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## THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Harwood-Janson  
**Respondent:** Professional Renaissance  
**Heard at:** East London Hearing Centre  
**On:** Wednesday 27 November 2019  
**Before:** Employment Judge Burgher

### Representation

**Claimant:** Mr D Harwood-Janson (Father)  
**Respondent:** Mr G Ridgeway (Consultant)  
Mr Mark Pipe (Director)

## JUDGMENT

The judgment of the Employment Tribunal is that the Claimant's claim fails and is dismissed.

## REASONS

### *Issues*

1. At the outset of the hearing, the issues were identified as follows:
  - 1.1 Whether the Claimant was employed under a common law contract of apprenticeship.
  - 1.2 If so, what was the duration of the apprenticeship?
  - 1.3 If so, Whether the Respondent was entitled to terminate the apprenticeship prior to the expiry of the fixed term by reason of the conduct of the Claimant.

2. It was accepted that there was no Apprenticeships, Skills, Children and Learning Act 2009 ("ASCLA") compliant apprenticeship agreement operating in this case as the relevant requirements had not been complied with. I would therefore consider whether there was a common law contract of apprenticeship.

3. It was also accepted that if I found that there was no common law apprenticeship then there would be no claim for statutory notice under section 86 of the Employment Rights Act as the Claimant had worked for less than one month.

### ***Evidence***

4. The Claimant gave evidence on his own behalf and called his father, Mr David Harwood-Janson, to give evidence in support. The Respondent called Mr Mark Pipe, Director.

5. All witnesses gave evidence by way of signed witness statements. The Respondent also sought to rely on letters written by Mr Liam Pipe, Digital Accounts Manager; Ms Diana Sinclair, Client Relationship Manager and Ms Emma Pipe, Marketing Manager in respect of the Claimant's conduct and events on the day of his termination. These people were not in Tribunal to be cross-examined on their statements and as such, the letters had limited probative value in respect of the matters I was required to decide.

6. The Respondent also sought to rely on its standard agreement it had with training providers relating to the apprenticeships it offers. However, it was readily accepted that there was no such contract was executed in respect of the Claimant and therefore it would have limited assistance or probative value to the construction of the actual contract the parties actively entered into.

7. I was also referred to relevant pages in a bundle consisting of 90 pages.

### ***Facts***

8. I found the following facts from the evidence.

9. The Claimant successfully completed his accountancy level 2 AAT exams at Seevic College in May 2018. He sought to continue on to level 3 AAT but in order to do so he needed to complete three weeks work experience. He did this at Rosling King Solicitors, which was the place where his father worked.

10. The Claimant was unable to find an available apprenticeship at level 3 during the summer of 2018 and recommenced temporary work at Rosling King Solicitors in January 2019.

11. The Respondent's is a small family run business employing 5 people.
12. On 20 March 2019 the Claimant applied for an advanced level apprenticeship under the governments find an apprenticeship scheme. The role was based at the Respondent with an expected duration of 18 months and a possible start date of 15 April 2019. The application was to be processed by the South Essex College of Further and Higher Education (SEC) and offered a weekly wage of £146.25.
13. Coincidentally, on 25 March 2019 the Claimant received an email from Toni Croxall who worked at Seevic College asking if he was interested in the apprenticeship at the Respondent.
14. On 29 March 2019 the Claimant received an email from Ms Jill Pipe, Director of the Respondent informing him that Seevic had forwarded the CV regarding the accountancy apprenticeship and that they would like to interview him.
15. The Claimant was interviewed on 4 April 2019 and by email of 8 April 2019 he was offered an accountancy apprenticeship with the Respondent. The Claimant was asked to confirm if he was happy to accept it so start date could be provided. He was informed that a full contract will be given on commencement of employment.
16. The Claimant responded by email of the same date stating that he would be delighted to accept and queried which college provider, Seevic or SEC, he would be required to attend.
17. Ms Pipe responded later that day stating that Monday 15 April 2019 would be an ideal start date. In respect of the college, she stated that the Claimant could undertake this from Seevic although the next AAT course did not start until June. Ms Pipe stated that Toni Croxall would arrange everything with the Claimant.
18. Mr Pipe asserted that the Claimant was initially given a temporary contract on the national minimum wage until the formalities of the apprenticeship agreement were executed by the training provider, Seevic. Mr Pipe stated he relayed this to the Claimant and the other apprentice who was taken on at the same time during interviews. Mr Pipe stated that he has had 14 apprenticeships and usually the formalities are completed by the training provider but until such formalities are undertaken it is usual the Respondent's usual practice for the apprentices to be employed under a temporary contract of employment.
19. There is no written documentation or confirmation to support that this was communicated to the Claimant. I find that the email confirmation offering the accountancy apprenticeship points against this.

20. The Claimant's contract was a short one. The Claimant complained that he was not provided with sufficient training. The Respondent contended that the Claimant did not have the appropriate efficiency or application towards the role.

21. I accept there were three albeit, informal meetings with the Claimant, specifying general concerns the Respondent had with him about not listening or following instructions. However, such meetings were not disciplinary meetings that could have led to dismissal.

22. On 25 April 2019 Mr Pipe noticed the Claimant was on his phone and asked the Claimant to put it away. I find that the Respondent has a strict no phone policy within the office for GDPR reasons given that they have very sensitive client data throughout the office. Mr Pipe asserted that the Claimant was informed of this policy and the reasons for it. The Claimant denies this. On balance, I accept Mr Pipe's evidence in this regard. The Claimant accepts that he did have a discussion with Ms Diana Sinclair, about whether he could use his headphones in the office and I conclude that this question must have been based on the fact that he knew he was unable to use his phone. I also note that the Claimant stated in his evidence that he apologised to Mr Pipe for using his phone and phone usage and stated he would make sure his phone stayed in his jacket pocket in future. I find that there would have been no need for an apology if there was no mobile phone policy that was communicated to him.

23. At 5:30 at the end of the working day on 25 April 2019 Mr Pipe called the Claimant into the boardroom for meeting. There was a dispute in relation to the chronology and content of the meeting. I have resolved this dispute in large part by reference to the Claimant's email to Toni Claxton on 26 April in the morning and the Respondent's letter of dismissal sent to the Claimant on 30 April.

24. The Claimant's email on 26 April states:

*"Professional Renaissance terminated my contract yesterday. I've only been there for six days with very limited support and training and the reasons given were where (SIC).*

*They didn't like how I was sitting at my desk, apparently, I was slouching.*

*I was too slow at my job – I have completed every task I have been given with very limited training. I explained I would get quicker with training and getting familiar with the role.*

*Phone use – I got my mobile phone out at 5:25 pm as I was typing up for the day. My attitude stinks – I think at this point he realised that none of the above are particularly valid points and he was coming up with anything. I've never been late (always in early), completed all tasks given*

*to me, so there is nothing in the six days that I have been there for this ridiculous and unfounded allegation to even be mentioned.*

*They then said they were terminating me and they wouldn't discuss it further."*

25. In his evidence before me the Claimant stated that he then swore at Mr Pipe but he did not swear at Mr Pipe until after he had been terminated. The Claimant does not make any reference to his language in his email to Ms Croxall.

26. The Respondent's letter of dismissal, dated 30 April 2019 stated:

*"You were asked to attend a meeting in the boardroom with myself to discuss the following matters of concern*

*Alleged failure to devote the whole of your time and your attention to duties, namely on 25 of April you are spending a considerable amount of time on your mobile phone despite having already having been warned that this is not acceptable during working hours.*

*Alleged failure to follow a reasonable` management instruction, namely on 25 April you were seen using your mobile phone during working hours despite having already been warned that this is not acceptable during working hours*

*After the hearing your justification, which I found unsatisfactory, my intention was to give a formal warning but you did not accept what was said and this degenerated into rude and objectionable behaviour where you used abusive and offensive language. This constitutes gross misconduct and at this point you were advised that your contract was being terminated.*

*We then went into the main office where your swearing and abusive behaviour continued for another ten minutes, with other staff present. This cannot be tolerated and your dismissal is on this basis.*

27. When considering the dispute in the oral evidence, I conclude that the Claimant stated it was a habit for him to use his mobile phone when it pings, he stated to Mr Pipe: *"you say am going too slow, then you say my speed doesn't matter, you are completely fucking contradicting yourself"*, before he was told his contract was terminated.

28. Mr Pipe reacted to this statement and stated that the Claimant's attitude stinks and he said he did not think the Claimant was right for them or that they were the right people for him and asked the Claimant to think about his position. The Claimant then said *"you're not giving me a fucking chance"*. As a result of the Claimant's attitude towards Mr Pipe, Mr Pipe decided that the Claimant's contract should be terminated. Mr Pipe informed the Claimant that his contract was terminated and the Claimant then continued swearing at Mr Pipe and ended up calling him a *"fucking stuck up prick"* before leaving.

29. When considering this I was struck by the assertive evidence of Mr D Harwood-Janson who stated that he asked his son if he had sworn at all when

the Claimant was relaying the events to him. This was a curious closed question and unsolicited question of the Claimant which I considered to be reflective of a knowledge that his son may have been prone to lose his temper and swear when pressured.

30. The Respondent paid the Claimant the sum of £261 for time the Claimant worked.

31. The Claimant was sent a contract of employment by the Respondent after the contract was terminated.

32. The Claimant recommenced his temporary work Rosling King earns £8 an hour for 37 hours a week totalling £296.00.

### **Law**

33. In determining whether the Claimant's contract was a contract of employment or a contract of apprenticeship the Tribunal referred to the cases of *Chassis & Cab Specialists Ltd v Lee* UKEAT/0268/10/JOJ (Underhill P), and *Flett v Matheson* [2006] ICR 673, Court of Appeal. The cases demonstrate that the following factors must be considered.

- 33.1 Is the principal purpose of the contract training of the 'apprentice';
- 33.2 What is the duration of the training;
- 33.3 What level of qualifications are to be gained;
- 33.4 What was the contractual intention of the parties; and
- 33.5 What labels and language did the parties apply to the relationship.

34. When considering termination of contracts of apprenticeship misconduct would not be sufficient to terminate unless the apprentice's actions were so extreme that the apprentice is effectively unteachable.

35. The case of *Learoyd v Brooks* [1891] 1QB 435 and *Wallace v CA Roofing Services Ltd* [1996] IRLR 435, QBD are relevant in this respect. In the case of *Wallace*, Sedley J stated at paragraph 13:

*"As this case shows, the announcement of the demise of apprenticeship is exaggerated. In particular, the assimilation of apprenticeship to employment for specific statutory purposes has not in my view necessarily had the effect in law suggested by the learned editor of the current edition of Halsbury's Laws.*

*In such a relationship the ordinary law as to dismissal does not apply. The contract is for a fixed term (see North East Coast Shiprepairers Ltd v Secretary of State for Employment [1978] IRLR 149, 3). Where an employee might expect to be dismissed for misconduct, an apprentice can expect to be punished, though today not physically. The difference in treatment reflects the difference in the nature of the relationship. Most*

*particularly, although a contract of apprenticeship can be brought to an end by some fundamental frustrating event or repudiatory act, it is not terminable at will as a contract of employment is at common law."*

36. In terms of remedy for a wrongfully dismissed apprentice, the case of *Dunk v George Waller & Son* [1970] 2 Q.B. 163 provides guidance that a dismissed apprentice is entitled not only to damages for his loss of earnings and loss of training during the remainder of the apprenticeship agreement, but also for the diminution of his future prospects caused by the loss of training and the loss of status. In that case Karminski L.J. observed that the fact that there are difficulties in assessing those future damages: "*does not excuse the court from doing its best to measure the damage as best it can on the information and evidence available*".

37. The rules relating to taking reasonable steps to mitigate loss apply to contracts of apprenticeships.

### **Conclusions**

38. In view of my findings of fact outlined above, I conclude the Claimant was working under a contract of apprenticeship. In doing so I conclude that:

38.1 The purpose was training and qualifications of the 'apprentice';

38.2 The duration of the training was 18 months;

38.3 The level of qualifications to be gained was the Level 3 AAT.

38.4 The contractual intention of the parties was an ASCLA apprentice but the formalities were not completed;

38.5 The language the parties used to describe the relationship, which I conclude is the proper label, is Accountancy Apprentice.

39. I do not conclude that there was a contract of employment, notwithstanding the contract of employment that was sent to the Claimant after the apprenticeship agreement was terminated.

40. I then considered whether the Claimant's conduct in this close knit professional office environment was such that he was no longer teachable. I conclude that Mr Pipe was entitled to terminate given the nature of the language and the Claimant's offensive reaction to criticism and feedback. The Claimant was no longer teachable by Mr Pipe as Director of the small family run business. There needs to be a level of respect, trust and confidence within any relationship and I conclude that the Claimant's conduct towards Mr Pipe after such a short working period within the Respondent fundamentally undermined the necessary trust and confidence.

41. Therefore, whilst I find that there was a contract of apprenticeship lasting 18 months, I conclude that the Respondent was entitled to terminate it on the grounds of the Claimant's conduct which rendering him unteachable by them.

42. The Claimant's claim for breach of contract therefore fails and is dismissed.

Employment Judge Burgher

Date: 5 December 2019