



THE EMPLOYMENT TRIBUNALS

Between:

Claimant: Mr K Garman

Respondent: Steinhoff UK Retail Limited

Hearing at London South on 23 October 2018 before Employment Judge Baron

Appearances

For Claimant: The Claimant assisted by Mrs Garman

For Respondent: Robert Lassey - Counsel

JUDGMENT

It is the judgment of the Tribunal that the Respondent was in breach of contract and **orders** the Respondent to pay the Claimant the sums of £14,428.17.

REASONS

- 1 This is a claim by the Claimant on the basis that the Respondent was in breach of contract. The claim is for an enhanced or additional redundancy payment which the Claimant alleges was due to him on the termination of his employment on 31 December 2017.
- 2 I heard evidence from the Claimant and he did not call any additional witnesses. I also read a statement by David O'Connor provided in support of the Claimant's case. On behalf of the Respondent evidence was given by Kalwant Singh, Supply Chain and Logistics Director, and also by Lauren Davenport, Junior Buyer. I was provided with a bundle of 128 pages and have taken into evidence those documents to which I was referred.
- 3 I find the facts as below based upon the written and oral evidence, and on a balance of probabilities.
- 4 One of the trading names of the Respondent in the UK is 'Harveys', under which name the Respondent sells home furniture by retail from stores across the country. In the Grounds of Resistance it is stated that overall the Respondent has 406 stores nationally (not all trading as 'Harveys') and eight distribution centres. The Claimant was employed from November 2004 as Supply Chain Manager based in Dartford. He was in charge of the Supply Chain Operations department. The Claimant was not responsible for buying furniture from suppliers. He was generally responsible for the overall supply chain of the furniture from the suppliers to the Respondent's warehouses. I use the word 'generally' because of the issues mentioned below. The warehousing of the furniture and subsequent delivery of the furniture from the warehouses to the customer was the responsibility of the

aply named Warehouse and Distribution department, and not that of the Claimant. The Claimant was also responsible for such furniture as was delivered direct by the supplier to the customer and which did not pass through the Respondent's warehouse.

- 5 In the middle of 2017 there was a restructuring and a business decision was taken to merge the Claimant's role with that of General Manager of Central Operations. The Claimant was informed on 30 August 2017 that he was at risk of redundancy. After consultation it was decided that the Claimant was to be made redundant, and that he was to hand over his role to Mr Hall with effect from 1 October 2017. The Claimant was informed of that decision at a meeting on 25 September 2017. No issue arises directly out of the decision to make the Claimant redundant. The Claimant was entitled to receive three months' notice of termination.
- 6 Wilmarie Groenewald, Supply Chain Operations Manager, reported to the Claimant. She expressed concern to Mr Singh about the possibility of the Claimant being made redundant, saying that she did not think that she and her colleagues had the requisite knowledge to make decisions without the Claimant's guidance.
- 7 The Claimant requested an enhanced redundancy package from Mr Singh. Following that request and the concerns expressed by Ms Groenewald Mr Singh wrote a letter to the Claimant on 2 October 2017. That was a formal letter confirming the Claimant's redundancy and that his employment would end on 31 December 2017. The letter stated that the Claimant would receive his statutory redundancy payment (as to which there is no issue) and further:

£14,428.17 termination payment which is calculated as 2 months salary subject to a thorough and professional handover being carried out successfully with Darren Hall
- 8 It is that sum which is being claimed, and the dispute is whether the Claimant did effect a 'thorough and professional handover'.
- 9 The Claimant ceased to be the Supply Chain Manager at the end of September 2017 and Mr Hall took over his responsibilities. The Claimant prepared a handover checklist setting out the various matters to be covered under various headings. I set out those headings to give a flavour of the whole document. Under each of the headings various items were listed. I only set out the detailed items to which I was referred.
 - 1 Supplier / factory / account management
 - h. Act as an advisor to B&M for the introduction of new suppliers, products and services
 - 2 Pipeline Mgt / Optimiza
 - a. Forecasting project (Cognos + Optimiza = 1)
 - 3 Delivered sales planning & forecasting
 - 4 Planning per-se
 - 5 Commercial planning
 - 6 Liaison with other depts
 - 7 Project involvement
 - a. Experience of what may or not work
 - b. Consultant role (DHL / Exclusive etc)

- c. Risk analysis / anticipation of unexpected outcomes
 - 8 Continual improvement
 - 9 BAU [Business as usual]
- 10 There was no criticism made of the Claimant during his employment in respect of any of those matters by Mr Hall or Mr Singh, or indeed anyone else, until 21 December 2017. The evidence of the Claimant that he discussed the handover with Mr Singh on 30 November 2017 and early on 21 December 2017 and that Mr Singh said on each occasion that he was entirely satisfied with the handing over to Ms Groenewald and other departments was not challenged.
- 11 The issue which has resulted in these proceedings concerns the supply and delivery of marble furniture. Mr Singh raised a further matter in his witness statement to which I refer below.
- 12 I will refer to the company which was supplying the Respondent with marble furniture at the beginning of 2017 as 'Exclusive'.¹ I was not given its full name. Exclusive imported the furniture at least principally from China, and stored it in its own warehouse or warehouses. Because of the nature of marble furniture it was then delivered by Exclusive direct to the customer to fulfil orders placed with the Respondent rather than to the Respondent's own warehouse. Exclusive ran into financial difficulties in early 2017 and went into administration. The Respondent purchased from the administrator the marble furniture which Exclusive had in its warehouse(s) and also the furniture which was still at sea awaiting importation. Exclusive continued for a time thereafter to deliver the furniture to satisfy orders placed by customers with the Respondent.
- 13 The Respondent had at some stage in the past bought marble furniture from Alfrank Designs Limited ('Alfrank') in Eire. In the light of the difficulties with Exclusive there was a preliminary meeting on 28 June 2017 with Alfrank in Dublin. That meeting was attended on behalf of the Respondent by Lisa Broad, Head Buyer, Ms Davenport, Junior Buyer, and James Irons, Head of Marketing. The purpose was to discuss the possibility of again sourcing marble furniture through Alfrank. The Claimant was not involved in those discussions.
- 14 There was a further meeting on 9 August 2017 at which Ms Broad, Ms Davenport and the Claimant were present. Ms Broad agreed to buy three ranges of furniture from Alfrank. Any furniture ordered was to be delivered direct to the customer by Alfrank, as was the case previously with Exclusive. I do not know what was reported to Mr Singh by Ms Broad, if anything, following that meeting. I did have in the bundle an email to Mr Singh from the Claimant dated 14 August 2017. This is part of a chain of emails concerning the possibility of using another company for marble furniture. The relevant part of the email is as follows:

¹ In some emails it is referred to as 'Scala' and I have changed the nomenclature for the purposes of clarity.

Lisa has bought 3 ranges and some occasional from Alfrank (one of which will replace a current range we import direct) and if they are as good as their word we will potentially move more of our Marble business to them (next Spring).

- 15 The Claimant then set out the delivery costs to be charged by Alfrank for each type of item, and it is not necessary to provide the details. The important point is that the fact of delivery by Alfrank was mentioned, together with details of the charges. It is common ground that at the date of this hearing all marble furniture sold by the Respondent was being supplied by Alfrank. The Claimant did not have any further involvement at all concerning arrangements with Alfrank either in respect of purchasing goods from them or for the delivery of such goods.
- 16 The Respondent started experiencing difficulties with Exclusive concerning the delivery to customers of the furniture in its warehouse(s) which had been purchased by the Respondent. There were then discussions with DHL. I accept the evidence of the Claimant that his only involvement was to take part in a teleconference on 22 September 2017 with Mr Hall and DHL representatives for an exploratory discussion. The Claimant's sole concern at the time was to effect an urgent movement of the furniture which was in Exclusive's warehouse to the Respondent's warehouse. That was an entirely different matter from the purchase of furniture from Alfrank.
- 17 I entirely reject the evidence of Mr Singh that the Claimant subsequently attended various meetings concerning a new arrangement with DHL. There were no minutes or other records of such meetings. There were no emails setting up those meetings to which the Claimant was a party. No details of the dates of any of the supposed meetings which Mr Singh said were attended by the Claimant were provided. There was simply no evidence of them at all other than the assertions of Mr Singh. Mr Singh also made some assertions in his witness statement as if they were facts, but of which he did not have knowledge. I conclude that Mr Singh was not a trustworthy witness in several respects.
- 18 The evidence of the Claimant was absolutely clear and convincing concerning this matter. I find he answered questions put to him in cross-examination wholly truthfully and he did not seek to distance himself from matters where he had been involved. I find that his sole involvement with DHL was to participate in the telephone conference on 22 September 2017.
- 19 There were no documents in the bundle whatsoever concerning the final arrangements agreed with DHL. It was asserted that there had been an agreement reached under which DHL was to deliver all marble furniture to be sold by the Respondent in the future, including the furniture supplied by Alfrank. I accept that some such arrangement was reached with DHL. It will be recalled that Alfrank was to effect delivery of the furniture itself.
- 20 Mr Singh's evidence was somewhat vague, but I accept that he learned that Alfrank was effecting its own deliveries direct to the customer during the week commencing 18 December 2017. In his witness statement he said that it was 'in or around December 2017' but there is an email of 21 December 2017 which refers to the week of 18 December 2017. In any event it was before Mr Singh had spoken to the Claimant first thing on 21

December during which Mr Singh had expressed himself satisfied with the handover being effected by the Claimant.

- 21 Mr Singh then left a voicemail on the Claimant's telephone later on 21 December 2017 saying that he was withdrawing the enhanced redundancy payment. There was then a brief telephone conversation followed up by a letter of the same date from Mr Singh. The relevant paragraph is as follows:

Following our conversation today, it has been brought to my attention that you have failed to correctly engage with the logistics team, more importantly Darren Hall, in relation to the Scala (Exclusive) Marble furniture supply moving to Alfrank; specifically, the agreement with them to use their own logistics services to fulfil and home deliver all UK orders. As such, you have exposed the business to incurring significant additional costs from our new service provider DHL, who we will need to terminate services with.

- 22 The Claimant replied to that email on 28 December 2017. The relevant paragraphs are as follows:

The issues with Exclusive following their financial issues (early 2017) are well understood, Commercial asked [Warehouse and Delivery] if they would consider delivering Marble for Harvey's and the answer was an emphatic "no".

I raised the flag with you on July 30th via email that we may have an issue with Exclusive delivery capacity/stability in the run-up to Xmas and advised that we should move a meeting planned in early September to Lutterworth so W&D could be in the driving seat. As it turned out Exclusive withdrew their delivery service leaving us no choice other than to collect our stock and set up an alternative delivery service via DHL within 30 days, you will also recall that a trial via Lutterworth was unsuccessful.

Afrank:

I have not personally made an agreement to use Alfrank logistics services. I have had minimal involvement with Alfrank and have met them once in August. I joined David, Lisa and Lauren at David's request to provide input as to their viability as a possible alternative source for Marble. I emailed you was line manager the relevant information from the meeting along with cost per drop on August 14.

- 23 In his witness statement Mr Singh raised one other issue which the Respondent maintained justified the non-payment to the Claimant. The issue did not form part of the decision by Mr Singh not to make the payment. He said that the Claimant had failed to handover Cognos forecasting and that Ms Groenewald and Mr Hall required the assistance of the Finance department. There were no material documents provided. I accept the evidence of the Claimant that he had trained Ms Groenewald on Cognos and that the Finance department had been involved for months. He added that others 'owned' the process. The matter was not pursued in cross-examination.
- 24 The Respondent has not sought to argue that the wording of the letter of 2 October 2017 was too vague as to be unenforceable, or that for any other reason it was not binding on the Respondent, but rather that the Claimant did not comply with his obligations to effect a thorough and professional handover.
- 25 Mr Lassey said at the beginning of the hearing that the law was straightforward, but he did not elaborate on the point at that time. In closing Mr Lassey said that there had to be a repudiatory or fundamental breach of the agreement by the Claimant and he submitted that the Claimant was

in fact in such breach in that there had not been a thorough and professional handover as required. Mr Lassey did not address the point as what the position would have been in circumstances where the Claimant was in breach of contract, but not in fundamental breach. Mr Lassey also did not submit that the effect of the letter of 2 October 2017 was to create a contract subject to a condition precedent. I have therefore considered the matter on the basis put forward by Mr Lassey, although the matter is somewhat academic by reason of my factual findings.

- 26 What I have to consider is whether in fact the Claimant was in fundamental breach of his obligations, whether or not any such breach was known to the Respondent at the time.²
- 27 Mr Lassey submitted that the Claimant had full knowledge of the terms of the new arrangement with Alfrank, and also the terms of the contract being negotiated with DHL and that DHL was to be responsible for the delivery of all marble furniture. I do not accept that submission to be correct on the facts.
- 28 Mr Lassey pointed to item 7b in the handover checklist and that it referred to both DHL and Exclusive. It is correct that it does refer to both companies. However, the role of the Claimant was to act as a consultant. I read that as being available to provide advice and assistance if consulted about any issue. Nobody chose to consult the Claimant about the marble furniture delivery issue save in respect of transferring the 'ex-Exclusive' stock to the Respondent's own warehouse(s). The Claimant cannot be blamed for the omission others.
- 29 I find that the Claimant complied with his obligations to effect a handover appropriately and was not in breach of contract, let alone a fundamental breach. My conclusion is that there was a failure of management within the Respondent, and that the Respondent through Mr Singh has quite wrongly sought to place the blame on the Claimant. I note in this context an email from Mr Singh says that what occurred 'demonstrates how silo'd we actually are'. I cannot find any evidence of any default by the Claimant and any responsibility lies elsewhere than on the Claimant.
- 30 For the above reasons I find that the claim succeeds.

Employment Judge Baron

Dated 26 October 2018

² It is therefore different from a case of unfair dismissal where the actual knowledge of the employer at the time is material.

