



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)  
LONDON CENTRAL

BETWEEN

Miss H Wang

Claimant

-AND-

Vision Academy Education and Technology UK Ltd

Respondent

Employment Judge:

Mr J S Burns

Representation:

Claimant in person

Respondent:

Mr Lei Yuan (Director)

Judgment

The Respondent must pay the Claimant £3600 by 22 October 2020.

Reasons

1. The claim in the ET1 was for one months pay and one month's notice pay.
2. I heard evidence on oath from the Claimant and from Mr Lei Yuan and I have read the ET1, ET3, contract of employment, termination email, transcript of voice recording, translation of various Wechat messages and an email exchange between the Claimant and Leicester University during April 2020.

Facts

3. The Claimant was employed from 28/2/2020 as a sales consultant at the rate of £24000 gross per year. She worked full time 5 days a week, but entirely from home.
4. Her contract stated that the first month would be a probationary period and after that she would be entitled to one month's notice.
5. Her probation ended on 27/3/2020. She was not notified that she had failed her probation.
6. At the end of March 2020 she was told orally by Mr Yuan that she would be put on furlough.
7. She signed a furlough agreement with the Respondent which is dated 1/4/2020 but in fact received, signed and returned by her on 3/4/2020. This is a somewhat complicated document but in it the Claimant agreed to being placed on furlough from 1/4/2020 she not being required to work including work from home. The Respondent would apply for government furlough payments for the Claimant but if the application failed she would be put on unpaid leave about which further notice would be given. The agreement also stated that when the furlough ended, in the event that there was insufficient work, the Respondent could lay the Claimant off with no pay "except for statutory guarantee payments".
8. The plan appears to have been that if the government furlough could be secured for the Claimant for April then she would be retrospectively paid by that means for April, and hence, officially at least, the Claimant should not work during April so as to comply with the conditions of the furlough scheme.
9. In fact Mr Yuan continued to give instructions to the Claimant and advised her about her work, and suggested that she use her personal rather than her home email so as to better

- conceal her continuing work from the government furlough scheme overseers. These instructions and liaison continued by the WEchat social media platform until 17/4 at least.
10. The Claimant was thus working at the behest and under the instruction of the Respondent, a situation not covered by the furlough letter dated 1/4/2020.
  11. By 22/4/20 the Respondent had discovered that the Claimant did not qualify for the furlough scheme so sent her an email on 24/4/2020 terminating her contract with one weeks notice. The email suggested, for the first time, that the Claimant's performance during her probationary period had not been satisfactory.
  12. The Claimant was paid her salary until the end of March 2020 but no pay after that and no severance payments at all have been paid to her.

Assessment and conclusion.

13. The Claimant's probation came to an end on 27/3/2020 and after that she was entitled to one month's notice or pay in lieu.
14. The Respondent's attempt to retrospectively fail the Claimant's probation is disingenuous and ineffective.
15. The furlough letter agreement did not correspond with or cover the situation in April during which until 24/4/2020 the Claimant carried on working from home under Mr Yuan's supervision. She was in fact not furloughed or put on unpaid leave because of this continuing work. Hence she is entitled to her normal pay from 1/4/2020 to 24/4/2020 which is £1600 pro rata.
16. The Claimant was entitled to be given one month's notice but did not get this so is entitled to pay in lieu ie £2000.
17. The above sums are gross of tax and must be paid as such to the Claimant, who will on receipt be responsible for paying any tax due to the Inland Revenue.

NOTE

The hearing took place over CVP. From a technical perspective, there were no difficulties. The participants were told that it was an offence to record the proceedings.

J S Burns Employment Judge  
London Central  
8/10/2020  
For Secretary of the Tribunals  

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date sent to the Parties – 09/10/2020