



EMPLOYMENT TRIBUNALS

Claimant: Miss Tanya Loades
Respondent: Sumic Limited
Heard at: Southampton On: 9 March 2018
Before: Employment Judge Gardiner

Representation:

Claimant: In person
Respondent: Mr Chris Grayston, Managing Director

JUDGMENT

The Respondent is to pay the Claimant the sum of £4924.36, which comprises the following amounts :

Breach of contract	£1403.41
Accrued holiday pay	£91.08
Failure to provide statement of employment particulars	£1467
Failure to allow representative at dismissal meeting	<u>£978</u>
Sub-total	£3,939.49

25% uplift for failure to comply with ACAS Code £984.87

Total £4924.36

REASONS

1. This is a claim for various remedies following Miss Tanya Loades' dismissal from her position as Marketing Manager for River Studios in Southampton.
2. As a result of the clarification of the issues at the outset of the hearing, the following issues fall to be determined.
 1. Whether the Claimant was dismissed or whether her agreement terminated by mutual consent.
 2. Whether the Claimant should have been given two weeks or four weeks' notice, if she proves she was dismissed. It is accepted that it was appropriate for her to receive whatever notice pay she was entitled to receive under her contract of employment.
 3. Whether the employer was entitled to deduct sums from her pay for an alleged failure to return keys and marketing material.
 4. Whether there should be a remedy for failing to provide a statement of employment particulars.
 5. Whether there should be an award for failing to allow the Claimant to be represented at the meeting at which she was dismissed.
 6. Whether a percentage uplift should be made to the awards for failing to follow the ACAS Code of Conduct on Disciplinary and Grievance Procedures, and if so, in what amount.
3. It is agreed that the Claimant is entitled to be paid £119.69 to reimburse her for expenses incurred during the course of her employment. It is also agreed that the Claimant is entitled to receive 5 days gross pay by way of accrued but untaken holiday pay. This amounts to £576.90.
4. I have heard evidence from Miss Loades, the Claimant, and from her witness Miss Lada Tomcalova, and from Mr Chris Grayston, Managing Director of the Respondent. Each of them have produced written witness statements that they have confirmed on oath, and on which they have been cross examined.
5. I have read the documents to which I have been directed in the bundle of documents, together with further documents as to the deductions which were copied during the course of the hearing.

Basis of termination

6. I have to decide whether the Claimant resigned or whether she was dismissed. It is common ground that the Claimant's employment ended at a meeting that took place between the Claimant and Mr Grayston on Monday 26 June 2017.

It was intended to be a review meeting to consider how the Claimant had been getting on in her relatively new role of Marketing Manager. There were clearly difficulties in terms of how the role was going, although the Claimant felt that these difficulties could be overcome if she was assisted with the processes she had been asked to carry out. She was not expecting to be dismissed at the meeting, nor was she intending to resign. Nothing was said at the meeting that persuaded her to resign her employment.

7. The parties agree much of what was discussed at the meeting. What is in dispute is whether Mr Grayston said to Miss Loades that he was dismissing her. I accept Miss Loades' recollection that Mr Grayston opened the meeting with the following words : "*I am dismissing you. This is not working out. I am finding this stressful*". It was hoped that terms could be agreed such that her departure could be styled as termination by mutual consent, as is apparent from the subsequent letter sent by Mr Grayston on the same day. When that did not occur, he wrote again on the following day saying that he had no alternative but to terminate her employment by dismissal with immediate effect.
8. It was therefore clearly a dismissal rather than a resignation. The reason for the dismissal was dissatisfaction at her performance, which Mr Grayston refers to as gross misconduct in his witness statement.

Notice period

9. I have come to the conclusion that the contractual notice period was four weeks at the date of the Claimant's dismissal. I have reached this conclusion for the following reasons :
 1. The letter outlining the terms of her employment did not specify the notice period that would apply after the end of the probationary period. The two-week notice period related solely to the probationary period [28] as shown by the words "During this time, the company will assess your performance and conduct and it reserves the right at any time during this period to terminate your work with two weeks' notice or payment in lieu and without following any disciplinary procedure". It is implicit that a different notice procedure and a full disciplinary procedure will apply outside the probationary period.
 2. I accept that a lack of clarity as to the notice period was raised by the Claimant on 12 December 2016 on her first day at work, and that Mr Grayston told her it would be four weeks once the probation period had been passed.
 3. This appeared to be the standard practice on the Respondent's paperwork at the time – two weeks' notice during the probationary period and four weeks' notice after the probationary period. It was the period which was stated in Lada Tomcalova's contract of employment, which was not individually negotiated but provided 'off the peg' in response to a specific request as this was needed by her for a Court hearing.

4. Given her role as General Manager of a very small team, and given a large degree of autonomy, it would have been very difficult for the Respondent to recruit a replacement within a fortnight if she had chosen to resign and had given only the contractual notice, particularly if she had taken outstanding leave at the end of her employment. It was in the business's interest to make sure that she gave at least four week's notice, but provide her with equivalent notice if they were dismissing her.
5. There was no specific discussion about the notice period once the probation period had been passed at the end of March 2017. Therefore, it remained the four weeks that had been verbally offered at the start of employment.
6. At the point at which the Claimant was dismissed, she expected to be paid four weeks' notice and Mr Grayston was apparently willing to pay her four weeks' notice. This is some evidence that this four-week period reflected the contractual position as agreed at the outset.

10. In these circumstances the Claimant is entitled to four weeks' pay by way of notice.

Was the employer entitled to deduct sums for getting the keys recut and for replacing marketing materials ?

11. The only relevant provision in the Employee Handbook is as follows :

Where an employee damages property belonging to the Company either through misuse or carelessness, the Company reserves the right to make a deduction from the employee's pay in respect of the damaged property.

On termination of their employment, employees are to return all company property such as keys or any other items belonging to the company on their last working day or within 24 hours of their last working day

12. My finding is that the Claimant has failed to return the key to the rear door, the alarm fob and a lanyard key for the internal café. She has also failed to return 100 A6 size leaflets and around 100 coasters. She did return the A3 posters that she had been keeping in the boot of her car.
13. What remedy does the Respondent have for this under the contract ? It seems implicit that the Respondent is entitled to deduct from the Claimant's salary the replacement cost of items that are lost as well as damaged, although the word 'lost' is not specifically included in the contractual wording.
14. That means purely the replacement cost of the keys and the marketing materials, rather than any **consequential** losses. A claim for consequential losses would require an employers' counterclaim and there is no such claim before the Tribunal.

15. I assess the value of these items alone, in terms of their replacement costs, as £50.

Breach of contract

16. The net amount which should have been paid to the Claimant by way of notice pay is $4 \times £455.38 = £1821.52$. In fact, the sum of £487.80 was paid, leaving a balance of £1333.72. To this should be added £119.69 as the agreed sum by way of failure to reimburse expenses incurred and the sum of £50 should be deducted for items not returned. This is a total adjustment of £69.69, making a total award for breach of contract of **£1403.41**.

Failure to comply with Employee Handbook on disciplinary proceedings

17. There is no further entitlement to claim sums by way of loss of contract beyond the sums that would have been paid if the Claimant had been permitted to work her notice period. Therefore, I reject the claim for two weeks' pay for failure to comply with Employee Handbook on disciplinary proceedings.

Holiday pay

18. It is common ground that the Claimant had 5 days of holiday which had accrued but not been paid by 26 June 2017 when she was dismissed. In fact, she was paid for an extra four days through the payroll in being paid from 27-30 June. As a result, she has one further day of holiday pay to be paid, which is £115.38 gross and **£91.08** net.

Failure to provide a statement of employment particulars

19. I consider that there has been a failure to provide a statement of employment particulars. The paperwork provided to the Claimant did not specify the Claimant's hours of work or the notice period that applied after the end of the probationary period on either side. It did not specify the position so far as sick leave or pension entitlement was concerned.

20. Given the extent of the employer's failure to provide the required employment particulars, but recognising that certain particulars were provided in the employee handbook, I consider it would be appropriate to award three weeks' pay for this failure. This amount is capped at the maximum week's pay as provided under Section 227 of the Employment Rights Act 1996, as adjusted. This is $3 \times £489 =$ **£1467.00**.

Failure to allow the Claimant to be accompanied at the dismissal meeting

21. The Respondent ought to have permitted the Claimant her right to be accompanied at the meeting at which she was dismissed, under Section 10 of the Employment Relations Act 1999. This was not done here, and as a result,

the Claimant is entitled to complain about this to an employment tribunal. On such a complaint under Section 11 of the 1999 Act, the Tribunal may make an order of compensation not exceeding 2 weeks' pay. I agree that such an award should be made here, which is 2 x £489 = **£978**.

Uplift for failure to follow ACAS Procedures

22. There has been a significant failure to follow the ACAS Code of Conduct. There was no warning that there was to be a dismissal hearing, no hearing at which she could justify why she should keep her job, and no opportunity provided to appeal against the dismissal decision. In those circumstances, I consider that the full 25% uplift should be made.

23. This ought to be applied to each of the awards.

24. Therefore, the total award is as follows :

Breach of contract	£1403.41
Holiday	£91.08
Failure to provide statement of employment particulars	£1467
Failure to allow representative at meeting	<u>£978</u>
	£3,939.49
<i>25% uplift</i>	<i>£984.87</i>
<i>Total</i>	<i>£4924.36</i>

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE