



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss D Taylor

**Respondent:** Mrs A Adewale

**Heard at:** London South Employment Tribunal

**On:** 24 September 2019

**Before:** Employment Judge Ferguson (sitting alone)

## Representation

Claimant: In person

Respondent: In person

**JUDGMENT** having been sent to the parties on **5 October 2019** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## INTRODUCTION

1. By claim form presented on 29 April 2019, following a period of early conciliation from 29 March to 29 April 2019, the Claimant brought a claim for breach of contract, arguing that the Respondent had failed to pay her full notice pay. The Respondent defended the claim.
2. I have heard evidence from the Claimant and the Respondent.

## FACTS

3. The Claimant commenced employment with the Respondent as a nanny on 7 November 2018. She worked 7am to 6pm four days a week. A signed contract provides that, after the first four weeks of employment, the notice period for either party to terminate the contract was 4 weeks.
4. On 8 February 2019 the Respondent telephoned the Claimant to tell her that they no longer needed a full-time nanny and her employment would be coming to an end. There is a dispute about what was said. The Respondent says that she told the Claimant she wanted the agreement to end in the week ending 1 March and acknowledged that this was only three weeks, not the four weeks' notice agreed in the contract. The Respondent says the Claimant said that was

fine as long as she could use the time while the children were at school to apply for other jobs and attend interviews. The Respondent agreed.

5. The Claimant disputes that the Respondent said she wanted the notice period to be reduced to three weeks. The Claimant version of events is that the Respondent mentioned the notice period being four weeks, but said that the decision was partly for financial reasons, and the Claimant said if she found a job and could start earlier she would be happy to leave sooner to help out. The Claimant asked if she could attend interviews while the children were at school, as long as all her work was done, and the Respondent said of course, as she felt bad about having to let the Claimant go.
6. The Claimant continued to work as normal. It is not in dispute that she attended two interviews during the following three weeks, during the working day while the children were at school. The Respondent says she also offered the Claimant to start at 12.30pm on 12 February and the Claimant agreed. The Claimant does not dispute this, but says she did not have an interview that day and she did not request the time off.
7. On 26 February the Claimant was offered a new job. A start date of 11 March was agreed. The Respondent has produced a text message exchange which she says was on 27 February in which the Claimant mentioned going for an interview and said "Hopefully going to be an offer but they wanted to see me ASAP. As looking for immediate start".
8. On Thursday 28 February, at the end of the Claimant's working day, she had a conversation with the Respondent about changing the bedding in which she said something along the lines that there were two beds she had not been able to change but would do them next week. The Respondent said you will not be here next week because this is your last day. There is another dispute about what happened next. The Claimant says she was shocked, but did not make any issue of it as it was clear they did not want her around. The Respondent says the Claimant said she was happy about that because it meant she could start her new job straight away.
9. On 5 March the Claimant texted the Respondent as follows:

"After I left Thursday I looked into when we spoke on the phone and you gave me a months notice and it was 8th February and so this week should be the last week I am working there. I remember saying I'd go a shorter period of time if I had a job to go to.

I have left it because I assumed you needed it to be shorter. I have however lost out on a weeks money."

## **CONCLUSIONS**

10. The sole issue is whether there was an agreement on 8 February 2019 that the contractual notice period of four weeks would be reduced to three weeks.
11. There is no documentary evidence of the conversation, so I have to assess the oral evidence and decide which account is correct on the balance of probabilities. I have concluded that it is more likely that the Claimant's account

is correct. It is clear that, as at 28 February, the Claimant was expecting to work the following week because she mentioned changing the sheets “next week”. It was a surprise to her that she would be leaving that day. The Claimant’s expectation that she should be working until 7 March is also consistent with her having agreed a start date for her new employment of 11 March.

12. The Respondent’s main argument is that she would not have agreed for the Claimant to attend interviews during working hours for full pay unless the Claimant had agreed to a shorter notice period; it was a quid pro quo. But even on the Respondent’s case the Claimant only attended two interviews and it is not implausible that the Respondent would have agreed to this, given that the Claimant’s employment was being ended sooner than expected. Although the Respondent now says there were performance concerns, it is not suggested that the Respondent ever gave that as a reason to the Claimant for ending her employment. It is entirely consistent with the Claimant’s case, that the Respondent said it was at least in part for financial reasons, that the Respondent would agree to allow the Claimant to use a reasonable amount of work time to look for alternative employment.
13. It is possible that the Respondent genuinely believed that they had agreed to reduce the notice period to three weeks, but I find that the Claimant never actually agreed to that so there was no concluded variation to the contract.
14. The fact that the Claimant did not challenge the Respondent on 28 February when she said it would be her last day could either have been to avoid confrontation, particularly when she was unexpectedly having to say goodbye to the children, or perhaps the Claimant thought it might be possible to bring forward the start date of her new job. In any event neither party says that there was any discussion about pay on that day. I accept that the Claimant thought about it over the weekend and sent a text message on 5 March in which she set out her position, which is entirely consistent with her evidence to the Tribunal.
15. I therefore find that there was no agreement to shorten the contractual notice period. There is no dispute that the Claimant was only paid for three weeks. The breach of contract claim succeeds and I award the Claimant one week’s gross pay in damages. The agreed figure is £721.15.

---

Employment Judge Ferguson

Dated: 12 November 2019