



EMPLOYMENT TRIBUNALS

Claimant: Mr J Hall
Respondent: Peel Hotels plc
Heard at: Leeds **On:** 10 January 2018
Before: Employment Judge Davies

Representation

Claimant: In person
Respondent: Mr G Peacock (General Manager)

RESERVED JUDGMENT

1. The Claimant's claim of wrongful dismissal (notice pay) is not well-founded and is dismissed.
2. The Claimant's claims for holiday pay and pay for lieu days are dismissed on withdrawal by him.

REASONS

1. Introduction

- 1.1 This was the hearing to decide claims of wrongful dismissal (notice pay) and for pay in lieu of accrued holiday and lieu days brought by the Claimant, Mr J Hall, against the Respondent, Peel Hotels plc. The Claimant represented himself and the Respondent was represented by Mr G Peacock, General Manager of the Midland Hotel, Bradford. I was provided with various documents by both parties, which I considered so far as they were relevant. The Claimant gave evidence on his own behalf. For the Respondent I heard evidence from Mr Peacock, Ms J Miller (Front Office Manager) and Mr R Healey (Operations/Deputy Manager). Both parties sought to rely on written statements. I made clear that the fact that the witnesses did not attend to be cross-examined would affect the weight I could give to their statements. The Respondent had also prepared further witness statements and brought other witnesses to give evidence. However, when we had discussed the issues to be decided, we agreed that their evidence was not relevant to the issues.
- 1.2 It was necessary for me to reserve my judgment because the Claimant had an appointment and could not wait at the Tribunal for me to give an oral judgment.

2. The Issues

- 2.1 In discussion at the start of the hearing, the Claimant confirmed that his holiday pay claim had been settled in part. He was now only pursuing pay in lieu of holiday accrued during what would have been his notice period. I explained that his entitlement under the Working Time Regulations was only to pay in lieu of holiday accrued up to the effective date of termination of his employment. He also confirmed that he had now been paid for the lieu days. Accordingly, he withdrew his claims for holiday pay and for pay for the lieu days.
- 2.2 That left the claim for notice pay. The parties were clear that there was a single issue: the Claimant said that he was expressly dismissed on 30 September 2017 and the Respondent said that he resigned. The Claimant confirmed that he was not saying, by way of fallback, that he was constructively dismissed. The Respondent confirmed that it was not saying that it was entitled to dismiss him without notice because of misconduct in any event. It accepted that if I found he was dismissed, he should have been paid four weeks' notice. The only issue was therefore whether the Claimant was dismissed or whether he resigned by walking out and not returning on 30 September 2017.

3. The Facts

- 3.1 The Respondent, Peel Hotels plc, runs the Midland Hotel in Bradford. From June 2017 the Claimant was employed at the hotel as Operations Manager. I was concerned solely with the way in which his employment came to an end.
- 3.2 The Claimant's evidence was that on Saturday, 30 September 2017 he was responsible for a large function taking place in the hotel that evening. He told me that at around 6 pm he was in the kitchen writing the plan on the whiteboard of who would do what. Mr Healey and Ms Elderbrant were also present. Mr Peacock came into the kitchen and expressed concerns about the preparation for the event. He said that they were short staffed and not organised. The Claimant said that when Mr Peacock left he told Ms Elderbrant and Mr Healey that he was not happy with how he had been spoken to. He was annoyed so he walked into the ballroom to calm down. Mr Peacock came into the ballroom and asked if he was okay with what Mr Peacock had said. He told Mr Peacock that he was not happy because he felt that he was organised and knew what he was doing. He told Mr Peacock that he had confused matters and made it more stressful. Mr Peacock told him that he was not comfortable with it and that he was not happy with how the Claimant had spoken to him. He then told him to, "Fuck off" and said "I will do the function. Leave your keys on the way out." The Claimant said that he was in shock. He went to the back of reception where his bag was, left his keys on the desk and left the building. He drove to a nearby McDonald's where he tried to digest what had happened and contacted his wife. He also texted Ms Elderbrant. I saw that text. It was sent at 7:25 pm. The Claimant wrote, "Hi, when the boss tells you after having words, to fuck off and I'll do it myself and leave the keys. I'm out of here! I will be taking it further so keep it to yourself for now please X" In cross-examination, he accepted that this was sent in response to a missed call from Ms Elderbrant.
- 3.3 I also saw subsequent texts sent by the Claimant and Ms Elderbrant on 3 October 2017. When Ms Elderbrant asked the Claimant what had actually happened he

told her that Mr Peacock had sacked him on Saturday night. He had put in a complaint to the managing director and now Mr Peacock was saying that he “walked” and that he’d been trying to manage him out of the business for ages.

- 3.4 The Claimant did not attend work after 30 September 2017. The Respondent treated him as having resigned without notice.
- 3.5 Mr Peacock’s version of events was different. He said that he attended work on Saturday, 30 September 2017 to catch up on his workload. He saw the Claimant who seemed shocked and surprised to see him. The Claimant accepted that he was surprised to see Mr Peacock. Mr Peacock said that between 4 and 5 pm he met the Claimant, Mr Healey and Ms Elderbrant when he went into the ballroom and kitchen. Ms Elderbrant seemed stressed and expressed concerns about how much there was to do to prepare for the event that evening. Mr Peacock looked at the staffing and plan on the board and could not believe the number of staff the Claimant had organised and the plan that he was putting on the board, given the number of guests and the time schedule. Mr Peacock said that he questioned the Claimant’s organisation and preparation in front of his colleagues. He said that he had to change the plan and told the Claimant that he would be expected to run a team during the evening. He said that he wrote that down on the whiteboard. Sometime later in the ballroom the Claimant was putting butter on the tables and Mr Peacock told him that he was not comfortable. The Claimant said that he was, and always had been. Mr Peacock again said that he was not and told the Claimant not to speak to him like that. They then went their separate ways. Mr Peacock vehemently denied telling the Claimant to “fuck off.” Mr Peacock was then in the restaurant between around 6 pm and 6:40 pm assisting with a tour party. When he went back upstairs at around 6:40 pm he could not find the Claimant. He spoke with the chef about service and the casual staff then started to arrive so he looked for the Claimant to do the briefing. When Mr Healey came in he asked where the Claimant was. In the end he asked Ms Elderbrant to telephone the Claimant but he did not answer. Later Ms Elderbrant came back in from the ballroom and said that the Claimant had texted her and told her that he had walked out and that Mr Peacock had told him to “fuck off”. Mr Peacock said that he was, “shocked and amazed.”
- 3.6 In cross-examination the Claimant accepted that the timings might have been as Mr Peacock described them, that is to say that the conversation in the kitchen may have taken place at about 4:30 to 5:00 pm and the conversation in the ballroom at about 5:00 to 5:15 pm. He said that he definitely left the premises straightaway. He accepted that he had texted Ms Elderbrant from the McDonald’s car park, which was some two hours later. He said that he had been there for that whole time.
- 3.7 The Claimant said that Mr Peacock had not told him that he would need to run a team when he spoke to him by the whiteboard in the kitchen. Mr Healey, who was present during that conversation, gave evidence about it. I found him to be a measured and convincing witness. He was later shown a series of text messages between him and the Claimant. He said that some text messages were missing from those the Claimant had copied. The Claimant disputed that. However, Mr Healey still had the message exchange on his own mobile phone and referred me to the two missing messages. The Claimant then accepted that those messages had been sent. This suggested that Mr Healey had a clear recollection of events.

Mr Healey told me that he clearly remembered Mr Peacock telling the Claimant that he would have to run a team and writing his name on the whiteboard. I accepted his evidence.

- 3.8 Mr Healey also gave evidence that after Mr Peacock had left the kitchen the Claimant said something along the lines that he was “one word away from walking out of here.” The Claimant disputed that but Mr Healey maintained that the comment had been made. In her evidence Ms Miller said that the Claimant had told her the previous day, 29 September 2017, that it would only take one thing for him to “blow today and that will be it.” Again the Claimant disagreed that these comments had been made.
- 3.9 Mr Healey gave evidence that after the discussion in the kitchen he had been in and out of the ballroom. At one point he had overheard a conversation between Mr Peacock and the Claimant, in which Mr Peacock said that he was not comfortable and the Claimant told him that he was. Mr Healey said that he did not hear Mr Peacock telling the Claimant to “fuck off”.
- 3.10 Mr Healey also said that he saw the Claimant bringing some stock up for the Foyer Bar as people were arriving at 6:15 to 6:30 pm. He clearly remembered it because he was concerned about what time it was. The Claimant said that he did not bring any stock up. Mr Healey also said that shortly afterwards, around 6:30 to 6:45 pm, he went for a cigarette break outside. He saw the Claimant on his phone emerging from the back of the hotel in the car park. The Claimant saw him and went back into the building via the back door. The Claimant said that this had not happened.
- 3.11 The Claimant had an exchange of text messages with Mr Healey on Sunday, 1 October 2017. The Claimant texted him in similar terms to the text sent to Ms Elderbrant on the evening of 30 September 2017. As indicated above, the Claimant had produced what he said was an exchange of text messages between him and Mr Healey. However, it became clear that two messages were missing. The first missing message showed Mr Healey saying to the Claimant, “Boss, you’ve walked out. Perhaps you should consider talking to Mr P.” The Claimant’s response was that he had not walked out. He reiterated his account of the conversation.
- 3.12 This is a case in which there is a stark disagreement about what was said. Assessing all the evidence set out above, on a balance of probabilities I prefer the Respondent’s version of events. In reaching that view, I have taken particular account of the following:
- 3.12.1 The Claimant’s description of the timings of the various conversations in his initial evidence appears to have been incorrect. Events cannot have taken place as he described because Mr Peacock was downstairs in the restaurant between 6:00 and 6:40 pm. I therefore prefer Mr Peacock’s evidence about the timings. That was consistent with what Mr Healey said. The Claimant was insistent that he left as soon as Mr Peacock swore at him and told him to leave his keys. If that were right, he must therefore have left at about 5:15 pm. It seemed to me unlikely that he would have spent two hours at McDonald’s, which he must have done in order to send a text to Ms Elderbrant from there at 7:25 pm. I find it much more likely that he was still at work and was seen by Mr Healey both

bringing up stock to the Foyer bar at around 6:15 to 6:30 pm and shortly afterwards leaving from the back of the hotel. That discrepancy about timings and where the Claimant was at different points casts doubt on his credibility.

- 3.12.2 I have already indicated that I found Mr Healey a persuasive witness. I accept his evidence that Mr Peacock did tell the Claimant when they were standing near the whiteboard that he would have to run a team that night. That was consistent with Mr Peacock's evidence, but not with the Claimant's. I also accepted the evidence from Mr Healey and Ms Miller that the Claimant told each of them separately words to the effect that he was one word away from walking out. Each of them gave credible evidence about this and I was struck by the similarity in the comments said to have been made. Those comments point towards the Claimant walking out rather than Mr Peacock dismissing him, and to an element of pre-planning.
- 3.12.3 It seemed to me that the conversation Mr Healey had overheard in the ballroom walls the conversation Mr Peacock was describing between him and the Claimant. Mr Healey did not hear Mr Peacock using an expletive or telling the Claimant he would do the job himself and to leave his keys. It seems to me unlikely that there would have been two conversations in which Mr Peacock told the Claimant that he was not comfortable with today and the Claimant said that he was. That therefore tended to suggest that Mr Peacock's account of the conversation was truthful.
- 3.12.4 The main piece of evidence that tended to support the Claimant's version of events was the text messages he sent. The message he sent to Ms Elderbrant at 7:25 pm was consistent with his version of events, as were subsequent messages he sent to her and others. However, I noted that the text message from Mr Healey to the Claimant in which Mr Healey asserted that the Claimant had walked out and should consider talking to Mr Peacock had been omitted from the messages provided by the Claimant. The Claimant did not explain how that had happened. While the content of the Claimant's text messages was consistent with his version of events, overall I preferred the Respondent's account. The Claimant's account lacked credibility whereas Mr Peacock's account was supported by Mr Healey's persuasive evidence. There is, of course, another explanation for the content of the text messages, namely that the Claimant was trying to present events in a different light. Given that the Claimant referred in his initial text to Ms Elderbrant to his intention to take this matter further, that explanation seemed to me to be a plausible one.

- 3.13 Therefore, for all these reasons, I find that Mr Peacock did not dismiss the Claimant on 30 September 2017. Rather, the Claimant took offence at Mr Peacock's criticisms of him and was annoyed at having to lead a team that evening and walked out, leaving his keys behind. He then sent text messages and correspondence suggesting that he had been dismissed when that was not in fact the case. He did not return to work after that date.

4. The Law

- 4.1 An employee who voluntarily resigns is not dismissed. Sometimes a question arises whether ambiguous words amount to a resignation. The Tribunal must

consider all the surrounding circumstances and consider how a reasonable employer would have understood the words used in the circumstances.

5. Application of the law to the facts

- 5.1 This is a case that turns essentially on the findings of fact. I have made a finding that Mr Peacock did not dismiss the Claimant on 30 September 2017. For completeness, I find that the Claimant's actions constituted a resignation. He walked out in the middle of a shift leaving his keys behind and then suggested that he had been dismissed. A reasonable employer in all the surrounding circumstances would have understood the Claimant to be resigning. That was particularly so given his comments to Ms Miller and Mr Healey to the effect that he would walk out if one more word was said to him.
- 5.2 Accordingly, the Claimant was not dismissed, he resigned without giving notice. His claim for notice pay cannot therefore succeed.

Employment Judge Davies

Date: **10 January 2018**