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EMPLOYMENT TRIBUNALS

Claimant: Mrs C Sugarman
Respondent: City & Country Residential Ltd
Heard at: East London Hearing Centre
On: 2 July 2018
Before: Employment Judge Russell (sitting alone)

Representation
Claimant: In person
Respondent: Ms H Pollintine (Company Representative)

JUDGMENT having been sent to the parties on 6 July 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. The Claimant commenced employment on 26 July 2016 as a Planning Secretary. Her employment was subject to a probationary period which was then extended. At a meeting on 27 February 2018, the Claimant was given four weeks' notice of termination.
2. There is a dispute as to the reasons for dismissal but, as this is not an unfair dismissal case, it is not necessary for me to resolve the dispute. The issue to be decided is whether or not the Claimant was entitled to receive payment for her notice period or whether she had waived her entitlement by her conduct.
3. Clause 14.1 of the contract says that by mutual agreement notices may be waived or reduced. Clause 14.2 provides that after notice is given the Respondent may require the employee to perform all of their duties, part of their duties, alternative duties or no duty. Clause 14.3 reserves to the Respondent the right to pay in lieu of notice.
4. The Claimant's evidence is that she was told in the meeting by her director, Mr Winsborough, that she could choose whether or not to work her notice period. The Claimant says that she was not told that she would not be paid if she did not work and, had she been, she would have worked her notice. Mr Winsborough told the Claimant

that she did not need to attend the office for the rest of that day and in due course it was also agreed that she could have the following day off. The Claimant says that she was led to believe that she would be paid.

5. Ms Pollintine, who represents the Respondent today, was also present at the meeting on 27 February 2018. Her evidence is that the Respondent offered that the Claimant could leave the office that afternoon, return the following morning and have a meeting in the office. There was no mention of garden leave or that the Claimant need not work her notice period. Ms Pollintine relies upon a series of text messages sent after the meeting in which the Claimant asked if she had to work her notice and said that she did not feel she could do so. The Respondent therefore decided not to require her to work her notice period and sent a letter terminating her employment with effect from 28 February 2018.

6. Copies of the texts were available to the Tribunal. In a text to Mr Winsborough sent on 27 February 2018 at 21:09, the Claimant asked whether she had to work her notice or whether there was an option not to do so. She texted again the following day, expressing upset that the Respondent had not kept her dismissal private and stated:

“I was hoping to just work my notice in silence without anyone wise to the matter. I just don’t even feel like I can work my notice anymore. I wish you best of luck in your future endeavours.”

7. Mr Winsborough replied to say that he would speak to Ms Pollintine, discuss the matter and get back to her. He texted later that morning (28 February) to say that Ms Pollintine was going to get a letter out to the Claimant in that day’s post, hoping she would receive it tomorrow.

8. The Claimant’s response at 12:03 on 28 February 2018 was: **“Do you know if I’m required to work my notice?”** There was no reply to that text message.

9. The letter to which Mr Winsborough referred was dated 28 February 2018 and, as Ms Pollintine stated in evidence, it recorded the decision to dismiss on four weeks’ notice and included the following: **“However as you do not wish to work your notice period we would confirm that your last date of employment will be today Wednesday 28 February 2018.”** The Claimant was paid up to and including that date. Regrettably, that letter was not received until I accept that it is regrettable the letter of 28 February was not in fact received by the Claimant until 5 March 2018 due to for a further week due to problems with postal deliveries caused by the heavy snow.

Conclusion

10. The Claimant’s case is that there was no mutual agreement to waive notice as required by the contract of employment and she was entitled to pay in lieu of notice. The Respondent’s case is that whilst it was entitled to pay in lieu and/or put the Claimant on garden leave, there was no agreement to do so rather there had been a waiver by reason of the Claimant’s comments in the text messages.

11. I had regard to the entirety of the comments made. The Claimant expressed a hope that she would not be required to work her notice as she did not feel able to do

so. However, in her subsequent text sent at 12:03, I conclude that the Claimant was holding herself out as being ready, willing and able to work her notice if required to do so in order to be paid. I am not satisfied that there was a mutual agreement in this case that the Claimant's entitlement to notice be waived or reduced. The Respondent should have been aware, or can reasonably be expected to be aware, that there was no mutual agreement to waive the entitlement to notice. The Claimant received no response to that text and the letter dated 28 February 2018 was not received until the following week in any event. On balance, I find that absent a waiver by the Claimant, it was the Respondent which decided to terminate the Claimant's employment without requiring her to perform duties.

12. For these reasons, the Respondent was in breach of contract and the Claimant is entitled to payment for the balance of her notice pay. The Claimant was paid for one day's notice she is therefore entitled to the sum of **£1,526.15**.

Employment Judge Russell

4 October 2018

FOR THE TRIBUNAL OFFICE