



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MR D ROBINSON  
MRS E ROBINSON

AND

Respondent

MR E EWEN MRS R EWEN AND  
MR J EWEN T/A THE BAKERS  
ARMS

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 3<sup>RD</sup> JULY 2019

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANTS:- IN PERSON

FOR THE RESPONDENT:- MR D CHESTER

## JUDGMENT

The judgment of the tribunal is that:-

The claimants' claims for unpaid notice pay are dismissed.

## Reasons

1. By these claims the claimants bring claims for unpaid notice pay. Earlier claims of unfair dismissal were dismissed as the claimants had insufficient length of service.
2. The claimants' were employed respectively as Chef/Manager and Front of House Manager of The Baker's Arms from 2<sup>nd</sup> September 2018. On 11<sup>th</sup> September both resigned giving one month's notice expiring on 10<sup>th</sup> October 2018. Their last day of work was in fact 19<sup>th</sup> September 2018 and it is not in dispute that they have been paid up to that date. The claims are for the balance of the notice pay between 19<sup>th</sup> September and 10<sup>th</sup> October 2018. There are a number of disputes between the parties as to other aspects of their roles and in relation the accommodation provided but they are not relevant to the only issue before me.
3. It is not in dispute that following the claimants resigning on 11<sup>th</sup> September there as conversation between Mr Robinson and Mr Ewen on or about 12<sup>th</sup> September. Mr Ewen was going on holiday from 5<sup>th</sup> October and asked if the notice period could be extended until 20<sup>th</sup> October. Mr Robinson did not agree but an alternative, that the claimants would work until 1<sup>st</sup> October but be paid until 10<sup>th</sup> October was agreed. There is therefore no dispute between the parties that by that point it was agreed that the claimants would only work until 1<sup>st</sup> October but would be paid in full for the notice period.
4. The dispute arises from events on 17<sup>th</sup> September 2018. The claimants' case is that whilst both of them were in the bar Mr Ewen spoke to Mr Robinson saying "you don't want to be here and obviously we don't want you here any longer than necessary so if you can make arrangements to leave any earlier that suits us fine. It doesn't matter even if it's a working day." Mr Robinson's evidence, supported by Mrs Robinson, is that he asked about payment in lieu of notice and was assured that it would be paid, and was specifically told it would be paid at the end of September and end of October as normal payroll payments. As a result the claimants made arrangements to leave and did so on the morning of 20<sup>th</sup> September. Although not mentioned in the claimant's witness statements they do not dispute that Mr Robinson spoke to Mr Ewen on the evening of the 17<sup>th</sup> to tell him they would be vacating the premises then.
5. The respondent's evidence is that there was a conversation in the bar at about 6.00pm during which Mr Robinson stated that he wanted out of the pub as soon as possible and wasn't prepared to carry on working as agreed. There was a subsequent telephone call at about 7.00pm at which Mr Robinson told Mr Ewen that he would be leaving on 20<sup>th</sup> September and he simply replied "well if that's what you want to do". There is no dispute that there was no further contact before the claimants left on 20<sup>th</sup> September.
6. Thus the question for me is whether there was or was not an agreement to shorten the notice period from 1<sup>st</sup> October to 20<sup>th</sup> September but still to pay for the full period?

7. The claimants' submit that that is the effect of the agreement. In the bar it had been agreed that they could leave before 1<sup>st</sup> October but be paid to the 10<sup>th</sup> October and the subsequent phone call simply confirmed the date. The claimants submit that they had no other job to go to and would not have left unless they knew they were going to be paid.
8. The respondent submits that there is no concluded agreement to do so. Firstly they point to the fact that here is no documentary evidence supporting the claimants' position. It is simply one party's word against the other and that as the burden of proof lies on the claimants they cannot in the circumstances discharge it. They submit that there is no possibility that they would simply have given the claimants a blank cheque to leave whenever they wanted but to be paid in any event to the 10<sup>th</sup> October however inconvenient for the respondents. There is an alternative submission which has developed during the course of the hearing. Even if the claimant's evidence is correct, that at the time of the conversation at the bar the agreed position was that the claimants would work until 1<sup>st</sup> October and be paid to the 10<sup>th</sup>. Even on the claimants evidence all that happened thereafter was that the claimants informed the respondents when they were leaving. The claimants may have assumed that in those circumstances that the earlier agreement would apply whenever they left but there was in fact no agreement to that effect.
9. This case is made difficult by the fact that I have no doubt all the witnesses before me are giving truthful evidence from their perspective. I do not believe any of the witnesses have given deliberately false evidence to the tribunal. How then is it to be resolved?
10. In my judgment on the balance of probabilities I think that the likelihood is that parties were talking at cross purposes. I accept the claimant's evidence that Mr Ewen did confirm his agreement to continue to pay until 10<sup>th</sup> October, but I accept Mr Ewen's evidence that if it was said it was in the context that that was the agreement at the time. At that point on everybody's evidence there was no earlier leaving date proposed or agreed. In my judgment whilst the claimants may have assumed that that would still apply if they left earlier there was no specific agreement to that effect, and no specific agreement after the date of 20<sup>th</sup> September was given.
11. Put simply the only concluded agreement was that the claimants would be paid to the 10<sup>th</sup> October if they left on the 1<sup>st</sup> October. In those circumstances I am not persuaded that there was a specific agreement to continue to pay for the period after the 20<sup>th</sup> September and that as the claimants have been paid for the portion of the notice period that they actually worked that there is no further notice pay due and that accordingly the claimants' claims must be dismissed.

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Employment Judge Cadney

Date: 4<sup>th</sup> July 2019