



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs Celia Piper

Respondent

AND Mr Norman Allen and Mrs Julie Allen
Together trading as Pat's Greeting Cards

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin

ON

19 April 2018

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: In person

JUDGMENT

The judgment of the tribunal is that:

1. The claimant is entitled to a statutory redundancy payment of £4,239.00; and
2. The claimant succeeds in her claim for breach of contract and the respondent is ordered to pay the claimant the sum of £652.00.

REASONS

1. In this case the claimant Mrs Celia Piper claims entitlement to a statutory redundancy payment, and brings a claim for breach of contract in respect of her unpaid notice period. The respondent denies the claims on the basis that although the claimant's position was redundant, she was not entitled because she declined suitable alternative employment.
2. I have heard from the claimant, and I have heard from Mrs Patricia Merrett on her behalf. I have heard from Mrs Julie Allen who is partner in the respondent business.
3. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

4. The claimant Mrs Celia Piper commenced employment in February 1999 as a retail assistant in a shop known as Pat's Greeting Cards at 6 Westgate Street in Launceston in Cornwall. In February 2003 that business was purchased by the current respondent Mr Norman Allen and Mrs Julie Allen trading in partnership together as Pat's Greeting Cards. Mr and Mrs Allen are involved in another business, namely the Post Office in Launceston, which they run in partnership with their son James, and which is at 5 Westgate Street (just across the road from the shop premises for Pat's Greeting Cards).
5. In August 2017 owing to difficult trading conditions the respondent decided to leave the premises of Pat's Greeting Cards, and to cease trading at 6 Westgate Street, and to move the business across the road to share part of the premises of Launceston Post Office. Both businesses then continued to trade as separate entities from the same Post Office premises at 6 Westgate Street.
6. At the time when the business of Pat's Greeting Cards was moved in August 2017 the respondent had six employees. The three employees with the shortest service were dismissed by reason of redundancy and their notice payments and statutory redundancy payments were paid in full by the respondent. The remaining three employees (of which the claimant was one) were encouraged to move across the road and to continue working for Pat's Greeting Cards. Two of these employees agreed to move, but the claimant did not. The claimant's employment came to an end on 24 August 2017 in the following circumstances, and she brings claims for her notice pay and entitlement to a statutory redundancy payment.
7. The claimant had been issued with a written contract of employment in 2003, although this had not been updated to reflect her most recent working hours. The claimant worked for 21 hours per week, and her working hours were Monday, Tuesday and Thursday from 9 am to 4 pm. She earned £157.00 per week (both net and gross). The claimant did not work on Saturdays when she enjoyed looking after her grandchildren.
8. On 9 August 2017 Mrs Allen called the claimant into her office and informed her that Pat's Greeting Cards would be closing and merged with the Post Office across the road. Mrs Allen offered the claimant a similar position in the Post Office premises, but there was a change to both her hours and her duties. The proposed hours were to be Mondays and Fridays 8:45 am to 17:45 pm, and Saturdays 8:45 am to 1pm. The proposed duties would involve working behind a Post Office till. Although the greeting card business was transferring, and would have its own till, the five Post Office till counters were different and would involve normal Post Office business such as car tax and SORN, registered mail and so on. In fact I am told by the respondent that there are potentially up to 180 different types of Post Office transactions, which are generally processed by following computerised touch screen prompts. Although the respondent says that this is easy to learn, the claimant is aged 62 and not computer literate, and was concerned about these alternative duties.
9. Indeed, the claimant was sufficiently concerned as to this proposed change in her hours and duties to seek legal advice. Her solicitors delivered a letter to the respondent on 17 August 2017 asserting that the claimant was effectively redundant, and that in the absence of suitable alternative employment she should be paid her redundancy entitlements.
10. The respondent then met with the claimant later that afternoon, and confirmed their discussion in a letter dated 17 August 2017. The respondent offered a return to the contracted hours of 9 am to 3pm on Mondays and Tuesdays (but not Thursdays) and made it clear that "this will still involve (as it does for every member of staff) processing Post Office transactions".
11. The matter did not progress from there. The claimant effectively refused to move over on those terms, and considered herself dismissed. The respondent says that it could have continued to negotiate on hours, and that the new skills were hardly any different from the claimant's existing retail and till skills, and could have been easily learnt. In any event no satisfactory compromise was reached.

12. The claimant's employment terminated without notice on 24 August 2017, and she obtained alternative employment a week later at a reduced level of pay of £112.00 per week
13. Having established the above facts, I now apply the law.
14. The reason for the dismissal was redundancy which is a potentially fair reason for dismissal under section 98 (2) (c) of the Employment Rights Act 1996 ("the Act").
15. The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of (the employer's) business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish".
16. Under section 135(1) of the Act: "An employer shall pay a redundancy payment to any employee of his if the employee – (a) is dismissed by the employer by reason of redundancy, or ..."
17. Section 141 of the Act applies where an offer (whether in writing or not) is made to an employee before the end of his employment (a) to renew his contract of employment, or (b) to re-engage him under a new contract of employment, with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.
18. Under s141(2) of the Act, if the provisions of subsection 141(3) are satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer. Subsection 141(3) is satisfied where – (a) the provisions of the contract as renewed, or of the new contract, as to – (i) the capacity and place in which the employee would be employed, and (ii) the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or (b) those provisions of the contract as renewed, or the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.
19. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
20. For the reasons set out in the findings of fact above I find that the claimant was dismissed by reason of redundancy on 24 August 2017. This was because the dismissal was wholly or mainly attributable to the fact that the requirements of the respondent's business for employees to carry out work of a particular kind in the place where the claimant was employed by the respondent had ceased.
21. I have some sympathy with the respondent's arguments that modern Post Offices and retail outlets have evolved and that flexibility is required to succeed, and that modern retail computer systems are similar and often standardised, and not particularly difficult to learn. The respondent might also have been able to negotiate further with regard to suitable hours if the relationship had not broken down.
22. However, as at the time of her dismissal the offer before the claimant was to move to a new role in which her hours and duties were different. The proposed new hours were Mondays and Tuesdays only, but without the Thursdays. The proposed new duties involved working behind a Post Office till undertaking normal Post Office transactions, when the claimant was not computer literate and anxious about those new duties.
23. For these reasons in my judgment the provisions of the proposed new contract differed from the corresponding provisions of the previous contract, and the new offer did not constitute an offer of suitable employment in relation to this claimant. The claimant is therefore entitled to her rights on redundancy.
24. The claimant worked 21 hours a week, and her pay, both gross and net, was £157.00 per week. As at the termination of her employment on 24 August 2017 she had worked for 18 years, and was 62 years of age. Her statutory redundancy entitlement is therefore 18 x 1.5 x £157.00 or £4,239.00.

25. The claimant was also entitled to 12 weeks' statutory notice, and obtained alternative employment with effect from 31 August 2017 (one week later) at the rate of £112.00 per week. Her loss for her statutory notice period is therefore one week at £157.00, and 11 weeks at the differential loss at £45.00, which is a total of £652.00. She succeeds in her claim for breach of contract for this amount.
26. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 12; a concise identification of the relevant law is at paragraphs 14 to 19; how that law has been applied to those findings in order to decide the issues is at paragraphs 20 to 23; and how the amount of the financial award has been calculated is at paragraphs 24 and 25.

Employment Judge N J Roper
Dated 19 April 2018

Judgment sent to Parties on

