



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss E Simmons

v

Professional Deputies Limited

Heard at: Watford
Before: Employment Judge Smail

On: 4 July 2018

Appearances:

For the Claimant: In person

For the Respondent: Mr A Riddle, Managing Director

JUDGMENT having been sent to the parties on 3 August 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In this claim the remaining matter is that the claimant claims the balance of four weeks' notice pay having been summarily dismissed by the respondent on 15 September 2017 having herself given notice to resign on 6 September 2017. She was therefore summarily dismissed within the notice period meaning she could not work out the remaining part of her notice, earning money.
2. The respondent says it was entitled summarily to dismiss because the claimant had committed gross misconduct and had committed dishonesty. The dishonesty relied upon is essentially two-fold. First, misrepresenting hours worked on a timesheet, meaning 36 ¼ hours were unaccounted for over the claimant's period of work with the respondent between 20 March 2017 and 15 September 2017, an amount approximating 1 weeks' obligation. The claimant was obligated to work 35 ½ hours a week. Secondly, not working for 36 ¼ hours for which she was paid.
3. The claimant was employed as a Client Financial Affairs Officer. Mr Riddle is the Managing Director of the respondent company which is in the business of managing the assets of vulnerable adults.

4. This is a short-track case of modest value. The claimant did serve a witness statement in compliance with tribunal orders. The respondent indicated it wished to rely on its ET3 and disclosure as its evidence. The claimant had applied for a strike out which had not been considered by the tribunal before today. She did not apply to me at the outset of the hearing for a strike out. She did indicate she did not want an adjournment in the course of the hearing. So, no application to strike out was made. If it had been I would have rejected it as there is sufficient information before me to understand the case. The claimant has had sufficient notice of the issues she has to meet on the topic of gross misconduct. Further, I have benefitted from hearing the claimant and Mr Riddle give oral evidence and make oral argument today. We are all in full position to address all relevant matters.
5. When the claimant handed in her resignation on 6 September 2017, Mr Riddle indicated that she might not be able to work out her full notice period because he was investigating a matter of misconduct.
6. On 15 September 2017 he provided the detail of this allegation to the claimant. He provided the claimant with evidence of the times she fobbed in to the office and times of when her computer was switched on and off. The respondent had placed a piece of software on the claimant's computer which was able to read those matters. Both sources of evidence, he suggested, were reliable indicators of when she attended work in contrast to the timesheets the claimant had kept.
7. Mr Riddle had done a reconciliation of the claimant's timesheets, the key fob times and the computer switch on and off records. The biggest discrepancies were on days that he was not in attendance. The most striking discrepancies are as follows:
 - 7.1 On 30 May 2017 the claimant's timesheet suggests she attended work at 8.45: the key-fob suggests 9.46, being a discrepancy of 1 hour.
 - 7.2 On 2 June 2017, the key-fob morning reading was 9:14 rather than 8:45 and in respect of the afternoon the timesheet suggested a 16:40 finish when in fact her computer was switched off at 15:09, being a discrepancy of 1 hour and 30 minutes.
 - 7.3 On 9 June 2017, the timesheet suggested an 8:45 start, the key-fob was 11:38, the computer 11:46, suggesting a difference of 2 hours and 55 minutes.
 - 7.4 On the afternoon of 9 June 2017, the timesheet suggested a finish of 16:40 when the computer was switched off at 15:13, suggesting a 1 hour 25-minute discrepancy.
 - 7.5 On 12 June 2017, in the afternoon, the timesheet suggested a finish of 16:45, the computer log was 15:52 when it was switched off,

suggesting a discrepancy of 53 minutes.

- 7.6 On 21 June 2017, in the afternoon, the timesheet suggests a 16:40 finish when the computer was switched off at 15:04, being a difference of 1 hour 33 minutes.
- 7.7 On 29 June 2017, the timesheet suggests a start time of 8:45, the key-fob is 10:43, the computer 10:56, suggesting a 2 hour discrepancy in the morning.
- 7.8 On 12 July 2017, the timesheet suggests a start time of 8:45, the key-fob 9:57, the computer 9:57, being a discrepancy of 1 hour 15 minutes in the morning.
- 7.9 In the afternoon the finish time of 16:45 is provided on the timesheet, the computer was switched off at 15:15 suggesting a difference of 1 hour and 30 minutes.
- 7.10 On 20 July 2017, in the afternoon, the suggested finish time is 16:40 but the computer was switched off at 15:32, a discrepancy of 1 hour and 10 minutes.
8. So, there are there I find, ten substantial discrepancies between timesheets purportedly kept by the claimant and the key-fob and computer evidence all suggesting both a mis-recording of time but also an underworking of hours.
9. The claimant stopped filling in her timesheet after 28 July 2017. She was asked to reconstruct the weeks between 28 July and 6 September 2017 and she did this by herself using the same computer records as Mr Riddle had relied upon in attempting to demonstrate shortfall.
10. In my judgment the evidence obtained by Mr Riddle does show dishonesty on the part of the claimant. The records indicate inaccurate recording of the hours worked and, as importantly, a pattern of underworking of the contractual hours.
11. The claimant is not in position to challenge the individual discrepancies on any one day including the significant ones by showing where she was. She says she is not able to remember the details. She was, however, unable to remember the details in September 2017 as she is not able to remember the details now.
12. She makes some general criticism of the reliability of the computer and the fob entries. Her criticism of the reliability of the computer evidence is contradicted by her own use of the same software to recreate her timesheets after she stopped completing them on 28 July 2017. Her challenge to the fob entries is that they are unreliable because she might have come in at the same time as someone else with a fob and then had to exit and then to come in herself again. In evidence she suggested that this was a better explanation for the afternoon than the mornings but many of

the substantial discrepancies are fob readings for the mornings. And, fundamentally, she is not able to give the detail as to why she may have reentered in the morning on any given day. She also argues that she was under no obligation to keep timesheets but she did it for a period for her own information.

13. I do note she stopped completing timesheets from 28 July 2017. I prefer the evidence of Mr Riddle that her timesheets were to be a management resource that was kept on the shared drive so that he could see what she was doing and she could refer back to it likewise.
14. So, there is in my judgment, strong evidence of a pattern of mis-recording and as importantly, underworking, which the claimant does not explain away.
15. In many ways the claimant's best argument is that Mr Riddle delayed until 15 September to take the point and so waived those matters and affirmed the contract. Mr Riddle tells me that there was an on-going investigation. Well it does seem to me that there was a suspicion which he examined in detail when the claimant resigned. That resignation did prompt him to investigate fully his suspicion. Does that mean he waived the claimant's irregularities and affirmed the contract?
16. Whilst this is the claimant's best argument I have come to the conclusion that Mr Riddle did not waive them and affirm the contract. When he found time to investigate the matter fully, and he was seeking to run a business and so would have preferred not to spend time doing this, his suspicions that the claimant may not have worked all hours contractually or properly, were confirmed.
17. The claimant was in breach of contract by having mis-recorded timesheet entries and having underworked to the degree that has been recorded above. Neither of those actions were honest. They were, I find, for the civil purposes of the relationship between herself and her employer, dishonest. This was not dishonesty of a type likely to be of interest to any police authority or anything like that, this is very much a civil matter. However, Mr Riddle was entitled to terminate the employment relationship without allowing the claimant to work out her notice. He was entitled to dismiss the claimant summarily for her conduct which was not honest as between her and her employer.
18. As I say, I have to do the best I can on the balance of probability, some material discrepancies have been established by the respondent and I do note that the claimant does not explain away any of the ten significant discrepancies I have alluded to by way of recollection of what happened on the particular days. September 2017 was not far away even from the earliest one of these discrepancies on 30 May 2017.
19. The claimant did not have two years' service and so does not have the procedural protections which unfair dismissal law would have given her.

20. I am assessing the breach on contract principles. I have to objectively stand back from the evidence and doing the best I can on the balance of probability make findings as to what I see.
21. In my judgment, on the balance of probability, the claimant was in repudiatory breach of her contract. Mr Riddle was entitled to accept it without paying any further notice.
22. Mr Riddle has however acknowledged that he has failed to pay 1% contributions to pensions as he was contractually obliged to and the parties have agreed that sum, in the sum of £193.12 which must be paid within 14 days.

Employment Judge Smail

Date: ...11.10.18.....

Judgment sent to the parties on
.....26.10.18.....

.....
For the Tribunal office