



EMPLOYMENT TRIBUNALS

Claimant

Paul Simons

Respondent

GB Electronics Limited

v

Heard at: Hull

On: 04 December 2018

Before: Employment Judge Wedderspoon

Appearance:

For the Claimant: In person

For the Respondent: Mr Darren John Fell, Director

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

REASONS

1. By claim form dated 20 August 2018 the Claimant, Paul Simons, brought a claim for breach of contract against his former employer, G.B. Electronics Limited, the Respondent.
2. Judgment was given on the day of the hearing dismissing the Claimant's claim. These written reasons are provided pursuant to the Claimant's application dated 13 December 2018.
3. The Claimant's claim is for notice pay. His case was that he had served notice to terminate his employment with the Respondent. However, the Respondent required him to serve his notice working on a project which would mean he was continuing to live and work away from home. In the circumstances, the Claimant stated he had no alternative to resign before his contractual notice period expired because he was concerned for his health working away from home.
4. The issue identified at the commencement of the hearing was whether the Respondent was in repudiatory breach of contract by requiring the Claimant to undertake work on the Anvil project (which meant working away from home) during his contractual notice period.

5. The Tribunal was provided with an agreed bundle of 79 pages. The Tribunal heard from the Claimant and from Mr. Fell, Director of the Respondent Company. The Respondent also relied upon two written statements of Mr. McLaren and Mr. Phelps. Due to the fact there was no opportunity to challenge their witness evidence at the hearing, the Tribunal has attached limited weight to their evidence.
6. At the commencement of the hearing, it was clear that the terms of the Claimant's employment contract were relevant to the identified issue in the case. At the Tribunal's request, the Respondent obtained a copy of the Claimant's written contractual terms and the Claimant agreed that the terms provided by the Respondent were applicable to his employment with them.
7. The Claimant was employed by the Respondent from 1 October 2007 until 31 May 2018; latterly his role was Senior Project Manager. The Respondent contracts with third parties and installs life safety, security and data network installations at different sites.
8. In November 2013, the Claimant suffered work related stress and was absent from work for a period of about 5 weeks. From 2017/2018 the Claimant worked on a project for the Respondent for 4 days per week based in Norwich and lived away from home for a period of about 15 months.
9. On 18 January 2018, the Respondent informed the Claimant that Mr. Tommy McLaren (the Claimant's assistant) was being moved to another contract on 29 January 2018. The Claimant objected to this but was informed by the Respondent that it was unable to afford to keep Mr. McLaren with the Claimant on the "Norwich" contract.
10. The Claimant did receive some assistance from Shaun Raven but he was already on site full time as owner of the sub-contract company carrying out fire alarm and security systems installation for the Respondent.
11. The Claimant became increasingly stressed. He was working long hours to complete the work. On 23 January 2018 he was informed he was required to stay on site 5 days per week. The Claimant complained about this to Mr. Fell who informed him that there was no other option and if the Claimant was unhappy he could resign but wanted to know the Claimant's decision by 9 am on 24 January 2018.
12. On 24 January 2018 James Morrison, the Claimant's line manager contacted the Claimant and asked him what he had decided to do. The Claimant stated he had no choice but to accept.
13. The Claimant explained that he was unable to sleep and was becoming increasingly ill. Although at the Tribunal hearing Mr. Fell, on the part of the Respondent, stated it was sympathetic to the Claimant, the Tribunal does not

find any evidence of this. Despite alerting the Respondent to his situation, the Respondent failed to undertake any risk assessment for the Claimant.

14. By May 2018 the “Norwich” contract was drawing to a close and the Respondent informed the Claimant he was required to work on another contract at RAF Marham on completion of the Norwich contract. The Claimant complained that this meant him working away from home and he did not want to work on this contract. The Respondent told the Claimant there was no alternative. On this basis the Claimant discussed the matter with his wife and concluded he would leave the Respondent’s employment in the best interests of his health. It is agreed between the parties that it was an express term of the contract that the Claimant had to give the Respondent three months’ notice.
15. On 25 May 2018, the Claimant wrote a letter of resignation explaining he was retiring because of ongoing ill health due to work related stress and extreme pressure and working away from home for so long has affected his personal home life. He stated he was prepared to finish the “Norwich” job but did not see any point continuing with works on the Anvil project (at Marham). He stated in his notice of resignation that he could work his notice period on completing the build documentation for the Norwich job but did not feel able to work on the Anvil job at Marham. He sought to agree a leaving date.
16. Mr. Fell, replied to the Claimant’s notice of resignation. The Respondent wished to discuss the Claimant’s refusal to work his notice face to face. He asked the Claimant to attend a meeting on 29 May 2018. Initially the Claimant refused to attend the meeting. Mr. Fell replied that the Claimant was seeing his *“proposal as the only solution to the situation with no consideration of operation of the business and live projects impacted.”* He stated that the Claimant’s failure to work his notice period puts him in breach of his contract of employment. He asked to meet the Claimant again.
17. At the meeting on 29 May 2018 with the Claimant and Ian Phelps, Group Operations Director and Darren Fell, the Claimant explained to the Respondent how he was feeling mentally and that he would not work his notice on project Anvil. Darren Fell stated that the Claimant had been on the project since day one and that the Respondent did not have any other work for the Claimant to go to whilst he worked his notice. The Respondent stated that the Claimant was required to attend the Anvil contract at Marham. The Claimant stated he did not think he could do that. The Claimant stated that he felt he needed to take 8 months off all work and would decide what he wanted to do after that period which could include working in a superstore. The Respondent stated that as the Claimant was going on a two week holiday in June 2018, the Respondent could get a temporary Project manager to cover the Claimant’s notice period and the duration of the project. The Claimant asked if the Respondent would try and claim back the cost of the temporary project manager if he did not work his notice period. Mr. Fell stated that the Respondent would be entitled to do so but if the Claimant agreed his last pay day would be 30 May the Claimant’s salary could, be used to pay for the temporary Project Manager. The Claimant agreed to leave the Respondent’s employment on 30 May 2018 on this basis.

18. Under cross examination, the Claimant accepted that the client required the Respondent to have management present on site 5 days per week. However, he further stated custom and practice meant that he was not required to be on site on all 5 days. He accepted that the Respondent was entitled to allocate him a job/site to work on. Mr. Fell gave evidence that the Respondent was required to fulfill the contract for the client on site. He stated that third parties do require managers to be present on site. On balance the Tribunal concluded that although the Claimant had been permitted to work on some sites at times four days per week by January 2018 there was a requirement in his role to be on site five days per week.
19. The Tribunal finds that the Respondent did require the Claimant to undertake this Project and they required his expertise on site 5 days per week but the Claimant because of his health was intransigent that he could not do so.

Submissions

20. The Claimant's evidence is that he was forced to resign. No confidential counselling services were offered or provided to the Claimant. He submitted that if it had not been for the stress or if the Respondent had addressed his mental state he would still be working there.
21. The Respondent's case is that the Claimant had been employed on two projects; the Quadrum Institute at Norwich and the Project Anvil (Marham). The Claimant confirmed he was unwilling to work at Marham. The Claimant was required to work at Marham. To avoid any future dispute, the Respondent agreed with the Claimant he could leave his employment early but would forfeit his entitlement to notice pay. The Respondent is therefore surprised he has brought a breach of contract claim.

Conclusions

22. The starting point is the terms of the Claimant's employment contract with the Respondent. Express terms contained in the contract of employment determine the obligations of the employer and employee.
23. It was agreed that it was an express term of the Claimant's employment contract that the Claimant must provide three months' notice to terminate his contract of employment.
24. The contract of employment states that the Claimant's role involves "*a considerable amount of travel and may involve travelling overseas*" (see letter of appointment dated 29.8.2007).
25. The contract dated 6 January 2009 states at clause 3 "*the Claimant is to perform all acts, duties and obligations to comply with such orders as may be assigned by the company reasonably consistent with that position... Not being assigned to duties you cannot reasonably perform*".

26. Clause 5 states *“You may also be required to work at any other company premises with reasonable travelling distance from your home. During the course of your employment you may also be required to work at various premises belonging to the Company...and to travel both with the UK and abroad.”*
27. Pursuant to clause 14.3 of the company handbook it states, *“although you will usually be employed at one specific site it is a condition of your employment that you are prepared wherever applicable to transfer to any other of our sites”.*
28. The Respondent was entitled under the contract to determine where the Claimant worked. This included travel overseas. The Claimant was a senior project manager with expertise and significant skill. The Respondent required the Claimant to work at the Anvil project during his notice period because it did not have any other work for the Claimant to complete. This project required the Claimant to be present on the site 5 days per week.
29. The Claimant had been working away from home for a long period. The Tribunal accepts that this inevitably placed pressure and stress on the Claimant and his family life. However, the Tribunal finds that the Respondent was contractually entitled to require the Claimant to work on the Anvil project; it had no other work for the Claimant to do during his notice period. An employee cannot dictate to its employer where he/she can work. Further, the Claimant was in a senior position and was required to continue in his role at Anvil.
30. The terms of the employment contract were drafted widely enough by virtue of clause 5 to permit the Respondent to require the Claimant to work in the UK and abroad. In fact, the Claimant had on his own admission in evidence been working away from home for about 15 months on the Norwich project and previously worked abroad for some months for the Respondent.
31. The Tribunal finds working at the Anvil site was a reasonable distance from the Claimant’s home in the context of the drafting of the contractual term and the way in which it had historically been interpreted; the custom and practice has meant that the Claimant worked some distance in Norwich (and in fact abroad) historically. The idea of continuing on the Anvil project and the distance from the Claimant’s home may have been a stressful idea for the Claimant but was not an unreasonable distance and was not in breach of the employment contract.
32. When the Respondent required the Claimant to work at Anvil during his notice period, it was contractually entitled to do so. The Claimant was bound to comply. The parties in the circumstances reached a mutually acceptable compromise. There was no breach of contract. This is not a claim for disability discrimination whereby if an employee is disabled the employer must make a reasonable adjustment to a usual place of work that places the Claimant at a disadvantage. The Claimant has brought a breach of contract claim only.

33. I also consider the position as regards implied terms. An employment contract also contains an implied term that the parties to the contract will not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust which should exist between employer and employee (**Malik v BCCI SA (in liquidation) (1998) AC 20 and Baldwin v Brighton & Hove City Council (2007) ICR 680**). It is a severe test and there is no breach of the implied term if any conduct destroys trust and confidence where there is a reasonable cause for it. On the basis that there was a contractual right to require the Claimant to work at Anvil, there is no breach of contract in requiring the Claimant to do so although the Claimant found the idea stressful.
34. The breach of contract claim fails.

Employment Judge Wedderspoon

12 February 2019