



EMPLOYMENT TRIBUNALS

Claimant: Mr M Pigott

Respondent: UBI Limited

Heard at: Stoke (Hanley) Employment Tribunal **On:** 27 February 2020

Before: Employment Judge Mark Butler

Representation

Claimant: In person

Respondent: Mr Cameron (Legal Consultant)

JUDGMENT

The judgment of the Employment Tribunal is as follows:

- (a) The claim of wrongful dismissal/dismissal in breach of contract is not well founded and is dismissed
- (b) The application for costs by the respondent is unsuccessful

REASONS

These are the written reasons as requested by the claimant, having already received judgment and oral reasons that were handed down at the end of the hearing.

1. The claim in this case arise following the presentation of a claim form on 13 October 2019. The claim was for breach of contract/wrongful dismissal. In essence, the claimant's case was that there were in effect two breaches of his contract: first, there was a breach of the dismissal procedure, and second that there was a breach in relation to notice pay.
2. I heard evidence from the claimant. And I heard evidence from Dr Zhong Li,

who is a Director of the respondent.

3. I was also assisted by two bundles: one prepared by the claimant and one prepared by the respondent. As the respondent's bundle was paginated I asked the parties to work from that bundle when giving evidence. However, if there was a document in the claimant's bundle which the claimant needed to refer to then he would just need to identify the precise document, and this would be considered.

The Law

Wrongful dismissal/dismissal in breach of contract

4. A wrongful dismissal concerns a dismissal by an employer in breach of the employee's contract of employment. This can, and often does, focus on whether an employment contract has been terminated without the necessary notice period.
5. Required notice periods are provided for through agreement in the employment contract, or through the statutory scheme contained at section 86 of the Employment Rights Act 1996 ("ERA"). Section 86 ERA provides a statutory minimum notice entitlement, which cannot be reduced by contractual agreement. This provides that after one month of continuous employment, an employee would be entitled to at least one weeks' notice, with increases in entitlement based on years of service. Section 86 ERA does not provide any entitlement to notice period for employment that has not yet reached one month in length.
6. Payment in lieu of notice can be provided for in a contract.
7. Where an employee does have an entitlement to a notice period, there are circumstances in which the employer can dismiss without the need to give notice. These are where it can be established that there has been a repudiatory breach of the contract by the employee. In these circumstances a summary dismissal (dismissal without notice) is justified.
8. The classic formulation of a repudiatory breach of an employment contract was given by Lord Evershed in ***Laws v London Chronicle (Indicator Newspapers Ltd) [1959] 2 All ER 285***, at 287, where he set out the question as being "*whether the conduct in complained of is such as to show the [employee] to have disregarded the essential conditions of the contract of service*".
9. In order to succeed in a claim for wrongful dismissal the claimant needs to establish two things: a breach of the contract and a loss. Where notice pay (defined broadly) has been received in full then there will be no loss and a claim for wrongful dismissal/dismissal in breach of contract will fail.

Findings of Fact

10. Mr Pigott was appointed as head of sales for the respondent on 02 October

2017. He was dismissed on 11 July 2019. He had worked for the respondent for less than 2 years.

11. All payments, other than notice pay had been received. These were not in dispute between the parties.
12. Mr Pigott had a contractual notice period entitlement of 2 months. He had a clause allowing for payment to be made in lieu of notice ('PILON'). This was provided for at clause 17 of his contract.
13. The respondent activated the PILON clause and decided to pay the claimant PILON rather than have him work during his notice period.
14. Mr Pigott received full pay for the month of July 2019. This must have been a payment for having worked the first 11 days, with the remainder of the month paid as PILON.
15. Mr Pigott was paid a full month's pay for the work that he would have completed during August 2019. He received this payment on 04 September 2019.
16. Mr Pigott received a final payment on 16 September 2019. This was a payment of £1,846.15. This reflected the 8 working days that he would have worked in September had he been required to work during his notice period. This was calculated by discounting the weekends from the 11 days into September at which his notice was due to complete. Which left 8 working days (as there were three days over the weekend in this period). This was then multiplied against £230.77, which was the daily rate the respondent calculated as being Mr Pigott's pay for each day he worked (this was calculated by dividing the claimant's salary of £60,000 by 260 working days in the year).
17. If the respondent had calculated this final payment based on a daily rate, without discounting for weekends, Mr Pigott would only have been entitled to be paid £1,833.33. The calculation would have been £5,000 (gross monthly salary) divided by 30 (number of days in September) multiplied by 11 (the number of days owed as PILON in September).
18. Mr Pigott only received two wage slips during the period he received PILON, despite three payments being received.
19. The first of these wage slips, which is dated 31 July 2019 records the payment as BASIC. This is reference to the basic gross salary that Mr Pigott was paid. There is no distinction between pay for work completed and PILON.
20. The second of these wage slips, dated 30 August 2019, records a payment of BASIC, a payment for ACCRUED HOL PAY, and a payment IN LIEU OF NOTICE. The PILON I recorded as being for 8 days.
21. Mr Pigott is working part time as a driver. He is paid £130 as a daily rate, but is responsible for running costs of the vehicle he uses.

Conclusions

22. Mr Pigott received all of the payments he was due for notice. He was entitled to two months notice pay by virtue of his contract. This was paid through a PILON clause. He was dismissed on 11 July 2019, and received 2 months full pay from this date. There are no actionable losses and therefore his claim for wrongful dismissal/dismissal in breach of his contract fails and is dismissed.
23. The wage slips provided to Mr Pigott are confusing. It is unclear what payments were received as basic pay for work he completed, and which payments are for PILON. This was not helped by conflating the two final payments on to one wage slip.

Costs

24. Mr Cameron did make an application for costs in the form of Preparation Order on behalf of the respondent. However, given my findings above this application was refused.
25. The claimant had an arguable case given the confusing nature of the wage slips. He did not think that he had been paid his notice in full, and it was unclear whether he had on his pay slips. Mr Pigott had an understanding that he was due half a month's pay in the final payment, as he thought that he was only paid half a month for PILON in the first of the three payments. And the wage slips did not help with this. In these circumstances I did not consider the claim to have no reasonable prospects of success.
26. Further, the financial means of Mr Pigott, and his current limited income meant that no order would have been made in these circumstances.

Employment Judge **Butler**

02 March 2020

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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