



Reserved judgment

THE EMPLOYMENT TRIBUNALS

Between:

Claimant: Miss S Bukhari

Respondent: MPR Solicitors LLP

Hearing at London South on 25 January 2018 before Employment Judge Baron

Appearances

For Claimant: The Claimant was present in person

For Respondent: Gregory Burke - Counsel

JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal as follows:

- 1 The Tribunal declares that the Respondent made unlawful deductions from the Claimant's wages and the Respondent is **ordered** to pay to the Claimant salary for the period from 1 to 25 November 2016 inclusive together with the further sum of £90 subject in each case to statutory deductions;
- 2 That the Respondent was in breach of contract in not giving the Claimant notice to terminate her employment and the Respondent is **ordered** to pay to the Claimant such net sum as she would have received as salary for the period from 27 November 2016 to 2 January 2017 inclusive;
- 3 That the Respondent was in breach of contract in not reimbursing expenses to the Claimant in the sum of £533.71 and the Respondent is **ordered** to pay that sum to the Claimant;
- 4 That any claim for leave pay be dismissed;
- 5 That the parties have liberty to apply to the Tribunal for a detailed calculation of the sums due to the Claimant.

REASONS

- 1 The Claimant was employed by the Respondent as a Duty Solicitor and Higher Court Advocate from 1 April to 25 November 2016. The Respondent is a small law firm specialising in criminal defence work. The Claimant's employment was ended by the Respondent on the grounds of alleged gross misconduct. The Claimant made claims in these proceedings for

notice pay, holiday pay and arrears of pay. There was also a claim for travel expenses.

- 2 There were two issues as to notice pay. The first was whether the Claimant had lost the right to receive notice by virtue of having committed an act, or acts, of gross misconduct. The second issue was the length of notice to which the Claimant was entitled. The Claimant originally maintained that she was entitled to damages equivalent to three months' net pay, and the Respondent maintained that the entitlement was four weeks' pay. The Claimant accepted that any entitlement ceased as of 3 January 2017 because she was re-employed from that date and her remuneration was slightly higher than she had been receiving from the Respondent.
- 3 The claim for arrears of pay related to November 2016. Payment was not paid to the Claimant for that part of November 2016 for which she was employed. Agreement was reached between the parties that the Claimant was due to receive £533.71 in travel expenses, and £90 gross for overtime worked.
- 4 I heard evidence from the Claimant and from Abdullah Al-Yunusi, a partner in the Respondent. Each of the parties provided a bundle, and I have taken into account those documents to which I was referred. I find the facts below from the evidence provided at the hearing. In the circumstances it was agreed that Mr Al-Yunusi should give his evidence first.
- 5 The Claimant entered into a written contract of employment. Clause 2 provided for a probationary period of three months. Clause 12 contained provisions as to annual leave. Clause 16 provided that during the first four years of employment the Claimant was entitled to four weeks' notice, subject to having completed the probationary period. However the Claimant had to give 12 weeks' notice. The Claimant accepted during cross-examination that her notice entitlement was four weeks.
- 6 Clause 17 provided that the employment could be terminated without notice in certain circumstances. The two sub-clauses relied upon by the Respondent were as follows:
 - (a) commits any act of gross misconduct or gross incompetence or other repudiatory breach of contract;
 - (b) without reasonable excuse and after prior warning, repeats or continues any breach of contract not falling within clause 16.2 above;¹
- 7 Clause 23 contained the following provision:

The Employee agrees that the Employer may at any time deduct and retain from any remuneration due to the Employee, any money that the Employee owes the Employer including, without limitation, any overpayments made to the Employee by the Employer or losses suffered by the Employer as a result of the Employee's dishonestly or through wilful neglect or negligence of the Employer's or the Law Society's or SRA's rules or through any act or omission which is negligent or an act of incompetence. This provision does not affect the right of the Employer to recover any sums or balance of sums owed by the Employee to the Employer by taking legal proceedings against the Employer or another third party.

¹ The reference to clause 16.2 does not make sense because that sub-clause simply sets out the length of notice to be given by the employee.

- 8 It is of course wholly impossible for a Tribunal to ascertain with any clarity exactly what went on in the Respondent's office and at court hearings from day-to-day. Mr Al-Yunusi made various generalised allegations about the Claimant in his witness statement. For example, in paragraph 9 he said that the Claimant was regularly late for work, and in paragraph 13 he said that the Claimant often did not return to the office after hearings. He also referred to her being late at court for hearings. In paragraph 10 he said that she 'displayed problems with her attitude towards members of staff and the partners.' He did refer to some specific matters as examples.
- 9 On 15 April 2016 Mr Al-Yunusi sent an email to the Claimant asking for some information, which did not appear to be urgent. He sent a reminder on 20 April asking that the Claimant should always reply to emails.
- 10 On 26 September 2016 Mr Al-Yunusi sent another email to the Claimant complaining that the Claimant had not read the whole of the staff handbook, and requiring her to do so by 5.30 pm on the following day.
- 11 There was an email from Mr Al-Yunusi dated 10 November 2016 at 09:39 to the Claimant marked 'please acknowledge'. This was said to be an example of the Claimant not acknowledging an email.
- 12 On 23 July 2016 another partner sent an email to the Claimant saying that when on duty she 'must be on call to take calls.' This referred to being on call for duty solicitor work. The Claimant's evidence was that it was not always possible to answer a call, and that she had responded to that email although the response was not in either bundle. I am not able to make any finding one way or the other about this incident.
- 13 I was referred to an incident over the weekend of 15 and 16 October 2016. The Claimant was on the rota to be duty solicitor over at least part of the weekend. She was on leave during the preceding week and was due to return to the office on 17 October 2016. There was a misunderstanding and the Respondent arranged for a colleague to cover the weekend duty work. An email was sent to the Claimant at 08:58 on 14 October 2016 telling her this. When she received it she contacted the colleague and arranged to cover the duty rota as originally booked.
- 14 The Respondent also relied upon matters surrounding an eye problem which the Claimant experienced in September 2016. On 21 September the Claimant sent an email at 08:23 to the partners saying that she would not be in during the morning due to a medical emergency, but would be in during the afternoon. The Claimant was asked to complete a risk assessment form. That she did on 22 September 2016. The condition was stated to be 'onset of cataract / dry eyes'. The Claimant was criticised at this hearing for simply answering 'Yes' to the question as to whether the matter had been reported to a partner or health professional, and also for not answering the 'Yes/No' question as to whether she wished to discuss the matter further. An email was sent to the Claimant asking for these lacunae to be filled, and the Claimant replied within 21 minutes having supplied the missing information.
- 15 On 10 October 2016 an email was sent to the Claimant by a partner referring to various clients and cases. My attention was drawn to six cases

where it was said that there had been omissions or errors by the Claimant. Three of them involved letters to the clients not having been sent. Two were said to be deficient in that the next hearing date of the case was not in the diary.

- 16 There was an appraisal meeting between the Claimant and Mr Al-Yunusi on 19 October 2016. A summary of the meeting was sent to the Claimant by email on 24 October 2016.² There were various general criticisms of the Claimant, such as punctuality and time management being poor. She was also referred to as being rude and arrogant. There were specific criticisms of her in connection with particular cases. There was a general criticism of her billing cases outside of time limits causing losses to the firm. Although no details were set out of what is alleged to have occurred previously the Claimant was warned that 'any future contemptuous remarks to any Partner / Associate would result in immediate dismissal due to gross misconduct.' Finally it was said that there would be a further review in six weeks' time. That would have been 30 November 2016.
- 17 It is apparent that by 19 October 2016 relationships were beginning to break down. There were some discussions about the length of notice to be given by the Claimant being reduced. In an email of 25 November 2016 from the Claimant to Mr Al-Yunusi she mentioned that he had said that she could leave if she did not agree with the firm's rules and procedures, to which she said that she would do so if the Respondent agreed to reduce her notice period. I accept that as an accurate record of part of the discussion.
- 18 The Claimant lodged a grievance against Mr Al-Yunusi on 9 November 2016 which Mr Al-Yunusi did not mention in his witness statement. The grievance is of over three pages of closely printed script. The Claimant complained about the behaviour of Mr Al-Yunusi and in particular the appraisal meeting of 19 October 2016. She also complained about her workload and what she said was pressure to ask clients to pay privately.
- 19 The Respondent placed reliance on a letter from the Claimant on behalf of the firm to the Legal Aid Agency dated 16 November 2016. It was written in reply to a letter of 6 November 2016 which was not before me. There had clearly been a query about a lack of attendance notes. The Claimant said:

Please note that we are unable to provide attendance notes for other times indicated on the list as the fee earners have now left the firm. Please make your assessment accordingly.
- 20 Mr Al-Yunusi met the Claimant on 25 November 2016. There is a material difference in the evidence as to that meeting, save that it is agreed that the Claimant was dismissed. Mr Al-Yunusi said that the letter of 16 November 2016 was the proximate cause of the meeting, but the Claimant says that it was never mentioned. Mr Al-Yunusi says that the Claimant referred to him as running the 'firm like a fucking Asian shopkeeper.' I do not accept the evidence of Mr Al-Yunusi on these points. It is notable that there was no specific mention of either point in the reasons for the dismissal set out

² I was told that there was an audio recording of this meeting but it was not made available.

below. The phrase alleged to have been used by the Claimant does not easily fall under the meaning of 'belligerent', and 'extremely abusive' would have been more appropriate.

- 21 The letter to the Claimant confirming the termination of her employment was dated 1 December 2016. It quoted the sub-clauses from clause 17 of the contract of employment set out above. Four reasons were given for the dismissal, as follows:
1. Your failure to bill completed cases within the firms and the LAA time limits for billing and thereby causing financial losses to MPR.
 2. Despite numerous warnings and reminders to you that you are not authorised nor able to sign LF1/AF1 claims communicate with the LAA on behalf of the firm in respect of billing matters – you continue to do so and most recently wrote to the LAA on the case of [X] informing them that the firm does not retain attendance notes for the fee earners who have left the firm. This is completely incorrect and if true would be a serious breach of contractual obligations to the LAA putting our contract at risk and is also serious breach our obligations under the SRA rules.
 3. Despite numerous warnings your attitude remains belligerent towards senior members of the firm.
 4. Constant disregard of the firm's policies and procedures despite warnings.
- 22 I now turn to the submissions and my conclusions. The basic contractual position is clear. An employee is entitled to be given notice save in the case of a repudiatory breach of contract. That involves a 'wilful and deliberate contravention of an essential term of the contract or gross negligence.'³
- 23 Mr Burke submitted that mutual trust is critical in the employment relationship, and that I entirely accept. He further submitted that it was apparent from the manner in which the Claimant replied to answers in cross-examination and undertook the cross-examination of Mr Al-Yunusi that she was confrontational. All trust had been destroyed by the letter to the Legal Aid Agency of 16 November 2016.
- 24 The Claimant said that for a dismissal to be justified for gross misconduct then there had to be something which went to the heart of the contract of employment, and that was not the case here.
- 25 As mentioned I accept the submission by Mr Burke that a relationship of trust is critical. However, that does not mean that where that relationship breaks down then an employer is entitled to dismiss an employee without notice. Such circumstances may be a fair reason for dismissal for the purposes of the unfair dismissal legislation, but the right to dismiss without notice is one of common law.
- 26 I therefore find that the Respondent was in breach of contract in not providing the Claimant with notice. The Claimant will be presumptively entitled to the net pay she would have received for the period from 26 November 2016 to 2 January 2017.

³ Per HHJ David Richardson in *Robert Bates Wrekin Landscapes Ltd v. Knight* (UKEAT/0164/13) referring to *Sandwell & West Birmingham Hospitals NHS Trust v. Westwood* (UKEAT/0032/09)

- 27 There remains the question of pay for November 2017. The Respondent admits that the gross salary due to the Claimant for that period was £2,923.08. It is maintained that it is entitled to make deductions from the net amount pursuant to clause 23 of the contract of employment which is set out above. Basic details were set out under six categories in the response form ET3 and Mr Al-Yunusi made further mention of them in his witness statement. I do not intend to set out such details as were provided. It suffices to say that I am not satisfied on the very limited evidence before me that the Claimant has herself been negligent or incompetent which has resulted in losses to the Respondent.
- 28 There was a claim for leave pay. No evidence was given about the matter and that claim is dismissed.
- 29 The question as to the precise calculation of the sums due to the Claimant will be left to the parties who are requested to inform the Tribunal within 28 days whether agreement has been reached.

Employment Judge Baron

Dated 19 February 2018