



EMPLOYMENT TRIBUNALS

Claimant: Ms A D'Oyley

Respondent: Skye Solutions Recruitment Ltd

Heard at: North Shields

On: 29 May 2018

Before: Employment Judge A.M.S. Green

Representation

Claimant: Ms K Robinson – Lay representative (Citizens Advice Bureau)

Respondent: In Person

JUDGMENT

1. By consent, the claimant's claims for arrears of pay, holiday pay and an itemised payslip are dismissed upon withdrawal.
2. The claimant's claim for breach of contract is dismissed.

REASONS

1. The claimant was employed as an IT Consultant for the Respondent until 21 November 2017. Her start date is disputed but, for the reasons given below, she signed her contract of employment on 11 September 2017. She resigned and raised a claim against the respondent for notice pay, payment of arrears of wages, holiday pay and a failure to provide payslips. She claims that she resigned from her employment with the respondent because of their material breach of contract. The respondent has defended the claim and has issued a counterclaim. In essence, the counterclaim proceeds on the basis that the claimant breached her contractual duties of confidentiality, post-termination restraint of trade clauses and the claimant engaged in making slanderous statements against the respondent.

2. In her resignation letter dated 20 November 2017, the claimant says why she decided to resign. She did so for the following reasons:
 - a. She claimed that the respondent had not complied with the terms and conditions of her agreement with them, both verbal and written. She does not provide any specific details of the relevant terms that were not complied with.
 - b. She claimed that she found it very difficult to execute her job to the best of her ability both to her clients and to the business making her role seem unprofessional.
 - c. In her claim form the claimant has expanded on her position by stating that she believed that she had agreed terms which were not reflected in the written contract, but she was forced to sign on 16 November 2017. She further alleged that the respondent refused to change her terms in writing and she was working in conditions in the office that were unsatisfactory in that there was no heating, no water and equipment or stationary to do her job. She gave examples such as no printer, computer or phone were provided.
 - d. In her oral evidence, the claimant also referred to the fact that Ms Seller's twin 7-year-old children came to the office. She also claimed that Ms Seller brought her dog to work.
3. As a preliminary matter, I informed the parties that the tribunal did not have jurisdiction to hear the employer contract claim and these should be pursued in a civil court. These were excluded claims. It appeared to me on discussion that there was little dispute between the parties concerning the arrears of pay and holiday pay claims. I adjourned the hearing to enable them to have a without prejudice discussion. On resuming the hearing, I was informed that they had reached agreement on these matters and would use ACAS to settle them via a COT3. The issue that was left for me to resolve was whether the claimant had established a material breach of contract on the part of the respondent justifying her resignation. I also discussed with the parties the measure of damages that would be payable to the claimant if she succeeded with her contract claim. This meant that the measure of damages payable to the claimant would, according to well established principles, be calculated by reference to the notice period which the respondent should have followed. This is based on the principle that the claimant would be entitled to be put into the position, had the contract been properly performed. Having reviewed the both the signed and the unsigned written contract of employment [RB #1 and CB 36] (clauses 46 and 37), it was clear to me that the termination provision was ambiguous and unenforceable. In the absence of a contractual and express contractual provision, the default position would be the statutory minimum period of notice required to be given by the respondent under Employment Rights Act Rights Act 1996, section 82(1).
4. The parties prepared separate evidence bundles which were paginated and indexed ("CB" and "RB"). The claimant and Ms Seller adopted their witness

statements and gave oral evidence. Ms Robison and Ms Seller made closing submissions.

5. The claimant has the burden of proving her claim and must do so on a balance of probabilities. In reaching my decision, I have considered the oral and documentary evidence together with my record of proceedings.
6. Ms Seller submitted that there was equipment provided in the office for the claimant. The claimant signed the contract on 11 September 2017. The claimant resigned with immediate effect. She had wanted her to work her notice, but she refused. No notice pay was due to be paid to her. The fact that her partner's children were occasionally in the office was immaterial. It only occurred on a couple of occasions. Her claim that she brought a dog to work was not credible.
7. Ms Robison submitted that there were contractual issues that the claimant wanted to be resolved. The contract she received in August 2017 did not reflect what was agreed. She was only presented with her contract on 16 November after having worked for 3 months. The terms set out did not tally with what was agreed. She expected to have 3 or 4 staff working for her. She expected to have a dedicated Scandinavian line which was not provided. There was no heating in the office. She was pressurised into signing the contract. She decided to resign. She expected to be given 4 weeks' notice but was prevented from working.
8. Having heard the evidence, I have made the following findings of fact:
 - a. The claimant resigned with immediate effect on 21 November 2017 when she came to work at 0830. I accept her evidence that her letter was written the night before, but I accepted Ms Seller's evidence about when she tendered her resignation. It was clear that the claimant had no intention of working her notice, whatever that was, and the respondent accepted her resignation.
 - b. The office environment in which she worked had computer equipment, phones and a printer contrary to what the claimant claims. Ms Seller produced a copy of a service agreement with Diamond Group [RB #5] which covered three handsets, a Sweden local number, fibre optic broadband and a printer. I had no reason to disbelieve her evidence on this point. When the claimant was cross examined on this, she accepted that there was a discrepancy between what she had said in her claim form where she said there was no phone and what she said in paragraph 6 of her witness statement where she accepted that she had used a colleague's work phone. I asked her whether she had raised a grievance about these matters during her employment. She said that she had in October 2017. She had done so by emailing Ms Seller, using a work computer. She also acknowledged that was when the internet was working properly.

- c. In terms of the lack of hot water or heating, the claimant stated that she had become very ill because of this. No evidence was provided to substantiate this, and Ms Seller indicated in her evidence that the landlord would not provide accommodation in such circumstances. I prefer Ms Sellar's account.
 - d. In her evidence, the claimant alleged that Ms Seller's partner's twin 7-year-old children frequently came to the office as did her dog. Whilst this is set out in her witness statement, I would have expected this to have been averred in her claim form. I do not accept that this was part of the reason why she resigned.
 - e. During her oral evidence, the claimant alleged that whilst she signed a contract of employment [RB # 2] on 16 November 2017, she did not write the date 11/9/17 next to her signature. She was adamant that she signed the contract on 16 November and not 11 September 2017 as claimed by the respondent. She went so far as to say that Ms Seller forged the claimant's handwriting by inserting this date. This is a very serious allegation. It is not referred to in the claimant's claim form and nor is it referred to in her witness statement. She also alleges that she was pressurised by Ms Seller to sign the agreement on 16 November 2017. Ms Seller's evidence was that the claimant signed the agreement on 11 September and it incorporated the changes that were set out in an email exchange in August 2017 [CB 29-32]. She said that the claimant had received a draft contract in August 2017 [CB 36] which was amended to include the proposed changes, and this is what the claimant signed on 11 September 2017. Having reviewed the proposed amendments and the signed contract, it appears that those amendments were incorporated. When I asked why the claimant signed an agreement which did not reflect what was agreed, she said that she suffered from dyslexia and had not read it. Given my concerns about her allegations concerning forging the date of signing, the lack of supporting evidence concerning her dyslexia and her clearly articulate emails that she lodged in her bundle, I did not find this a plausible or credible explanation. She signed what was agreed.
 - f. I accept that by 16 November 2017, the claimant had some concerns about her remuneration going up to £24,000. The timing coincided with a possible lucrative deal with a Norwegian client and this was what prompted further discussion about the terms of the agreement concerning remuneration.
 - g. There was some suggestion about insufficient numbers of staff being provided for claimant as agreed. She said that she was promised 3 or 4 at first. Ms Seller said that 2 were provided because there was insufficient work. That may well be the case, but it is not material and certainly did not amount to a material breach of contract.
9. I do not believe that the claimant was entitled to resign without notice. She has not established that the respondent was guilty of a material breach of contract. She was herself in breach of contract by failing to give the

Case No:2500146/2018

respondent 1 weeks' notice of termination as required by Employment Rights Act 1996, section 86(2). She signed an agreement that reflected what had been agreed. She has alleged that the respondent failed to provide facilities. I do not accept that on the evidence. Even if there were deficiencies, this would not amount to a fundamental breach of contract unless the equipment required put the claimant or others in danger or if her ability to carry out her duties was severely compromised. That was not the case, indeed the claimant was on the cusp of clinching a lucrative deal with a Norwegian client and wanted her contract to be amended to increase her remuneration. Finally, there was no evidence that the respondent failed to provide a safe working environment.

10. The claimant's claim of breach of contract is dismissed. Her claims for arrears of pay, notice pay, holiday pay and for an itemised payslip were withdrawn by consent.

Employment Judge A M S Green

Date 19 June 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.