



THE EMPLOYMENT TRIBUNAL

SITTING AT: CROYDON EMPLOYMENT TRIBUNAL

BEFORE: EMPLOYMENT JUDGE HARRINGTON
(sitting alone)

BETWEEN:

MISS F RUVOLO Claimant

and

THE BROOKWOOD PARTNERSHIP LIMITED Respondent

ON: 5 April 2018

APPEARANCES:

For the Claimant: In person

For the Respondent: Ms C. Silvester, Head of Human Resources

JUDGMENT

The Claimant's claim for payment of a retention bonus is not well founded and is dismissed.

REASONS

Introduction

1 By an ET1 received by the Tribunal on 11 July 2017 the Claimant, Miss Francesca Ruvolo, claims the sum of £3,200 from her former employer, The Brookwood Partnership Limited. The Claimant worked for the

Respondent as an Executive PA/Office Manager from 1st March 2016 until 17 April 2017, following her resignation on 17 March 2017.

- 2 It is the Claimant's case that at a meeting on 12 October 2016 she was verbally promised the payment of £3,200, referred to as a 'retention bonus', by Catherine Silvester, Head of Human Resources. However the payment was never made.
- 3 At the hearing today the Claimant appeared in person and the Respondent was represented by Ms Silvester. Both the Claimant and Ms Silvester produced witness statements, supported by a pack of further documents. They each gave oral evidence and questioned the other before making short closing submissions.

Relevant Factual Background

- 4 The Claimant commenced her employment with the Respondent on 1 March 2016 as a temporary Executive PA / Office Manager. The role became permanent with effect from 17 March 2016. The Claimant worked at the Head Office, Brookwood House, in Walton on Thames.
- 5 On or around 15 July 2016 the Respondent merged with CH&Co. It is agreed by the parties that, at the time of the merger, it was announced to the employees that it would be 'business as usual'. However Ms Silvester acknowledged in her evidence today that it was, in fact, never going to be business as usual following the merger and that major changes were inevitable including the closure of Brookwood House. Ms Silvester also commented that at around the time of the merger announcement, it was probable that personnel matters were not handled as they should have been. This part of the background is relevant because it provides the context for the meetings which occurred in October 2016.
- 6 By October 2016, there were general concerns held by the employees as to their future employment post merger. To provide some clarity and guidance to the employees, the Respondent organised and held a number of meetings. It is agreed that on 11 October 2016 a number of group meetings were held at Brookwood House.
- 7 Ms Silvester told me that these meetings were informal but identified to employees that further formal meetings might be necessary 'down the line'. The purpose of the meetings was to say that there would be changes. In her witness statement, Ms Silvester refers to the fact that it was confirmed at these meetings that Brookwood House would be closing at the end of March 2017 (paragraph 1, page 2 of Ms Silvester's witness statement) and that a 10% retention bonus would be applicable for those employees whose roles would be made redundant but who remained in employment until either the end of December 2016 (for HR and Payroll teams) or the end of March 2017 (for the Finance team). The sales department and business administration team roles were not going to be

subject to redundancy. In her evidence to me, Ms Silvester said she saw the Claimant at one of those meetings.

- 8 The Claimant told me she was not at a group meeting on 11 October 2016 and that the meetings were held with the HR and Accounts department but, as she was not within either of those departments, she did not attend.
- 9 Ms Silvester also stated that there was a separate one to one meeting with the Claimant on 11 October 2016. Again, the Claimant denied that this meeting took place.
- 10 Having considered the evidence about the meetings, I prefer the Claimant's account that she neither attended a group meeting or a one to one meeting on 11 October 2016. The Claimant's evidence with regards to the meetings she attended was clear and consistent with her witness statement. By contrast, Ms Silvester had not referred to a one to one meeting on 11 October 2016 in her witness statement but mentioned it for the first time in her oral evidence. She was also generally vague in her recall of the meetings on 11 October 2016. In addition, I have noted the following matters: that there were no written records kept or produced by the Respondent to substantiate the suggestion that the Claimant did attend, that whilst Ms Silvester referred to the Claimant attending with her colleague, Kim, the Claimant confirmed that Kim had been on holiday on that day. Further, there didn't seem to be any particular reason as to why the Claimant would have had two one to one meetings on consecutive days (11th and 12th October 2016) particularly as Ms Silvester's account was that the meetings at this stage were very much preliminary discussions to provide some basic information as to the changes which would be occurring.
- 11 On 12 October 2016 it is agreed that a one to one meeting took place between the Claimant and Ms Silvester.
- 12 The Claimant's account of that meeting is that Ms Silvester asked her how long she had been with the company to which the Claimant confirmed that it would be a year in March 2017. Ms Silvester then informed the Claimant that she would not be entitled to a redundancy payment but that she would receive 10% of her salary, if she remained working for the Respondent until March 2017. Ms Silvester said that she would put this all in writing to the Claimant.
- 13 It was the Claimant's understanding that this payment was not dependant upon her being made redundant from her role. In fact, it was the Claimant's understanding that her role would remain in the longer term. In her evidence, the Claimant stated,

'..the way it was put to me was that I would still receive the retention bonus regardless of the new role'

- 14 The Claimant identified two other employees, Louise Pepe and Stacey Cooper, who received payments although they carried on in their employment with the Respondent. The Claimant gave evidence that she spoke to both of these women around February 2017 and they confirmed that they were given retention bonuses 'because of the upheaval' and that they had been instructed to keep these payments confidential.
- 15 Ms Silvester agreed that these women had received payments but that payments were made to reflect their performance in the sales department and they were not related to retention.
- 16 In her witness statement, Ms Silvester does not even refer to a one to one meeting with the Claimant on 12 October 2016, although she accepts the meeting did take place and that a retention bonus was referenced in the meeting because she felt it was important that there was transparency as to the arrangements being made for the employees. Ms Silvester said in evidence,
- '...it wasn't said you will or you will not get a bonus but it was made clear that her role would remain and only those who would be redundant would get a bonus'*
- 17 My detailed findings as to what was said at this key meeting are set out within the conclusions section of this Judgment.
- 18 On 17 October 2016 Ms Silvester sent the Claimant a letter. The letter referred to the closure of Brookwood House and the possibilities of working at a different office or working from home. The letter did not refer to a retention bonus.
- 19 On 20 October 2016 the Claimant sent an email to Ms Silvester. The email read as follows,
- 'Thank you for your letter dated 17th October.*
- When we had an informal chat on 12th October, with regards to my role, you mentioned a retention bonus if I were to remain at Brookwood until March, if alternative roles/location where not suitable. This was not stated in your letter.*
- Please could you clarify.'*
- 20 Ms Silvester's response on 21 October 2016 read as follows,
- 'I will speak to Sue and Kate about this and come back to you.'*
- 21 In evidence, Ms Silvester stated that she responded in this way, rather than expressly denying the entitlement to a retention bonus because although she had not promised a bonus to the Claimant, she was unaware

as to whether there had been further conversations in the interim between the Claimant and her line managers.

- 22 On 27 October 2016 Ms Silvester visited Brookwood House and told the Claimant that she would not receive a retention bonus.
- 23 Sometime after 21 October 2016 the Claimant spoke with Kate Martin, Managing Partner, and informed her that Ms Silvester had confirmed that the Claimant's role was not redundant and therefore she would not receive a retention bonus.

Closing Submissions

- 24 In closing, Ms Silvester submitted that at no point was there a conversation with the Claimant where it was stated that she would be entitled to a retention bonus as her role was not going to be made redundant.
- 25 The Claimant submitted that at the meeting on 12 October 2016, not referenced within Ms Silvester's statement, a promise was made that she would receive a retention bonus if she stayed in her employment until March 2017 to help with the transition. This was to ensure that the Claimant stayed working at Brookwood House until March 2017. The Claimant contended that Ms Silvester lied to the Tribunal and that it was unfair that she had not received her payment as promised. In her opinion, the sum of £3,200 is rightfully due.

Legal Summary

- 26 Contracts of employment are made up of a variety of terms and conditions which set out the respective obligations of the parties. It is open to the parties to agree some terms in writing and others orally. There is no legal requirement for an employment contract to be in writing. Where there is a dispute as to the terms of the contract and the disputed term is said to have been agreed orally, it will be a question of fact for the tribunal to establish what the terms are. Employment tribunals have jurisdiction to hear claims for breach of the contract of employment. The claim must be one which 'arises or is outstanding on the termination of the employee's employment' (art 3(c) Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994).
- 27 No deduction from a worker's wages may be made unless it is either required or permitted by a statutory or contractual provision or the worker has given his prior written consent to the deduction (s.13, s.15 Employment Rights Act 1996 ('ERA 1996')). If a deduction is made pursuant to a contractual provision, the terms of the contract must have been shown to the worker or if not in writing, its effect notified in writing to the worker, before the deduction is made (s.13(2) ERA 1996). With regards to what has to appear in writing, it is not merely provision for the

repayment of the sum concerned but it must identify that it will be deducted from wages (see W Potter v Hunt Contracts Ltd [1992] ICR 337).

- 28 The worker may bring a complaint to an employment tribunal if her employer breaches these provisions. A complaint may be made that an unauthorised deduction has been made contrary to sections 13 and 15 of the ERA 1996 (s.23(1) ERA 1996).
- 29 Where an employment tribunal finds that a complaint under s.23(1) is well-founded, it will make a declaration to that effect and, where an unlawful deduction has been made, will order the employer to pay to the worker the amount of the deduction (s.24 ERA 1996). Pursuant to section 24(2) a tribunal may order the employer to pay to the worker 'such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of'.

Conclusions

- 30 I accept that both the Claimant and Ms Silvester have done their best to assist me in determining this case by giving their account of the matter. Both give extremely clear evidence on the central issue of what was said at the one to one meeting on 12 October 2016. The Claimant appears absolutely certain that there was an offer from Ms Silvester, which she accepted, of a retention bonus to be paid if the Claimant continued to work in her role at Brookwood House until March 2017. Ms Silvester is equally clear that no such promise was made. They cannot, of course, both be right.
- 31 I must decide this case on the totality of the evidence available to me and in considering both the oral and documentary evidence to which I have been referred, I make the following findings:
- 32 I do not accept that Ms Silvester only referred to the matter of retention bonuses in the meeting to provide the Claimant with transparency as to what arrangements were being made for other employees. I am satisfied that the possibility of a retention bonus for the Claimant was raised by Ms Silvester. In reaching this conclusion I refer to the Claimant's email dated 20 October 2016 in which she makes the following statement,
- '...you mentioned a retention bonus if I were to remain at Brookwood until March...'*
- 33 In my judgment, the Claimant would not have included this sentence within her email unless this is what she had been told by Ms Silvester. I am satisfied that this reference within the email establishes that part of the conversation on 12 October 2016 was about a retention bonus being a possibility for the Claimant.

- 34 Having reached this conclusion, it is then necessary to consider in what circumstance a retention bonus would become payable to the Claimant.
- 35 In this regard, I have again found the Claimant's email of 20 October 2016 to be particularly relevant as it directly refers and is close in time to the meeting and it is obviously in the Claimant's own words. The entirety of the sentence from that email, referred to in paragraph 32 above, reads as follows,
- 'When we had an informal chat on 12th October, with regards to my role, you mentioned a retention bonus if I were to remain at Brookwood until March, if alternative roles/location where not suitable.'*
- 36 In my judgment, the sentence clearly refers to a bonus being paid if two conditions are met: firstly, that the Claimant remained at Brookwood until March 2017 and secondly, if alternative roles / location were not suitable. This second condition accords with Ms Silvester's account of a retention bonus only becoming payable if a role was made redundant and suitable alternative employment was not found.
- 37 I asked the Claimant about this second condition when she was giving evidence. She sought to distance herself from the language she used in the email and reiterated that there was only one condition for the bonus to be paid, namely that she remain at Brookwood House until March 2017. However, this is not what her email says.
- 38 I am satisfied, on the balance of probabilities, that the Claimant was told that a retention bonus would be payable to her if she remained at Brookwood House until March 2017 and if there was no suitable role for her going forward. This is what the Claimant has recorded in her own email when referring to the content of the meeting 8 days after it took place.
- 39 Accordingly, in my judgment the Claimant has no entitlement to a retention bonus in the sum of £3,200. Despite the Claimant's case that her entitlement to this money arose simply by staying at Brookwood House until March 2017, I am satisfied that the payment was also dependent upon the Claimant being made redundant. The Claimant was not made redundant but resigned from her employment.
- 40 The Claimant's claim is therefore dismissed.

Case Number: 2301816/2017

Employment Judge Harrington
Date: 6 April 2018