



THE EMPLOYMENT TRIBUNALS

Between:

Claimant: Miss S Leke-Oyenibi

Respondent: First Trade Limited

Hearing at London South on 13 August 2018 before Employment Judge Baron

Appearances

For Claimant: The Claimant was present in person

For Respondent: Richard Ryan - Counsel

JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the Respondent was in breach of contract in not making a payment in lieu of notice to the Claimant and the Tribunal orders the Respondent to pay damages to the Claimant in the sum of £466.38.

REASONS

- 1 The Claimant was employed by the Respondent from 23 October 2017. This claim relates to the termination of her employment in January 2018.
- 2 The Claimant was employed under the terms of a written contract of employment. The only material provision for the purposes of this claim is clause 14, and the relevant parts are as follows:

You are entitled to receive from the company a maximum of one day's notice of termination of employment in the first four weeks of employment. After four weeks' employment, you are entitled to receive one week's notice increasing to two weeks after two years' continuous service. Thereafter you will be entitled to receive a further week's notice for each additional year's service, up to a maximum of twelve weeks after twelve or more years' service.

Should you leave the company, you are required to give the company three months' notice.

The company reserves the right to waive notice periods and to make a payment in lieu of notice.

- 3 The Claimant gave three months' notice in writing on 24 January 2018 in accordance with the above provision.
- 4 On 31 January 2018 the CEO of the Respondent, George Hofmeier, asked the Claimant to meet him. That she did. I heard from the Claimant, and had a witness statement from Mr Hofmeier but he did not attend the Tribunal hearing. The evidence given by the Claimant orally to the Tribunal and Mr Hofmeier in his witness statement as to exactly what was said at that

meeting was slightly different. The evidence of the Claimant was clear and could not be contradicted by Mr Hofmeier. I find that after saying to the Claimant that he was sorry she was leaving, Mr Hofmeier then told her that that was to be her last day, and that he thought it fair to pay her one week's pay. The Claimant left the building shortly thereafter.

- 5 There were then exchanges of emails starting with one from the Claimant on 1 February 2018 in which she asserted her right to receive three months' payment in lieu of notice. In the light of my conclusion below I do not consider it necessary to go into any detail about those emails.
- 6 The Claimant was paid up to the end of January 2018, but not for any period thereafter.
- 7 I find for the Claimant to the extent of one week's pay, but not without some regret. The terms of the contract are clear. The Respondent was entitled at any time to terminate the contract by one week's notice (taking into account the Claimant's then length of service) and the fact that the Claimant had herself given notice did not affect that right. The Claimant's contract was terminated by Mr Hofmeier on 31 January 2018 with immediate effect. The Claimant became entitled to payment in lieu of the one week's notice to which she was entitled. Even if Mr Hofmeier did not expressly refer to the contractual provision it is a general principle applicable to the amount of damages for a breach of contract that a party to a contract will exercise his rights under that contract so as to minimise liability.
- 8 It may be considered that what was done by Mr Hofmeier was inappropriate, but that is not the point. The Tribunal must apply the law to the facts, and that is what I have done.

Employment Judge Baron

Dated 13 August 2018