



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH EMPLOYMENT TRIBUNAL

BEFORE: EMPLOYMENT JUDGE WEBSTER

BETWEEN:

Mrs M Coleman

Claimant

AND

Mr M Vohra

Respondent

Appearances:

Claimant: Mr H Samuels (FRU rep)

Respondent: In person, accompanied by Mrs Vohra

JUDGMENT

1. The Claimant's claim for wrongful dismissal is refused.

REASONS

2. The sole issue for me to determine today was whether the claimant was entitled to be paid 2 weeks' notice pay. The claimant claimed that she had

been refused the right to work her notice and/or been dismissed for gross misconduct. The respondent asserted that they had dismissed her by reason of redundancy and that the claimant had stated that she did not want to work her notice and was therefore not paid for it.

Findings of fact

3. The Claimant was employed by the respondent as a Nanny Housekeeper from January 2018 until 27 March 2018. There was initially some confusion as to who the correct respondent to this matter ought to be but it was confirmed by both parties that the correct respondent was Mr Vohra and not his company.
4. The claimant's role included caring for the respondent's then 4 year old daughter and housekeeping duties. It is not in dispute that on 26 March 2018 the claimant was told by the respondent and Mrs Vohra that they could no longer continue to employ her because the respondent had lost a key contract for his business and he no longer had the funds to employ her. They said that she was entitled to 2 weeks' notice and that they would be happy for her to work an additional week as well if she wanted to, bringing the notice period to 3 weeks if she wanted it. As I understand it no decision was made at that point as to whether she would or would not work her notice. Everyone, including the claimant, expected her to attend work the next day.
5. The main area of factual dispute between the parties was what occurred the following day, 27 March 2018. It was agreed that Mrs Vohra and the claimant met at approximately 9am for around 20-30 minutes. It was an amicable meeting. What was said at that meeting was in dispute.
6. Mrs Vohra's version of events was as follows. She stated that the claimant told her that she did not want to work her notice and in particular she did not want to care for their daughter again because the claimant felt it was unfair on the child to involve her in any possible disagreements or bad feeling about the claimant's dismissal. Mrs Vohra says that she explained that if the claimant did not work her notice this would mean she would not be paid and the claimant fully understood this. Mrs Vohra says that she and the claimant agreed that the remainder of the week would be taken as holiday for which the claimant was paid. At the end of the meeting they hugged goodbye and the claimant took her things with her. Mrs Vohra said in evidence that she had thought that this was the last time the claimant would be attending their house for work though she recognised that the claimant would be on holiday for the remainder of the week. She was not sure, from a technical point of view whether the contract continued beyond that date but was sure that she did not expect the claimant to return to work after that meeting.

7. The claimant's account of what was said at that meeting was different. The claimant confirmed, in evidence, that she had told Mrs Vohra she did not want to work her notice because she was finding the situation very difficult and she agreed that she had said that she did not want to have to continue working with the daughter at all as she would find it too difficult given how much she loved the child and wanted to continue caring for her. However she did not agree that this meant that she had refused to work her notice. She said that it was clear that she would have performed her housekeeping duties in order to be paid if Mrs Vohra had needed her to. She agreed with Ms Vohra that it had been an amicable meeting, that they had hugged goodbye, that she took all her things with her. She agreed that she took the remainder of the week as paid holiday.
8. The claimant accepted, when questioned, that caring for the child was a key part of her role and that she would not have been willing to continue with this part of her role during any notice that she may have worked. She said that she felt that Mrs Vohra knew her well enough that she would have understood that she would not leave the family 'in the lurch' without childcare and that it was clear that she would only prefer not to work her notice not that she had made an absolute statement that she would not work her notice. However she did admit saying that she did not want to work her notice period and confirmed today that she did not want to work with the child and would not have agreed to do so.
9. In submissions, the claimant's representative addressed this point when questioned by the tribunal. He said that although the claimant admitted to asking not to work her notice in evidence, this was in a stressful situation where she was being asked questions by two people at once (Mr and Mrs Vohra both asked questions during cross-examination) and that the claimant remained sure that she had only said she would prefer not to work her notice and that she had only refused to carry out the caring part of the role as opposed to not working at all.
10. I conclude, on balance, that the claimant did tell Mrs Vohra that she did not want to work her notice period and that she would not be coming back to work. Whilst she may have expressed this in terms such as 'I would prefer not' as opposed to "I will not" she also said in the same conversation that she would not carry out any of her nannying responsibilities. I conclude that Mrs Vohra would not have asked her to return on such a basis and communicated that to the claimant and that the claimant understood that if she did not work performing her entire role she would no longer be needed. I find that this was clearly understood by both Mrs Vohra and the claimant and that she would not be continuing to work for them.
11. My conclusion is supported by the existence of the subsequent text messages between the parties. Immediately after the meeting the message

from the claimant to Mrs Vohra show that the claimant said goodbye and wishing Mrs Vohra the best in the future. There is nothing in the messages immediately after that meeting that indicate that the claimant expected to be returning to work. They clearly record somebody saying goodbye.

12. I think it was reasonable for Mr and Mrs Vohra to rely on the meeting and the subsequent text messages as confirmation that the claimant did not want to come back to work with them. I do not accept the claimant's submissions that Mrs Vohra ought to have known somehow that she would not let her down and could come back. That does not fit with her refusal to look after the daughter again (even if for apparently noble reasons), nor with her messages of good bye immediately after the meeting. I also find that nothing of this sort was said at that meeting.
13. It is not clear why the claimant continued to text Mrs Vohra afterwards. She said that she messaged her because she wanted to understand what was happening about her continuing to work with the Vohra family. Even if that was her motivation I find that the messages are unclear and contradictory. They continue to refuse to complete the entire role or even, at times, any part of the role at the same time as saying that she will be returning to work, as well as accusing Mr Vohra of being unkind and difficult. The content of the messages becomes stranger as the exchange continues.
14. It is clear from Mrs Vohra's first message that she had thought that the relationship had ended. She states *"Hi Michelle, I hope you're well. You've chosen not to work your notice and therefore you are not entitled to be paid for your notice period."* This confirms what Mrs Vohra had believed was agreed at the meeting that morning. Mrs Vohra's messages continue to confirm that this was her understanding of the situation and her evidence today also confirmed that.
15. It appears that the claimant agrees that something of this kind was also agreed, both from her text messages and her evidence to the tribunal. She says, *"I have not chosen not to work my notice I asked if I could no longer work my notice. I said under the circumstances it would be best for me not to and willingly I did not wish to but you sacked me and served me 3 weeks notice to attend interviews which I will be doing."*
16. However she also says *"Don't worry I wouldn't work for people like you again who clearly could never afford a professional nanny let alone a HNWHK. It's sad you brought a child into the scenario."* Within the same message she says *"I will be working my 3 weeks' notice. See you at 9am Tuesdays."* Followed by *"Please do not text me or email or contact me again. I will be work at 9am by break then attending interviews from 1.30-5.30 throughout the three weeks notice I am serving. Hence it is unkind to see your beautiful*

daughter again. I would not give you the pleasure of my company again don't worry."

17. I find that it was objectively reasonable for Mrs Vohra to conclude that, based on the face to face meeting, the text messages immediately afterwards which say good bye and the contradictory messages within the text exchange about whether the claimant wanted to return to work for the respondent, that the contract was terminated and had been terminated at the meeting that morning. I accept the respondent's submission that these later messages appear to be a confused attempt by the claimant to rescind her refusal to work her notice. Even if that is what these messages are meant to be - she continues to refuse to look after the child or work her full hours or communicate properly with her employer. At best this is only a partial rescission because she continues to maintain that she does not want to perform her full role of nannying and says she will only work part time.
18. Further I accept that the confusing and at times rude content of the text messages on that day amounted to sufficient action by the claimant for the respondent and Mrs Vohra to conclude that they did not want the claimant to return to working in their home or looking after their daughter. She is rude about the entire family, she says that she does not want them to communicate with her and she says that she does not want to spend any time with them. This is entirely at odds with someone working within the family home and potentially looking after their young daughter.

Conclusions

19. I therefore find that the claimant terminated the contract at the meeting on 27 March 2018 with Mrs Vohra by the claimant saying that she did not want to work her notice period and that it was objectively reasonable for Mr and Mrs Vohra to accept her words at that meeting as her terminating the contract with immediate effect and rely upon that termination from that time onwards.
20. Where there may have been uncertainty on the part of the claimant was around whether she should return to her housekeeping duties. However I do not accept that Mrs Vohra ever indicated that if the claimant did this she would be discharging her contractual obligations to them or that she wanted the claimant to return if she was not willing to look after their daughter. I further do not accept that the claimant's later text messages apparently attempting to rescind her termination of the contract that morning were clear and unambiguous given the many contradictions within them.
21. The claimant's representative submitted that the respondent had agreed to pay her the notice pay originally and that they then dismissed the claimant for gross misconduct because of what she said in the text messages. I do not accept that this occurred. The respondent offered the claimant the

opportunity to work 3 weeks' notice when they dismissed her for redundancy. As above I find that it was the claimant who terminated the contract on 27 March because she did not want to work her notice period. However, even if I am wrong in that, I find that the claimant's behaviour within the text messages that evening would amount to a repudiatory breach of the contract because she was clearly refusing to discharge a large proportion of her obligations under the contract by refusing to care for the child at the same time as being extremely critical of the respondent and his behaviour and saying that she did not want to communicate in any way with either Mr or Mrs Vohra. All of those factors would make even partial discharge of the contract almost impossible and would have amounted to a repudiatory breach of contract had the contract still be in existence.

22. The claimant's claim for wrongful dismissal is not upheld.

Employment Judge Webster

Date: 14 November 2018