



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Miss E Gonzalez

Claimant

-AND-

Wildflower Restaurant Ltd

Respondent

Employment Judge:

Mr J S Burns

Representation:

Claimant in person

Respondent:

Mr A Martin (Director)

Judgment

The claims are dismissed

Reasons

1. The judgment was given during a CVP hearing held on 24/9/2020.
2. I heard evidence on oath from the Claimant and from Mr Martin and have read various documents I was sent by the Claimant. The Claimant's first language is Spanish but she was able to converse with me and Mr Martin well enough for a fair hearing.
3. At the beginning of his evidence I asked the Claimant to tell me what she was claiming – she stated she was claiming his wages from 13/3/2020 until now (24/9/2020) because she had not been dismissed. If she had been dismissed (which she disputed) she claimed one week's notice pay. She made no mention of claiming holiday pay and gave no evidence about that so if there is any holiday pay claim it fails for want of prosecution.

Facts

4. The Claimant was employed from 13/2/2020 as a restaurant manager to work in the Respondents restaurant. A written contract was produced but not signed. The unsigned contract stated that the Claimant would normally work 4 and a half days a week but that these hours could be varied to accommodate the needs of the business. The contract stated that either party could terminate it with one week's notice.
5. The restaurant opened for business on 7 March 2020 but was forced to close on 17 March 2020 because of the Covid 19 lockdown. The market in which the business was trying to operate was closed by the landlord.
6. The Claimant worked until 17th March 2020 and was paid in full until that date. On 17/3/2020 Mr Martin told the Claimant that he had no work for her because of the closure. The Respondent company applied for but was unable to furlough its employees because it was a new business. To date, despite various attempts, it has not managed to furlough anyone.

7. The Respondent company re-opened the restaurant on 18/7/2020 with reduced capacity and since then has been trading at a loss, and is “just trying to keep the doors open”.
8. When the Respondent company re-opened the restaurant it did not seek to give work again to the Claimant because of the need to minimise overheads and also because the relationship had soured as a result of the Claimant’s demands for furlough payments.

Assessment and conclusion.

9. Frustration is an English contract law doctrine that acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.
10. I find that the contract was not terminated by either party but was frustrated on 14/3/2020 by the lockdown and forced closure of the restaurant, a matter of which the Respondent itself did not have any advance notice and which was a supervening event not the fault of either party extinguishing the Respondent’s purpose for entering into the contract. Accordingly all unaccrued rights and obligations fell away including the obligation to give contractual or statutory notice or to make payments or to provide hours of work.
11. If I am wrong to find that the contract was frustrated I would find that in any event the Respondent had the right to reduce hours and pay to nil to meet the changing needs of the business, and that under that analysis did so on 17/3/2020.
12. Accordingly the claims (for salary and or notice pay) fail and are dismissed.

NOTE

The hearing took place over CVP. The tribunal considered it as just and equitable to conduct the hearing in this way. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. One member of the public attended. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties. No requests were made by any members of the public to inspect any witness statements or for any other written materials before the tribunal. The participants were told that it was an offence to record the proceedings. The tribunal ensured that the witness/es, who were all in different locations, had access to the relevant written materials. I was satisfied that the witness/es were not coached or assisted by any unseen third party while giving evidence.

J S Burns Employment Judge
London Central
24/9/2020
For Secretary of the Tribunals

date sent to the Parties – 24/09/2020