



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE HALL-SMITH

BETWEEN:

Miss JL Beard Claimant

AND

Higareda Limited Respondent

ON: 17 February 2017

APPEARANCES:

For the Claimant: Mr N Beard, Claimant's father

For the Respondent: Mr W Beetson, Counsel

REASONS

(for the Tribunal judgment sent to the parties on 23 March 2017 and at the request of the Respondent)

1. By a claim form received by the Tribunal on 26 July 2016, the Claimant, Miss Beard brought complaints of unauthorised deductions from wages and of breach of contract involving notice pay entitlement.
2. At the hearing the Claimant attended in person and was represented by her father, Mr Neil Beard. Mr Beard called the Claimant and her grandfather, Mr John Beard to give evidence before the Tribunal.
3. The Respondent was represented by Mr W Beetson, Counsel, who called the following witnesses on behalf of the Respondent namely, Mr O Higareda, a director of the Respondent company and Ms Eleanor Bunyon, the Manager of the Dragon Pub. There was a bundle of documents before the Tribunal.

The issues

4. The issues to be determined by the Tribunal involved the question of whether the Claimant had resigned from her employment or had been dismissed. In the event that the Claimant had been dismissed the issue involved the effective date of termination of her employment with the Respondent.
5. The Claimant's financial claims before the Tribunal involved claims of unauthorised deductions for wages and the issue of damages for breach of contract involving notice pay entitlement. The issue of the effective date of termination was relevant for the purposes of calculating the period of her entitlement to her contractual pay.

The facts

6. The Claimant was employed by the Respondent as Front of House Staff at the Dragon Public House in West Sussex. The Claimant's role as Front of House Staff involved her in serving customers with drinks from behind the bar and she also had responsibilities on occasions in waiting at tables, taking food orders and attending to customers in the pub.
7. I found that there came a time when genuine performance issues surfaced about the Claimant. Matters came to a head as a result of complaints from customers about a row involving the Claimant which was overheard. The Claimant was suspended by the Manager of the Dragon, Eleanor Bunyan.
8. It is common ground that the Claimant was initially suspended without pay in breach of the terms of her contract of employment. The Respondent arranged a meeting the Claimant to discuss the issues which had surfaced on or about 27 June 2016. The Claimant attended accompanied by her father but in circumstances where it appeared that little or no progress was achieved in relation to the issues which had surfaced a further meeting of a more formal nature was arranged for the following day, 28 June 2016.
9. The Claimant attended the meeting arranged for 28 June 2016 accompanied by her grandfather, The Respondent's director, Mr Higareda and Eleanor Bunyan were present on behalf of the Respondent. The Claimant's grandfather asked to see the Respondent's disciplinary policy which was not available and matters did not progress. The Claimant became very distressed and felt that her continued presence at the meeting, which was becoming fractious, would serve no purpose and she left with her grandfather.
10. There was a dispute on the evidence as to precisely what happened at the meeting but it is common ground that Mr Higareda stated the following:

If you leave the meeting you will be treated as resigning.
11. The Respondent alleged that the Claimant stated at some stage *"I'll see you in court"* and the Claimant's grandfather accepted that he had something to the

effect *“this is likely to end up in court”*. I do not find such a comment surprising in circumstances where the Claimant herself considered that her suspension without pay had involved a breach of her contract of employment.

12. The Claimant, as I found, made attempts initially through her father by telephone to contact the Respondent to find out what the precise position was regarding her employment situation. Included in the Tribunal bundle were copies of the Claimant’s father’s telephone bills which evidenced that a number of calls had been made by him to the Respondent, namely on 28 June 2016, the day of the meeting, on 1 July and a number on 4 July 2016. The Claimant herself wrote a letter to the Respondent dated 30 June 2016 which included the following comment

I want to return to work, not dwell on what was said.

13. Accordingly, I found that endeavours had been made by the Claimant to find out what the position was.
14. It would have been open to the Respondent to have actively dismissed the Claimant although there may have been a potential liability for the Claimant’s notice pay unless there were grounds for summarily dismissing her.
15. The Claimant did not hear anything further from the Respondent until she received a letter from the Respondent on 8 July 2016 which stated that her resignation had been accepted with immediate effect. Although the letter bore the date 30 June 2016 it had been sent to the Claimant at a wrong address and the envelope which was produced to me was post marked 7 July 2016. The Respondent’s letter included the following:

Before you left the building I stated to you quite clearly at least three or four times that walking out of the meeting and out of the building would be tantamount to you resigning your position at the Dragon.

16. The Respondent’s letter continued by stating:

You left the business and I accepting your resignation with immediate effect.

The Law

17. It was the Respondent’s case that the Claimant had resigned from her employment at the meeting on 30 June 2016. It was submitted by Mr Beetson that the Claimant’s conduct at the meeting objectively considered was tantamount to a resignation.
18. A resignation involves the termination of the contract of employee by the employee concerned. In the circumstances of this case, the Respondent contended that the Claimant’s resignation should be inferred from her conduct at the meeting on 30 June 2016. A resignation can be inferred from the conduct of the employee. A difficulty can arise in assessing the legal position in the event that the Claimant’s conduct is ambiguous.

Conclusions

19. I reached my conclusion having regard to the evidence, to the parties' submissions and to the relevant law.
20. In my judgment the Respondent by the terms of its letter received by the Claimant on 8 July 2017 was dictating the circumstances in which it would treat the Claimant's conduct as conduct amounting to resignation in the absence of any reference to the Claimant's own intentions. The letter clearly informed the Claimant that her employment was at an end.
21. However I am unable to accept that the Respondent was justified in reaching a conclusion that the Claimant's conduct by leaving a meeting, which I found on the evidence, had been stressful and unproductive, had involved a resignation on the part of the Claimant. The Respondent never followed up the meeting with any enquiry of the Claimant about her intentions. The Claimant herself had made attempts to find out what the position was and had written to the Respondent on 30 June 2016 stating that she wanted to return to work and not dwell on the past. Accordingly, the Claimant had informed the Respondent in terms that she considered herself as continuing in its employment.
22. In my judgment the Claimant remained in the Respondent's employment until she received the letter from the Respondent on 8 July 2016 which informed her that she had been treated as having resigned from her employment. In circumstances where I have concluded that the Claimant had not resigned, the Respondent's letter amounted to informing the Claimant that her employment had been terminated by the Respondent.
23. I have concluded that the effective date of the termination of the Claimant's contract of employment was 8 July 2016 and the Claimant is entitled to her wages until that date in circumstances where she had been suspended. In addition, the Claimant was entitled to two weeks' notice pay.
24. The Claimant's take home pay amounted to the sum of £362.92 per week, and I award the Claimant damages in the sum of £566 representing two weeks' contractual notice pay entitlement.
25. The Claimant is further entitled to her pay from 28 June 2016 to 8 July 2016, made up as follows:

8 days' pay from 28 June 2016 to 8 July 2016:

1 week's net pay	£283
3 days' pay at £56.60 per day	£169.80
Tips	£65.00
	=====
	£517.80

Employment Judge Hall-Smith
Date: 27 December 2017