what a monthly payment of £1,150.82 might represent in terms of any gross salary. They have calculated that that figure would represent a gross salary of £19,000 as is noted at page 143b of the bundle.

28 In evidence before the Tribunal the Claimant admitted that she was on occasions paid overtime and acknowledged that the sum of £1,150.82 could have included overtime but she did not know what, if any, overtime she had worked at that time.

29 The Respondent was unable to locate any pay records for the Claimant, other than one payslip for the Claimant which was in April 2006. That payslip which is at page 60 of the bundle. It shows that the Claimant was paid the sum of £889.66 that month.

30 The Respondent says that they calculated what the Claimant's gross salary would be for a net monthly salary of £889.66. The Respondent said that they used a calculating tool to try and calculate what the equivalent gross salary would be for such a net monthly amount. Using that tool, they showed that it amounted to an equivalent gross annual salary of between £13,916-£13,917. Page 144 of the bundle shows how that sum of £13,916-£13,917 has been calculated. The Respondent says that this figure is consistent with the Claimant's salary, as set out in the 2006 contract taking account of any annual increase.

31 On 27 March 2007, a letter was sent from Alpay Keremezo the Chair to Ms Mowett who was part of the Board members and Chair of the Staffing Sub-Committee. The letter includes appraisals for the six month period relating to the Claimant for the period to June 2006. The letter itself also sets out brief details of the annual salary and hours of work of the Chief Operating Officer and his PA, namely the Claimant. The letter states that the Claimant's wages as at February 2007 are £13,910 per year and that she worked 17½ hours per week. That letter is at page 61 of the bundle. The Respondent say that the sum set out in that letter is largely consistent with the Claimant's salary as set out in the 2006 contract. The Claimant's signed appraisal for the period June 2006 is attached to that document and is at pages 62-64 of the bundle.

32 In evidence before the Tribunal the Claimant says that from 2005 she was paid full sick pay for any sickness absence. She says that that is consistent with the 2005 contract and not with the SSP which was to be paid under the 2006 contract.

Councillor Patrick does not dispute that the Claimant may have received full sick pay for any sickness absence, but stated that she thought that this was simply continuing the terms of the Claimant's original contract back in 1999, before the transfer of the services. Councillor Patrick said that she believed the Claimant would have received full sick pay under her original contract of employment.

33 In evidence before the Tribunal the Claimant said that she took more holiday than was set out in her 2006 contract. Councillor Patrick said that in reviewing the Claimant's holiday, it seemed that the Claimant took more holiday than she was entitled to under either the 2005 or the 2006 contract.

34 In early 2017 the Respondent decided to look at making redundancies within the Organisation. The Claimant's role was put at risk.

35 The Claimant says that as part of that redundancy consultation she was invited to a consultation meeting with a Mr Tony Brown who was engaged by the Respondent as a consultant from a provider company.

36 The Claimant said in evidence that Mr Brown said at the meeting that he could not find the Claimant's contract of employment. She was asked to bring a copy of her contract of employment to the meeting.

37 In evidence to the Tribunal the Claimant says that she attended at the consultation meeting on 9 February 2017 accompanied by her trade union representative and brought along the 2005 contract with her.

38 In evidence before the Tribunal the Claimant says that at the subsequent consultation meeting on 2 March 2017, Mr Brown produced the 2006 contract stating that it had been found in a box.

39 In evidence before the Tribunal Councillor Patrick said that the Respondent's HR files were in a mess, which was why they were unable to locate the 2006 contract, but that they brought in an administrative assistant who was asked to carry out a search. She says that they then searched the records and that the 2006 contract was found in a box.

40 Councillor Patrick said in evidence before the Tribunal that she considered that it was mainly the Claimant's responsibility to manage the Respondent's personnel records. In evidence before the Tribunal the Claimant said that she believed it was the responsibility of the Treasurer who was responsible for payroll and HR.

41 At the subsequent meeting with Mr Brown on 2 March 2017 the Claimant told Mr Brown that she had not seen the 2006 contract before nor had she signed it.

42 The redundancy situation was subsequently confirmed. The Claimant was then subsequently made redundant on 11 April 2017.

43 The terms of the Claimant's redundancy payment are set out at page 138(b) of the bundle. She was paid a statutory redundancy payment, but was not paid any enhanced redundancy payment.

44 The Claimant raised a grievance about the non-payment of her enhanced redundancy payment.

45 As part of her grievance, she obtained a statement from Mr Willoughby which is at page 94 of the bundle. He states that the Claimant would have transferred under the enhanced contract in 2005, prior to the staff being transferred to the new service provider. He states that he believed that the claimant is entitled to the enhanced redundancy package which was included as part of that contract. He states that the enhanced contract was only for the two remaining employees. That statement is dated 22 March 2017.

46 The grievance was heard by Ms J Mowett, then Chair of the Board. A detailed investigation was undertaken into the grievance. The report from that grievance investigation undertaken in April 2017 is at pages 68-76 of the bundle. The recommendations from the grievance report are set out at page 75 of the bundle. It is noted that it was difficult to establish with absolute certainty either way which contract was valid and that the recommendations are based on the balance of probabilities taking account of the information which was available. It was noted that there has been a lack of records which had led to the uncertainty on both parts. The recommendation was that, as there was no definitive evidence that the 2005 contract was valid, it is more likely than not that the 2006 contract was the appropriate contract. Therefore the enhanced redundancy payment should not be paid. Accordingly the Chair of the Board concluded that the grievance should not be upheld. It was dismissed.

47 The Claimant appealed against the grievance decision. Her appeal was heard by Councillor Patrick and another member of the Board. The Claimant was represented by her trade union representative. Councillor Patrick acknowledged that there was limited evidence available, but concluded that the 2005 contract could not have been issued. As a Board member at the time, she said that she was not aware the 2005 contract had been considered by the Board which she would have expected if it contained a redundancy clause to that effect. She said that it seemed unlikely that a decision would have been made to place a junior employee on the same terms and conditions as the Chief Operating officer. She also said that the only evidence which was available, limited as it was, pointed towards the 2006 contract. She did not believe that the 2006 contract would have been issued so shortly after the 2005 contract was apparently issued. She said that she concluded that the 2006 contract was more in line with the Claimant's salary in relation to her pay. The appeal was not upheld. She confirmed her conclusions in evidence before the Tribunal.

Submissions

48 The Claimant submitted that she was entitled to the enhanced redundancy payment. She relied on the 2005 contract which she said was signed by her. She also relied on the statement of Mr Willoughby, which she submitted supported her case that an enhanced redundancy payment was incorporated into her contract of employment. The Claimant also submitted that other London Borough of Hackney employees were paid enhanced redundancy payments in the past.

49 The Respondent's representative filed written submissions. He submitted that the contract which subsisted at the time of the Claimant's redundancy was the 2006 contract and not the 2005 contract. He said that, although there was limited evidence available, there was some documentary evidence which supported the Respondent's case that it was the 2006 contract which was in force at the relevant time. He further submitted that, in any event, the 2006 contract superseded any contract which might have been entered into in 2005.

Conclusions

50 This Tribunal reminded itself that the onus of proof in this case is on the Claimant to prove, on the balance of probabilities, that she is entitled to an enhanced contractual redundancy payment.

51 The Tribunal finds that, on balance, it was the 2006 contract, rather than the 2005 contract, which was the contract in force at the time of the Claimant's redundancy.

52 The Tribunal acknowledges that there is limited evidence available, but concludes that the evidence points in the direction of the 2006 contract being the applicable contract at the relevant time for the following reasons:-

- 52.1 There is no offer letter made to the Claimant in relation to the 2005 contract, in contrast to the position with regard to the 2006 contract.
- 52.2 The 2005 contract was not placed before the Board. The evidence suggests that a contract of such a nature incorporating an enhanced redundancy payment of this nature would have been placed before the Board, particularly bearing in mind that the contract of the Chief Operating Officer which apparently did include some form of enhanced redundancy payment was placed before the Board.
- 52.3 An offer letter was sent to the Claimant in relation to the 2006 contract. It seems unlikely that such an offer letter would have been sent, if the 2005 contract was already in existence.
- 52.4 The letter from the Chair referring to the claimant's appraisal in 2007 refers to a salary of around £13,000 which is consistent with the 2006 contract, but inconsistent with the 2005 contract where the Claimant was said to be earning a sum in excess of £15,000.
- 52.5 The Claimant's payslip in April 2006 shows a net monthly income of £889 which appears to be consistent with a salary in the range of £13,900. That again is consistent with the 2006 contract, but inconsistent with the higher salary set out in the 2005 contract. The higher salary paid to the Claimant in January 2006 of £1,150 could, the Claimant acknowledged, have also included overtime payments.
- 52.6 The other terms of the Claimant's contract other than pay do not really assist the Tribunal very much, in that it would appear the Claimant's sick

pay entitlement may well have related to the terms set out in her original contract of employment. The holidays which she took do not appear to be consistent with either the 2005 or the 2006 contract.

52.7 The very limited evidence which is available relate to pay and those few documents appear to be consistent with the 2006 contract and not the 2005 contract.

52.8 In any event, on the face of it the 2006 contract superseded the 2005 contract as is clearly indicated in the contract itself.

53 For those reasons the Tribunal finds that the 2006 contract was the contract in force at the time of the Claimant's redundancy.

54 Accordingly the Claimant's claim for an enhanced redundancy payment is not well founded and is hereby dismissed.

Employment Judge Martin

13 November 2017