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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4102798/2019

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Held in Glasgow on 24 May 2019

Employment Judge A Jones

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Mr S Spendley

**Claimant
In Person**

Vanguard Site Services UK Ltd

**Respondent
Represented by
Mr Gibson,
Advocate
Instructed by
Mr Smith,
Managing Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that the respondent breached the claimant's contract of employment in failing to pay him the notice pay to which he was entitled. The respondent is ordered to pay to the claimant the agreed sum of **£1,000 (One Thousand Pounds)** as damages for breach of contract.

REASONS

Introduction

E.T. Z4 (WR)

1. The claimant was employed by the respondent from October 2016 until he submitted his resignation on 8 February 2019. The claimant's contract stipulated that he was required to provide two weeks' notice of termination of his employment with the respondent. When the claimant submitted his resignation, he made no specific reference to that requirement. He was not paid for a notice period. He submitted a claim of breach of contract. The respondent's position was that the claimant had resigned with immediate effect and so was not entitled to be paid notice.
2. An alternative argument was set out in the respondent's Response Form to the effect that even if the claimant had been entitled to be paid notice pay, the respondent could have fairly dismissed the claimant without notice. That alternative argument was withdrawn at the commencement of the proceedings on behalf of the respondent.
3. The claimant appeared before the Tribunal in person and gave evidence. The Tribunal heard evidence from three witnesses on behalf of the respondent; its Managing Director, Mr Smith, the claimant's Manager, Mr Kenny and another employee Mr Marshall.

Issues to be determined

4. The Tribunal was required to determine whether or not the claimant had resigned with immediate effect and in breach of contract and if so this repudiatory breach was accepted by the respondent.

Findings in Fact

5. Having listened to the evidence and submissions of the parties and considered the documents produced, the Tribunal made the following findings in fact.
6. The respondent is a limited company providing recruitment agency services in the construction industry.

7. The claimant was employed as a Recruitment Consultant by the respondent from 25 October 2016 until his resignation on 8 February 2019. The claimant's salary was £26,000 per annum.
8. The claimant's line manager was Mr Kenny who had been employed for around 3 months before the claimant's resignation.
9. The claimant became increasingly unhappy with the manner in which he was being managed by Mr Kenny. In particular, he was concerned that his performance was being measured by reference to unachievable KPIs.
10. The claimant was in a fantasy football league at the office with Mr Kenny and a number of other employees.
11. On the morning of 8 February, the claimant had a meeting with Mr Kenny in relation to KPIs. The claimant was unhappy following that meeting.
12. The claimant was also due to receive monies as a result of his successes in the fantasy football league.
13. On 8 February, Mr Kenny chose to give the claimant his contribution to the claimant's winnings of £5 in small denomination coins.
14. The claimant was also unhappy at Mr Kenny taking this action, and swore at him.
15. The claimant called his partner over lunch and decided to resign from his employment.
16. The claimant then sent an email to Mr Smith and Mr Kenny at 14.26 which stated "Take this as a notice of my resignation. I will collect my belongings on Monday."
17. The claimant then left the office to visit a contact.
18. While enroute to this meeting, Mr Smith called the claimant and asked to meet him. A meeting took place in the car park at Braehead shopping centre. Mr

Smith sought to persuade the claimant to reconsider his resignation, but the claimant indicated he was not willing to do so.

19. Mr Smith had been accompanied by a Gavin McCallum who was a business associate of his, although Mr Marshall took no part in the meeting.
- 5 20. Mr Smith required the claimant to provide the key to the company car he had been driving and his mobile phone.
21. The claimant advised Mr Smith that once he obtained a new mobile phone, he would give him the contact details.
22. Mr Smith then drove the claimant home in his own car, and Mr Marshall took
10 the company car back to the respondent's premises. Mr Smith advised that he would arrange for Mr Marshall to return the claimant's belongings. The meeting ended on amicable terms.
23. That evening the claimant posted on his LinkedIn page that he had handed in his notice with the respondent and 'will be looking for a quick turnaround'.
- 15 24. This post was seen by Mr McCallum and forwarded to Mr Smith. Mr Smith was extremely angry at the post which he interpreted as the claimant suggesting that he would use contacts made through his employment with the respondent in future employment.
25. Mr Smith sent an email to the claimant at 19.15 attaching a screenshot of the
20 post saying 'Really do you think that I will stand back and do nothing Stephen. You've just admitted theft of Vanguards property. You worked under a contract that you have broken so I will now instruct my lawyers to act.
26. The claimant responded at 19.36 stating 'I'm not going to sit around
25 unemployed so you can instruct as many lawyers as you want to. Ps tell gavin to stop screenshotting stuff, we can do this the right way or the wrong way and I have plenty stuff which could go public but I have no intention of doing any of this so let's just draw a line at that. I have two weeks left of employment you can let me know if you would like me to work this or otherwise.'

27. There were a number of further email exchanges and at 23.12 Mr Smith emailed the claimant in the following terms: "I'll get your stuff together Stephen and I'll have young Kenny get it to you. Do not appear in my office at any time from now on. You no longer work for Vanguard having walked out without notice and all. All your personal stuff will be packed up. Nobody is stopping anybody from working but read what is there to protect you when you worked for us. Nothing is changed."
28. The claimant responded the following morning at 7.26 stating "I will be in work on Monday unless you formally put me on gardening leave. I have spoke to the relevant people and I have two weeks' notice to work which I will be due paid for. You can let me know if you do not want me to work this."
29. Mr Smith responded at 8.58 by saying 'You are not coming back to work as you please Stephen.....I have accepted your resignation and from now on all my communication will be done through legal channels. I have to talk to my Lawyers on Monday so I will not be making any more statements until then. You are not allowed on my premises until I investigate your conduct on Friday.'
30. The email exchanges continued that morning with Mr Smith stating "Do not turn up on Monday" and "If you turn up on Monday I will call the police"
31. The claimant did not attend the respondent's premises on the Monday. Having not received his belongings he did attend on Thursday. An altercation took place and the police were called.
32. A letter erroneously dated 11 January 2019 was sent at some point in the week beginning 11 February by recorded delivery by the respondent to the claimant. The letter stated "Further to the incident on Friday 8th February whereby you threatened your manage with violence, which you confirmed to myself at the point of verbal resignation upon returning the company vehicle and mobile telephone, I have accepted your written resignation as received on Friday, with immediate effect from 8th February with no notice period. Should you choose to work for one of our competitors and share knowledge

from Vanguard's database regards contacts, rates and all relevant information I shall pursue legally."

33. The respondent in the past had required employees to go on garden leave during their notice period.

5 **Observations on the Evidence**

34. The Tribunal heard evidence from the claimant and three witnesses on behalf of the respondent. The claimant was generally credible and reliable although the Tribunal formed the view that the claimant downplayed the disagreement which occurred between himself and his manager in relation to the incident arising from the fantasy football winnings. In any event, the Tribunal concluded that the disagreement in relation to this matter was not relevant to the issue before it.

35. The respondent's witnesses were on also the whole credible although it was clear that Mr Smith was extremely annoyed by the claimant making reference to his contacts in his LinkedIn post and concluded that this coloured the evidence he gave to the Tribunal.

36. While the Tribunal heard evidence about the dispute which occurred in the respondent's office, the Tribunal concluded that this was not in the end relevant to the question of whether or not the claimant was entitled to notice pay.

37. The only issue of relevance in dispute was whether or not the claimant left the respondent's premises to go home or to visit a contact. The Tribunal preferred the claimant's evidence in this regard and concluded that the claimant did leave the office to go on a pre-arranged meeting.

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Submissions

38. The claimant made brief submissions indicating that he denied the incident on 8 February as described by the respondent and submitted that the fact that

Mr Smith had sought to make him change his mind in relation to his resignation was indicative of his submission that he had not walked out of his employment without notice. The claimant also made clear that he was willing to work his notice, had made efforts to do so but had not attended his workplace as a result of the risk of the respondent calling the police.

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39. On behalf of the respondent, it was submitted that the claimant had resigned 'there and then' when he sent the email to Messrs. Smith and Kenny. It was submitted that the email from the claimant making reference to his notice entitlement was 'an afterthought'. Rather, the respondent submitted that the claimant had resigned without notice and there was no variation to that position. The respondent placed particular reliance on the claimant stating in his resignation email that he would come and collect his belongings on Monday.

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40. The respondent made reference to a number of authorities although the Tribunal concluded that none of these authorities were of limited assistance in determining the factual and legal position in relation to the claimant's resignation.

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Discussion and Decision

41. The Tribunal concluded that the issue in this case was ultimately straightforward – had the claimant resigned in repudiatory breach of his contract which had been accepted by the respondent or was the claimant entitled to be paid for his notice period?

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42. There was no dispute that the claimant was required to give two weeks' notice if he wished to terminate his employment.

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43. It is trite law that notice of termination of employment should be clear and unambiguous. The claimant's email giving notice to terminate his employment made no reference to notice. The claimant left the respondent's premises in a company car and with a company phone subsequent to sending an email to have a meeting with a contact.

44. However, the meeting with Mr Smith was then arranged enroute to that meeting. At that meeting, there was no discussion of notice periods. However, it was at Mr Smith's insistence that the claimant hand over the car keys to the company car he had been using and provide the mobile phone and pin number to allow the respondent to access the information on the phone. The claimant had not offered these up to the respondent.
45. The first mention of the issue of notice is the claimant's reference to him having two weeks left of employment in his email on the evening of 8 February. At no point prior to this email did the respondent indicate either verbally or in writing that he was of the view that the claimant had resigned in breach of contract and that he was accepting that breach.
46. The Tribunal concluded that Mr Smith was so annoyed at the claimant's post on LinkedIn that he resolved not to pay the claimant the notice pay to which he was entitled.
47. The Tribunal accepted that the claimant had not made specific reference to whether or not he was resigning with notice in his original email. However, the claimant made clear in the hours after sending his resignation email that he was able and willing to work his notice period. The Tribunal bore in mind that it heard uncontested evidence that in the past at least one employee (Stuart Wilson) had been put on garden leave by Mr Smith when he had handed in his notice. The Tribunal concluded that the claimant had expected to be put on garden leave given the nature of the respondent's business and had no intention of resigning without notice.
48. Further, the Tribunal was of the view that Mr Smith's actions in requiring the claimant to hand over the company property, rather than the claimant leaving this property at the respondent's office were consistent with the parties' understanding that the claimant was resigning with notice.
49. In addition, it was the respondent who advised the claimant not to attend work on the next working day and indeed indicated that the police would be called if the claimant did attend for work. Finally, the Tribunal noted that Mr Smith

stated in his email of 9 February at 08.58 that he was not going to communicate further with the claimant and that he was 'not allowed on my premises until I investigate your conduct on Friday'.

50. In all of these circumstances, the Tribunal found that the claimant was entitled to be paid for his notice period, and ordered that the respondent pay the agreed sum of £1,000 to the claimant in that regard.

Employment Judge: A Jones

Date of Judgement: 10 June 2019

Entered in Register,

Copied to Parties: 21 June 2019

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