



THE EMPLOYMENT TRIBUNAL

Claimant: Mr C McDonnell

Respondent: GQ Property Management Limited

REASONS

(Requested by the claimant on 26 February 2019)

1. These are the reasons for the Tribunal's Judgment, sent to the parties on 26 February 2019, that the Claimant was wrongfully dismissed.
2. By a claim form presented on 17 October 2017, the Claimant complained of wrongful dismissal. The Respondent denied that any sums were owed to the Claimant.
3. I heard evidence from the Claimant and from Paul Wilson, Managing Director of the Respondent. I was also provided with separate bundles from the parties.
4. The Claimant commenced employment with the Respondent on 24 July 2017 as a Block Manager.
5. The contract of employment, signed by the Respondent and the Claimant on the 4.8.17 and 3.8.17 respectively, contains provisions relating to notice at clause 18. That provides that the Claimant give one months' written notice of termination of employment. In respect of the Respondent, it refers to the right to dismiss the Claimant summarily without notice for gross misconduct and the right to make a payment to him in lieu of notice. However, it is silent on how much notice the Respondent is required to give the Claimant.
6. On 16 August 2017, the Claimant was dismissed with immediate effect. In a letter dated 21 August 2017 confirming the dismissal, the Respondent cited poor performance as the reason for termination. There is no reference to notice pay in the letter.
7. The Claimant's final payslip was dated 31 August 2017 and covered pay for the whole of August, amounting to £3333.33 gross.
8. As the Claimant was not dismissed for gross misconduct, the Respondent was not entitled to dismiss him without notice or payment in lieu.
9. As the Claimant was employed for less than a month, the statutory notice provisions at section 87 of the Employment Rights Act 1996 do not apply. Therefore any entitlement to notice is based on the contract.

10. It appears to me that that the absence of notice obligations of the Respondent in the contract of employment was a mistake rather than intentional and that the expectation of the parties when they entered into the agreement was that there would be mutual obligations to give notice. The fact that the Respondent reserves the right to make a payment in lieu of notice supports this.
11. The question is: how much contractual notice would have been agreed at the time. Given that the Claimant was required to give a months' notice from day 1 (well in excess of the statutory notice provisions), it is unlikely that the Respondent would have provided for a shorter period of notice to be given on its part. The Claimant contended that he was entitled to receive 4 weeks' notice of termination and that would be consistent with his notice obligation (albeit expressed as 1 month).
12. I accept the Claimant's case and find that he was entitled to 4 weeks' notice or pay in lieu of it from the Respondent.
13. As the Claimant was dismissed on 16 August 2017, he was entitled to receive notice pay up to and including 13 September 2017. The Claimant was paid for the whole of August and so that would have covered 2 weeks of his notice pay. He is therefore owed the remaining 2 weeks, amounting to 1666.66 (gross).

Employment Judge Balogun
Date: 14 March 2019