



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms D Glasper

AND

Prioritising People's
Lives Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Teesside

On: 20 November 2017

Before: Employment Judge Martin

Appearances

For the Claimant: Mr A Perriman (Employment Consultant)

For the Respondent: Mr R Crabtree (Employment Consultant)

RESERVED JUDGMENT

- 1 The claimant's complaint of breach of contract (notice pay) is not well-founded and is hereby dismissed.
- 2 The claimant's complaint of unlawful deduction from wages is not well-founded and is hereby dismissed.

REASONS

Introduction

- 1 The claimant gave evidence on her own behalf. Mrs Asfana Ali, the Managing Director of the respondent company, gave evidence on behalf of the respondent.
- 2 The Tribunal were provided with a bundle of documents marked Appendix 1.

The law

- 3 The law which the Tribunal considered was as follows:-

Article 3 Employment Tribunals Extension of Jurisdiction Order 1994:

“Proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages for a sum due in respect of personal injuries) if:-

- (a) the claim is one to which section 131(2) of the 1978 Act applies in which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- (c) the claim arises or is outstanding on the termination of the employee’s employment.”

Section 13(1) Employment Rights Act 1996:

“An employer shall not make a deduction from wages of a worker employed by him unless:-

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”

Section 13(2):

“In this section ‘relevant provision’ in relation to a worker’s contract, means a provision of the contract comprised:-

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

Section 13(3):

“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion, the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

The issues

- 4 The claims and the issues which the Tribunal had to consider are as follows:-
 - 4.1 Whether the claimant was entitled to any damages as a result of a breach of contract. In that regard, the Tribunal had to consider whether the claimant had committed an act of gross misconduct which entitled the respondent to summarily dismiss the claimant without notice. Alternatively, the Tribunal had to consider what, if any, notice was due and what amount was payable to the claimant in that regard.

- 4.2 Secondly, there was a claim for unlawful deduction from wages. In that regard the Tribunal had to consider whether the respondent was entitled to make deductions from the claimant's salary by reason of a relevant provision in the claimant's contract of employment. If not, the Tribunal had to consider what sum was due and owing to the claimant.

5 **Findings of fact**

- 5.1 The respondent is a small private company providing care and support to elderly and vulnerable people. Mrs Ali is the sole director and shareholder.
- 5.2 The claimant commenced employment with the respondent as a part time Care Coordinator in May 2016.
- 5.3 The claimant had previously worked in a care organisation and had worked with the registered Manager for the respondent company, Mr Gavin Hobson.
- 5.4 The respondent says that when the claimant was interviewed for the post she was provided with an applicant starter pack. Mrs Ali said that she interviewed the claimant and drew the claimant's attention to all the documents in the recruitment pack which included the job description, various policies relating to the company, a health declaration, a confidentiality agreement and an authorisation to make deductions from wages. Mrs Ali said that this was part of the respondent's standard applicant starter pack. She said that the claimant agreed to all of these provisions and policies. She said that those documents were all then, as was usual practice, filed on the claimant's personnel file in the usual way. The respondent's recruitment pack and starter pack is at pages 27-66 of the bundle.
- 5.5 A statement of terms of employment for the claimant is at pages 68-71 of the bundle. Page 69 sets out the notice provisions. It states that the employee is required to provide one month's notice and is entitled to receive two weeks notice to terminate her employment with the company, unless statute provides for a greater length of time based on her period of service.
- 5.6 The statement of terms of employment at page 70 of the bundle refers to a provision regarding deductions from wages. It states that the company reserves the right to require the employee to repay to the company either by deduction from salary or any other method acceptable to the company:- any amounts of remuneration, expenses, or other payments which are overpaid; any other sums owed to the company by way of training, company equipment, advances or expenses; and any excess holidays.
- 5.7 The claimant was subsequently promoted to the role of Deputy Manager. The respondent says that they were not able to locate a copy of the claimant's contract of employment, but have produced a standard statement of main terms of employment which includes a confidentiality provision which states "An employee must not disclose any secrets or other information of a confidential nature relating to the company or its business or in respect of any obligation of confidence which the company owes to any third party during or after their employment except in the

proper course of their employment or as required by law". It also states that "No documents which belong to the company that include confidential information must be removed from the premises at any time without proper authorisation and must be returned to the company upon request and in any event upon the termination of the employee's employment". That clause is at page 77 of the bundle.

- 5.8 The respondents have produced an authority to make deductions from wages which they say is part of the applicant starter pack which should have been retained in the claimant's personnel file. Mrs Ali says that the claimant removed this document from her personnel file along with other documents. That document states it is part of the applicant starter pack and is stated to be an authority to make deductions from wages. It states that "The employee accepts and agrees that the following are express written terms of their contract of employment as stated in the employee handbook which they have read and understood". The document is at pages 79-81 of the bundle. At page 79 of the bundle it states that "The employee authorises the employer to make deductions from the employee's wages as follows." It first of all refers to overused annual holidays; uniforms; loans and advances. It then states that "As a result of the employee's carelessness or negligence the company suffers loss or damage to property or stock, this will be construed as a serious breach of the rules and where this is construed as particularly serious then this may render the employee liable to pay the full or part of the cost. If the employee fails to pay, the employer reserves the right to deduct the costs from the employee's pay." The authorisation at page 79 also states that "If the employee leaves the organisation and fails to work their full contractual notice without the organisation's prior agreement then a sum can be deducted from any final monies owed to them."
- 5.9 The claimant says that her role included supervising care staff; undertaking risk assessments; completing and reviewing care packages and undertaking on call work when required. She was also responsible for undertaking audits in her role as Deputy Manager.
- 5.10 The claimant says that she and other staff who were working in the office, namely Emma the new Care Coordinator, Mr Gavin Hobson the Registered Manager and Mrs Ali the Director, all shared a company laptop.
- 5.11 Mrs Ali said that the laptop was very old and had little memory. She said it simply contained company policies, but did not include care plans.
- 5.12 The claimant said that she would often have the company laptop at home. She said she used it with a USB stick to draft or finalise a care plan which she had started in the office on the office PC, but which she was not able to complete and which she would then complete at home using the company laptop.
- 5.13 An incident arose on 22 January 2017 when a service user died. The Care Worker involved was Jason Hugill. He was suspended pending a police investigation which was commenced into the incident. The claimant was informed by the respondents that she should not have any contact with the member of staff involved until the investigation was completed.

- 5.14 The claimant says that during February she had some contact with the Care worker involved because on one occasion he asked for some support which she provided to him. She said that on another occasion she ran into him in a local supermarket.
- 5.15 The claimant says that part of her role as Deputy Manager was to undertake an audit of company files. She said that she had undertaken an audit around the beginning of March 2017 and noticed a number of issues where the respondents were not obtaining references and proper DBS checks or the DBS checks had expired. She said that she also had noticed issues regarding training requirements and training certificates. The claimant said that she had made notes of the issues of concern. She noted where documents or information were missing, and where there were failures to follow proper procedures. In evidence before the Tribunal she stated that she had made notes of all of these concerns which she had written down in a notebook. She did not indicate that she had ever brought these concerns to the attention of the respondents. She said in evidence that she had retained the notes which she had made at the time. She said that she pulled those notes from the notebook. She had left the notebook with the respondents, but taken the notes with her when she left the respondent's employment.
- 5.16 Another member of staff, Mr Anthony Donachie, made a complaint about the claimant around March 2017. He alleged that the claimant was bullying him. This was brought to a head following a supervision meeting with Mr Gavin Hobson and Mr Donachie. After that meeting, Mr Hobson sent an e-mail to Mrs Ali where he raised concerns about the claimant. That e-mail is at page 123 of the bundle. In that e-mail Mr Hobson raised concerns about whether the claimant was meeting other members of staff who had been suspended pending police and internal investigations in relation to the incident in January 2017. He also raised a concern about whether the claimant was victimising Mr Donachie.
- 5.17 On 22 March 2017 the claimant was called into a meeting with Mrs Ali. Those allegations were put to the claimant namely whether she was meeting with a member of staff who was suspended pending an investigation and against company instructions to that effect and the concerns raised by Mr Donachie about victimisation and bullying.
- 5.18 Mrs Ali decided that the claimant had disobeyed a reasonable instruction not to contact the member of staff who was suspended. She dismissed the claimant with notice. The claimant was only entitled to two weeks' notice but Mrs Ali gave her four weeks' notice. She said that she gave the claimant longer notice so that the claimant could get another job.
- 5.19 The letter of dismissal is at page 125 of the bundle. It states that the claimant has been dismissed for inappropriate use of social media; harassment and bullying of staff members; and disobeying orders from the Director regarding contact with a member of staff suspended pending a criminal investigation. The reason for dismissal is stated to be serious insubordination.

- 5.20 The claimant admitted in evidence to the Tribunal that she was not happy with the decision made to dismiss her. She admitted that she was angry and disgruntled about the decision.
- 5.21 The claimant said that after she was dismissed no one spoke to her in the office.
- 5.22 On Friday, 24 March 2017 the claimant had a meeting in the afternoon for an assessment of a care package. The claimant took the company laptop and a USB stick with her. She said that she left her computer on as normal when she left the office.
- 5.23 Mrs Ali said that the claimant was undertaking an assessment at Thornaby which would only take her about 45 minutes to an hour. She had expected the claimant back in the office. The claimant said that the assessment was in Acklam and some distance away.
- 5.24 The claimant said in evidence before the Tribunal that, before she left the office she told Elizabeth Bivens who was the receptionist, she would be bringing back her laptop on Monday. The Receptionist, Elizabeth Bivens, was a shared Receptionist with all of the businesses within the building where the respondent company was located.
- 5.25 The claimant said that she had this discussion with the receptionist because she had a week's holiday already booked. She said in evidence before the Tribunal that she did not intend to return to the respondent company after she took her holiday, but admitted that she had not told the respondent that she was not intending to return to the office after Friday.
- 5.26 Mrs Ali said that when the claimant did not return to the office about just before 5 o'clock she decided to phone the claimant.
- 5.27 The claimant said that Mrs Ali tried to phone her while she was still with the client. She said she wanted to finish the assessment and effectively said she would call Mrs Ali back, so put her off. The claimant said that when she had completed the assessment she phoned Middlesbrough Borough Council.
- 5.28 Mrs Ali said that when the claimant did not return to the office, both she and Gavin Hobson tried separately to phone the claimant and then discovered that their numbers appeared to be blocked. The claimant admitted in evidence before the Tribunal that she had blocked the respondent's numbers. She said that she had finished work at 5:00pm and decided to go home.
- 5.29 Mrs Ali said that she noted that the claimant's personal belongings seemed to be missing from the office. Mrs Ali said that she then tried to access some documents on the claimant's PC and discovered that all the documents on the claimant's PC and her e-mails appeared to be have been deleted.
- 5.30 Mrs Ali said that she was concerned and sent a text to the claimant's boyfriend to tell him that she was going to phone him. She did this because he is deaf. She said that she then telephoned the claimant's boyfriend and asked him to pass a message on to the claimant.

- 5.31 The claimant telephoned Mrs Ali after she got the message from her boyfriend. Mrs Ali said the claimant was not happy about her calling her boyfriend. Mrs Ali said she asked her where she had been and why she had not returned to the office. Mrs Ali says that she asked the claimant about the PC and her laptop and the claimant said that “she should wait and see” and that “she was not going to take these things lying down”. Mrs Ali said that she asked the claimant for everything to be returned. The claimant says that the respondent then dismissed her immediately. Mrs Ali said that the claimant then hung up on her and blocked her calls.
- 5.32 Mrs Ali said that when she looked around the claimant’s desk she noticed that the claimant appeared to have also got documents belonging to her previous employer. She said that she called them and was told that the claimant had reported them to the CQC. In evidence before the Tribunal the claimant admitted that she had some documents belonging to her previous employer, but said they were only templates and standard documents.
- 5.33 Mrs Ali said that she was concerned about the situation. She said that she then started to check the staff files and noticed that a number of documents relating to the claimant were not on her staff file and that documents were missing from other staff files as well.
- 5.34 Mrs Ali said that, because of her concerns about data having been removed relating to both staff and customers, she contacted all the various regulatory authorities namely the CQC and the Information Commissioner. She says that she also reported the matter to the police.
- 5.35 The claimant said that the police contacted her on Saturday morning and she told them that she would be returning the laptop and other items to the respondents on Monday morning. The claimant said that the police had told her that they were not going to be taking matters any further.
- 5.36 Mrs Ali said that she and Mr Hobson spent the weekend checking the paper files to see what documents were missing. Mrs Ali said that she also contacted an IT expert as the company did not have any IT specialist. She asked the IT specialist to review what files had been removed or deleted from the computer.
- 5.37 On Monday, 27 March 2017 the claimant returned the laptop and other items to the respondents. She left them with the Receptionist, Elizabeth Bivens. Those items included a diary; some communication sheets; a care plan; some company files; the company laptop; an assessment document; a notepad and some other items like the business centre fob, uniform, ID badge and office keys.
- 5.38 Mrs Ali said that the list of items returned did not include items taken from the claimant’s own file nor the USB stick. She said that when she opened the laptop she found that all the documents had been deleted. The claimant said that the USB belonged to her. She said that she did not remove any documents from her file.
- 5.39 The claimant said that she did delete some files. She said that she deleted partially completed care plans. She said that it was her practice to start drafting a care plan in the office and then complete it on the company

laptop at home using the USB stick. She then deleted the partially drafted care plans once she had drafted a final version of the care plans. She denied deleting any other files or documents.

- 5.40 On Monday, 27 March 2017 the respondents asked an IT Consultant to attend at the offices and check which files or documents had been deleted or removed.
- 5.41 The respondents have produced various documents from the IT expert which include an event log and a list of downloaded and deleted files which are at pages 128-138 of the bundle.
- 5.42 Pages 128, A and B of the bundle show the event log for the claimant produced by the IT expert. That document shows the activities of the claimant, which seem to start shortly after she was dismissed on 22 March 2017.
- 5.43 Pages 129-133 of the bundle show a list of files produced by the IT expert. This list identifies files which have been downloaded by the claimant from 22 March until she left the office on 24 March 2017.
- 5.44 Page 134-138 of the bundle show a list of files produced by the IT expert. This list identifies files deleted by the claimant from 22 March until she left the office on 24 March 2017.
- 5.45 The documents in those 2 lists documents appear to relate to various staff and service users. They include policies as well as documents relating to recruitment and staff files. They also include care plans for clients / service users.
- 5.46 The respondent says that most of those documents contained sensitive information about either their staff or vulnerable users of their service.
- 5.47 In evidence before the Tribunal the claimant admitted that she deleted some files but said that those were only care plans which she deleted when the completed draft was finalised after she had finalised it at home.
- 5.48 In evidence to the Tribunal Mrs Ali said that both she and Mr Hobson spent a lot of time over the weekend trying to check what documents were missing and then tried to replace them. She said that work continued all the following week. Mrs Ali said that she had to employ the services of an IT expert. He sent an invoice to her, which is at page 183 of the bundle. The invoice is for £6,000 for undertaking a review of the company's computers which he commenced on 27 March and continued at various times during that week.
- 5.49 The claimant suggested in evidence to the Tribunal that the IT Consultant was a friend of Mrs Ali. She alleged that Mrs Ali had a habit of producing false documents. However none of those allegations were actually put to Mrs Ali on cross-examination.
- 5.50 The claimant said that she tried to contact the CQC on Monday 27 March 2017.
- 5.51 On 28 March the respondent dismissed the claimant for gross misconduct. The letter of dismissal is at page 127 of the bundle. The claimant was dismissed for removing office documentation and deleting sensitive

information from the office computer and for theft of company data. The letter states that the company will be pursuing the claimant for damages in relation to those actions and indicates that the claimant is in breach of the data protection policy, the confidentiality policy and various other policies of the respondent company. It also advises the claimant that they have reported the matter to the CQC and the Information Commissioner. The letter is dated 28 March 2017 and is at page 127 of the bundle.

- 5.52 The respondent also reported the claimant to the DBS Register and Safeguarding Teams. No action was taken by them against the claimant.
- 5.53 On 29 March 2017 the claimant spoke again to the CQC. She said that she raised matters relating to the recent audit which she had undertaken. She e-mailed her concerns with a list of missing documents from employee files and allegations about what she claimed were fraudulent practices. The list of the matters which she raised with the CQC are at paragraph 38 of her witness statement which refers to a lack of references, invalid DBS checks, incorrect training certificates and lack of training. She also raises concerns about care plans and risk assessments not being completed on time. She refers to conflicts of interests, victimisation and breaches of employment contracts in particular relating to suspended employees and deduction from wages.
- 5.54 In evidence before the Tribunal the claimant admitted that she had taken the notes that she had made from the audit with her when she left the respondents' offices on 24 March. It was those notes which she used to send details of the information in the e-mail sent to the CQC. She said that she tore those pages from her notebook. She admitted that, although she returned the notebook, she did not return those notes to the respondents when she left her employment.
- 5.55 The respondents indicated that their subsequent inspection by the CQC was effected by the claimant's contact with the CQC and they received a poorer rating as a result.
- 5.56 The claimant said that she met with the Information Commissioner. She understood that the matter would not be pursued any further by them.
- 5.57 The respondent deducted money, which that they alleged is due from the claimant as a result of her actions, from her final salary.
- 5.58 The respondent says that they were entitled to do this under an authorisation to make deductions which the respondent says was signed by the claimant but removed from her from her personnel file. The respondent says that the standard file copy of that document is the one at page 79 of the bundle. The claimant denied in evidence that she had removed that document from the file, but did not dispute that there might be a standard form document.
- 5.59 The respondent said in evidence that the claimant as Deputy Manager would have known about the authority to make deductions.
- 5.60 The claimant admitted in evidence before the Tribunal that she did not tell the respondent that she intended to leave her employment on 24 March to take her week's holiday and that she would not then be returning to the

respondents. She said that she was not happy about the way she was being treated in the office after she had been dismissed with notice earlier that week.

Submissions

- 6 The claimant's representative submitted that the claimant was entitled to her notice pay. He submitted that the claimant did return the documents to the respondent and had always intended to do so.

The claimant's representative further submitted that the respondents were not entitled to make any deductions from the claimant's wages. He submitted that she was entitled to all of her outstanding wages.

The respondent's representative submitted that the claimant had committed an act of gross misconduct and had been instantly dismissed on 28 March without notice. He submitted that she was not entitled to any notice. He was also noted that the claimant was not intending to work her notice anyway.

The respondent's representative submitted that the respondents were entitled to deduct money from the claimant's wages pursuant to the authority for the deduction of wages/. He submits this was a standard document issued to the claimant which she had agreed to but which had been removed by her from her file.

Conclusions

- 7 This Tribunal finds that the respondent dismissed the claimant for removing and deleting company data which is an issue of conduct.

Conduct is a fair reason for dismissal under section 98(2) of the Employment Rights Act 1996.

This Tribunal finds that the respondent's decision to treat that conduct as gross misconduct was a fair and reasonable decision in the circumstances whereby the claimant left the offices taking a company laptop without informing the respondent of her intention to return that laptop the following day. Of more concern was that the fact that she had downloaded and then deleted a substantial number of files belonging to the respondents which contained information of a particularly sensitive nature in relation to both staff and service users.

The respondent's decision to dismiss the claimant instantly for that reason was fair in those circumstances.

This Tribunal prefers the evidence of Mrs Ali to that of the claimant about the downloading and deletion of those documents which evidence is supported by substantial documentary evidence produced from the IT expert. The Tribunal has also taken account of the fact that the respondent reported these concerns immediately to the regulatory authorities - CGC and Information Commissioner. This is consistent with their concerns about the removal and deleting of information by the claimant, and is not a step which they would have taken without good cause. In any event, this Tribunal notes that the claimant herself admitted in evidence before the Tribunal that she had taken some documents from the respondents namely notes of an audit undertaken by her as part of her

role. She did not return those documents to the respondents when she left her employment.

The respondent was therefore entitled to instantly dismiss the claimant for those reasons.

Accordingly the claimant is not entitled to her notice pay and her claim for damages for breach of contract is hereby dismissed.

- 8 In relation to the claimant's complaint of unlawful deduction from wages this Tribunal has considered the provisions of section 13(1) (a) of the Employment Rights Act 1996 and reviewed the standard authority produced by the respondents to deduct wages from their employees' salaries.

This Tribunal prefers Mrs Ali's evidence that the claimant did sign and agree to the deduction of wages on the terms set out in the standard authority produced by the respondent to this Tribunal, when the claimant joined the respondent company.

The Tribunal prefers Mrs Ali's evidence that the claimant removed that document from her file. The Tribunal has taken into account the fact that there is a detailed starter pack in the bundle before us and that the authority to deduct wages specifically refers to that detailed starter pack. Therefore we consider that it is likely that this a standard authority issued to all employees when they join the respondent company. Furthermore we have taken into account the evidence about the removal of her other documents by the claimant namely the downloading and deletion of computer files, which is supported by documentary evidence and the admission by her that she took certain notes from the respondent company.

The Tribunal notes that the respondents did suffer loss and damages as a result of the claimant's actions in downloading and deleting company data. We note the invoice sent from the IT expert, which sum substantially exceeds any sums due to the claimant in relation to her final salary. Although the claimant suggested that invoice might have been fabricated, the evidence was never challenged on cross-examination.

For those reasons we accept that there was an authority on the part of the respondents to deduct wages from the claimant for any losses to property, which they suffered as a result of the claimant's actions in removing data from the respondent's premises.

Accordingly the claimant's claim for unlawful deduction from wages is not well-founded and is hereby dismissed.

Employment Judge Martin

Signed: 15/12/17