



EMPLOYMENT TRIBUNALS

Claimant: Mr Haydn Wakefield
Respondent: Mitchell and Butlers Retail Limited
Heard at: Birmingham On: 26 October 2020 Before:
Employment Judge Hindmarch

JUDGMENT

The claim for breach of contract is not well founded and is dismissed.

REASONS

1. This matter came before me on 26 October 2020 to be decided on the papers.
2. By an ET1 filed on 20 October 2019, following a period of early conciliation from 18 September 2019 to 18 September 2019, the Claimant brought complaints of unfair and wrongful dismissal.
3. The claim was originally listed for hearing on 12 and 13 May 2020.
4. As the Claimant appeared to have less than two years' service (service necessary under s108 Employment Rights Act 1996 to claim unfair dismissal) the Tribunal wrote to him on 4 December 2019 giving a strike out warning. The Claimant responded on 27 February 2020 essentially accepting that only the wrongful dismissal claim would proceed. The Tribunal wrote to the parties confirming that claim would be heard on 12 May 2020 with a time estimate of three hours.
5. The unfair dismissal claim was struck out by Employment Judge Hughes in a Judgement dated 11 March 2020.
6. The Response was filed on 31 December 2019.

7. On the Respondent's application the hearing on 12 May 2020 was postponed to 17 July 2020 and listed as a Preliminary Hearing for Case Management by telephone.
8. The Case Management Preliminary Hearing took place on 17 July 2020 before Employment Judge Hughes. She noted the Claimant and Respondent were in agreement that the Claimant was paid his contractual notice pay. The Claimant was asked on what basis he was pursuing a breach of contract claim. He asserted that the Respondent had failed to follow procedures in dismissing him. Employment Judge Hughes ordered the Claimant to confirm the legal basis of his claim and the amount claimed along with any supporting documents by 24 July 2020 with the Respondent being ordered to respond by 4 August 2020. The matter would then be determined on the papers by an Employment Judge sitting alone.
9. On 29 July 2020 the Claimant emailed the Tribunal asking for an extension of time to comply with the aforementioned order. On 5 August 2020 he made a further such request. On 14 August 2020 the Claimant submitted various documents by email to the Tribunal. The Claimant stated that the Respondent had breached its own Probationary Period Policy in failing to meet with him and in electing to make a payment in lieu of notice. He attached a copy of the Probationary Period Policy.
10. On 4 August 2020 the Respondent emailed the Tribunal with its written submissions and supporting documents being an extract from what appears to be the offer (of employment) letter, the dismissal letter, and extracts from the contract of employment and evidence in the form of a wage slip showing notice pay paid. On 17 August 2020 the Respondent emailed the Tribunal pointing out that the Claimant had not set out the value of his claim.
11. On 8 September 2020 the Claimant emailed the Tribunal stating again that the Respondent held no meetings with him prior to dismissal and that the sum he was claiming was "*the maximum the Court could offer*".
12. The Parties agree that the Claimant was employed by the Respondent as Assistant Manager from 25 June 2019 to 31 July 2019. The offer letter provides:

" 1. Commencement

Your employment is subject to the following:-

vi) Successful completion of Probationary Period of up to 3 months ... if at the end of this period, or at any time during it, the Company decides for

whatever reason that you are unsuitable for continued and permanent employment, your contract of employment will be terminated.”

13. The contract of employment issued to the Claimant by the Respondent at Clause 22 entitled him to four weeks' notice. It is noted at paragraph 12 above the Claimant accepts he was paid such notice. Clause 22 b of the contract provides *“The Company reserves the right in its sole and absolute discretion to terminate the Assistant Managers employment with immediate effect at any time... by making a payment to the Assistant Manager in lieu of notice”*.
14. The excerpts from the above documents set out clearly that there was a contractual right on the part of the Respondent to terminate the Claimant's employment at any time during the probationary period, and to elect to do so by making a payment in lieu of notice. Thus the Respondent's decision to make a payment in lieu of notice cannot be in breach of contract.
15. The Claimant sent the Tribunal a copy of the Respondent's Probationary Period Policy, contending that the Respondent was in breach of contract by not meeting with him and not following this Policy. The Policy provides as follows:

“Can I terminate an employee's employment before the end of their probationary period?

... In some circumstances it might become apparent that the employee has some fundamental difficulties with the work. On speaking to the employee it might be apparent that the employee is not going to meet the required standards.

In such a situation, you should sit down with the employee, give clear factual reasons for your decision and ensure that ... you terminate their employment with notice. You must confirm the outcome of this meeting in writing”.
16. It is clear the Respondent did not 'sit down' with the Claimant, there was no face to face meeting. Instead, whilst the Claimant was on annual leave, it appears a manager telephoned him to tell him of the decision to dismiss him. This is reflected in the dismissal letter dated 31 July 2020, *“I am writing to you following our conversation on Saturday 20 July”*.
17. The Respondent thus failed to follow its own policy in not “sitting down” with the Claimant. The difficulty I have is that the status of the Policy is unclear. I do not know whether it is contractual or not. Even if it is contractual, and

has been breached, I cannot see what damage has been suffered by the Claimant. The Respondent was clearly contractually entitled to dismiss him at the time, and had made up for his mind that termination was necessary. Having a meeting face to face, rather than a telephone conversation, would it appears have made no difference in the outcome. The Claimant has failed to set out any value to his claim, despite being ordered to do so, and I therefore find the claim fails.

Employment Judge **Hindmarch**

28 October 2020