



EMPLOYMENT TRIBUNALS

RESERVED JUDGMENT

Claimant: Miss Charlotte Adby

Respondent: Best4Garden.co.uk Ltd

Heard at: Birmingham Civil Justice Centre

On: 25 April 2019 and on
29 April 2019 (without parties)

Before: Employment Judge Battisby (sitting alone)

Representation

Claimant: In person

Respondent: No attendance

RESERVED JUDGEMENT

The claimant's claim is not well-founded and is dismissed.

REASONS

1. This is a claim for three days pay totalling £168 following the ending of the employment relationship between the claimant and the respondent. This is a claim expressed to be in respect of notice pay or arrears of wages. The claimant alleges that the respondent gave her notice to terminate the employment, but then refused to let her work on certain days during the notice period when she was willing and able to do so, or pay her in lieu.
2. Arrangements had been made for this hearing to take place by means of a video link with the claimant at the Employment Tribunal (ET) in Glasgow with the respondent to attend the ET in Birmingham. Due to technical problems the venue in Birmingham was changed to the Birmingham Civil Justice Centre the day before, and the respondent was informed. However, nobody from the respondent attended the hearing and I proceeded in their absence.
3. At the conclusion of the case, I decided for technical reasons due to the

video link and for the convenience of the claimant to reserve my judgement for a short period.

The issues

4. The issues to be determined were discussed with the claimant and are as follows:
 - 4.1 How did the employment relationship end?
 - 4.2 Was the correct, or any, contractual notice given?
 - 4.3 If the respondent gave notice, did it fail to allow the claimant to work her notice or pay her in lieu?
 - 4.4 Was the claimant willing and able to comply with the contract until it ended?
 - 4.5 Did the respondent fail to pay the claimant her wages for three days?

The evidence

5. The claimant produced a bundle of documents running to 48 pages and documents mentioned hereafter will be referenced to their page number in that bundle. She produced a witness statement (pp47-48) and also gave oral evidence in response to my questions.
6. The respondent did not attend, but I took note of its ET3, in which liability for the claim was strongly rejected.

The facts

7. The claimant was employed by the respondent as a marketing manager. The respondent sells garden and plant items online. Its owner and director is Mr El-Hashahar. The claimant commenced her employment on 22 May 2017. There was a signed contract of employment (pp18-20). The relevant terms were as follows:
 - 7.1 Notice to be given was 4 weeks in writing from either party (cl.4).
 - 7.2 Place of work was Cauldon Locks, Stoke-on-Trent (cl.5).
 - 7.3 Hours of work were 21 hours per week from 9am to 5pm on Monday, Wednesday and Thursday (cl.6).
 - 7.4 Pay was £8 per hour (cl.7).
8. At some point the claimant informed Mr El-Hashahar that she intended to move to Scotland and, on 10 December 2017, this was confirmed by an e mail from her to him (p26). She indicated a willingness to carry on working for the respondent as long as she could do so from home. Mr El-Hashahar responded almost straightaway by e mail that he would think about it and let her know (p26).
9. On Saturday, 13 January 2018, with nothing yet having been discussed between them, the claimant sent another e mail to confirm the date of her move to Scotland as being 27 January 2018 (p27). Mr El-Hashahar

responded straightaway again that he would speak with the claimant on the following Monday.

10. They did not have a discussion until Wednesday, 17 January. Mr El-Hashahar responded to the claimant's offer to work from home in Scotland by saying the contract would need to be varied to a casual one with no hours guaranteed, or he would not want her to continue and the contract would have to terminate naturally on her move to Scotland. I infer that, in reality, he preferred her to work from the office in Stoke.
11. On Monday, 22 January the claimant sent Mr El-Hashahar another e mail requiring him to give her the contractual notice of 4 weeks (p27). She said she was happy for the 4 weeks to run from the date of their meeting on 17 January. In evidence she confirmed she accepted the reality of the situation. She knew the contract required her to work from Stoke and that Mr El-Hashahar would only agree to her working from home on the basis of a new contract, which she did not wish to accept because of the lack of guaranteed hours. What she was therefore seeking to achieve was the payment of her 4 weeks' notice. She was taking the view that it was the respondent terminating the contract and so it should pay her for the notice period. Her last day in the office before moving to Scotland was Thursday, 25 January. In her e mail she was asking to know Mr El-Hashahar's intentions for her after that date. She confirmed she would work her normal hours in the Stoke office on 5 and 7 February with 8 February also being a possibility (p27). She never offered or suggested she was able to work in the Stoke office after 25 January other than on these dates.
12. On 23 January there was an exchange of e mails between them (p29) in which Mr El-Hashahar made it clear he regarded her as the one giving up the contract, but that the respondent would pay her for all the days she worked before leaving and that any work done in Scotland would be under a new contract. He said he would treat the day on which she told him of her move to Scotland as being the date on which her notice to terminate commenced.
13. On Thursday, 25 January they had a further discussion. The claimant confirmed she had not made any plans to attend work in Stoke on 29 January or for the rest of that week due to the "short notice" she had been given to attend, but that she could attend the following week and continue to do so until the end of her notice period once the respondent confirmed it still wished to employ her for that period.
14. The claimant relocated to Scotland on Saturday, 27 January. She did not attend the office in Stoke or do any work for the respondent during the following week. Her normal days of work would have been 29 and 31 January and 1 February and those are the dates of her claim for 3 days' pay.
15. Having taken some advice, the claimant sent Mr El-Hashahar an e mail (p31). In it, she argued that the respondent had terminated her employment on 17 January and she was seeking payment of 4 weeks' notice pay. He responded with an e mail on the same day (p32) disputing

that the respondent had ended the contract and asserting she had ended it due to her move to Scotland and that he was helping her by not insisting on 4 weeks' notice from her. He offered to pay her for any days she was willing to work at Stoke during the notice period.

16. On Monday, 5 February the claimant attended work in Stoke and there was a three-way telephone conversation between her, Mr El-Hashahar and an ACAS officer to try and resolve matters. The parties agreed that the employment contract would end after 4 weeks from 17 January and that the final 2 days of the contract (12 and 14 February) could be worked from home.
17. The claimant worked in Stoke on 5, 7 and 8 February and from home on 12 and 14 February and was paid for those days. She was not paid for the 3 days in dispute, namely 29 and 31 January and 1 February. She commenced her claim in the ET on 26 February.

The law

18. To succeed with her claim for claim for breach of contract, the claimant needs to prove that her employment was terminated by the respondent with insufficient notice being given under the contract and that the respondent failed to pay her in lieu of such notice; alternatively, that she was willing and able to work as required under the contract, but the respondent refused to let her work.
19. To succeed with her alternative claim for arrears of pay she needs to show that she worked for the respondent on the days for which a claim is made and was not paid for such work.

Conclusions

20. At the time of her move to Scotland, neither party had given notice to the other to terminate the contract. The claimant had not made any arrangements to attend work in Stoke as required by the contract. The respondent had made it clear it required her to continue to work in Stoke and that any other arrangement involving her working from home would have to be under a new contract.
21. The claimant failed to attend work in the week of 29 January on the 3 designated days under the contract. The respondent had not agreed to this. Accordingly, she was in breach of contract.
22. No new contract terms were agreed. However, the parties did agree that the contract should come to an end on 14 February 2018 due to the claimant's move to Scotland and that she would be paid for the days she worked up to that date, and further that she could work from home on 12 and 14 January. The parties abided by this agreement.
23. The respondent did not agree to pay the claimant for the 3 days she did not work as required by the contract. It was not a question of the

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respondent refusing to allow her to work – it was her choice. She knew she was moving and the date. The onus was on her to make arrangements so she could attend work in Stoke, as indeed she did for the week commencing 5 February.

24. The respondent might well have dismissed her for breach of contract, but an agreement was reached to enable the claimant to carry on working under the contract until 14 February, which was the termination date by mutual agreement.
25. In all the circumstances, I do not find the claim for 3 days' pay to be well-founded and it is dismissed.

Employment Judge Battsby
RESERVED JUDGEMENT
Date: 29 April 2019