



EMPLOYMENT TRIBUNALS

Claimant: Mr M Slobodzian

Respondent: Kinaesis Ltd

Heard at: London Central

On: 24 September 2020

Before: Employment Judge Grewal

Representation

Claimant: In person

Respondent: Mr S Trewin, Head of Consulting

JUDGMENT having been sent to the parties on 24 September 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1 In a claim form presented on 11 June 2020 the Claimant complained of breach of contract (wrongful dismissal) in respect of his dismissal on 15 April 2020. The Respondent claimed that it was entitled to dismiss the Claimant without notice because he had been guilty of gross misconduct.

2 The Claimant gave evidence in support of his claim and Mr Trewin and Mr Eyears (Head of Business Development) gave evidence on behalf of the Respondent. The parties had produced a small bundle of documents. Having considered the all the evidence, I made the following findings of fact.

Findings of fact

3 The Respondent is small business that provides consultancy services to financial organisations.

4 The Claimant commenced employment with the Respondent on 3 February 2020 as a Managing Consultant. At that time the Respondent was working with a client, SAS, on a project for HMRC. The Claimant was employed in order to work on that project. Prior to his employment, the Claimant was interviewed and

assessed by SAS as well as by the Respondent. The Claimant was assigned to work with SAS on the HMRC project. He worked full-time (40 hours a week) and exclusively on that project. The expectation was that he would grow and expand the relationship with SAS in order to generate more work for the Respondent. The Respondent invoiced SAS monthly for the Claimant's services.

5 The Claimant's contract of employment provided, inter alia,

"You will be based at Kinaesis's office at 150 Minories, London EC3 1LS and any other such offices or locations to which the company will require you to perform your duties."

*"You are required to work 40 hours per week between the hours 9:00 and 18:00 from Monday to Friday (inclusive).
You are entitled to a maximum break of one hour for lunch per day."*

"The first six months of your employment will be a probationary period during which your employment may be terminated by one month's notice on either side..."

Kinaesis may terminate your employment summarily without prior notice or payment in lieu of notice if you commit an act of gross misconduct... examples of acts of gross misconduct that may lead to summary dismissal include ... failure to observe the terms and conditions of your employment by Kinaesis."

6 All employees were bound by the Company code which made it clear that all employees were *"expected to comply with the reasonable instructions of senior managers and to behave professionally and courteously to all colleagues and customers at all times."* The Claimant's job description identified his responsibilities as including the following –

"Acting as an authority and trusted advisor to clients on Kinaesis projects."
and

"Building new client relationships and translating those relationships into long-term benefits for Kinaesis and the client."

7 If a consultant was unhappy working with a client or on a particular project, the appropriate action for him to take would have been to raise it with the Respondent (either Mr Trewin or Mr Eyears). They would then see if they could resolve whatever issues the employee had with the client or the contract and, if not, they would manage the exit by finding a replacement for the consultant on the project and, if possible, a new role for the consultant.

8 The Claimant did not tell anyone in the Respondent that he wanted to leave or to resign from his role. On 31 March 2020 he sent an email to Helen Corbishey, the SAS Project Manager on the HMRC Project in which he said,

"I think its best all round if I leave this project. I'm not the right person for this role.

*I'm sure that it will save a lot of hassle in the short and long term.
Please call to discuss exit further."*

9 A little later in the day he sent an email to the same effect to Phil Gove, the SAS Engagement manager on the HMRC Project.

10 After he had told the client that he was leaving, he telephoned Mr Trewin and said to him something like, *“I hope you are sitting down. You are not going to like this. I have just resigned my role at HMRC”*. He said that as the Respondent did not have any other work for him he assumed that he would be paid one month’s notice. The next day he forwarded to Mr Trewin the emails that he had sent to Ms Corbishey and Mr Gove.

11 Mr Trewin was very concerned about the effect that the Claimant’s sudden departure would have on the Respondent’s relationship with SAS. He contacted Mr Gove the same day and set up a meeting on 2 April to discuss the Claimant’s emails to them. He said that the Respondent was committed to working with SAS as a valued partner and wanted to have the opportunity to understand what they needed to do to provide better support. He suggested to Mr Gove that the Claimant should join in the conversation and invited the Claimant to do so.

12 On 1 April Mr Gove telephoned the Claimant to find out what the issue was. The Claimant opened the conversation by saying that it was the worst project that he had ever worked on. He said that he had problems working with two particular team members and said that he did not like the project manager’s style. Mr Gove’s perception was that his working relationship with Helen had broken down. He said that he did not enjoy the work as there was “very little technical work”. He concluded by saying that it was not a nice team. Mr Gove then spoke to the project manager and other leading members of the team. They said that the Claimant had made it clear that he hated the project and did not want to work on it. They felt that he had upset the team dynamic/morale and that he would not contribute effectively. The universal view was that it would be not be appropriate for him to carry on working on the project. On 2 April the Claimant told the entire team at a meeting that he needed time off that afternoon to discuss his exit.

13 A meeting took place on 2 April between Messrs Gove, Trewin and the Claimant. The meeting discussed what changes could be made.

14 Later that day Mr Gove sent Mr Trewin an email in which he said that he had spoken to the Claimant and others on the team. He continued,

“The conclusion of these conversations is that even if we made changes, they wouldn’t be sufficient to fundamentally change things. Mirek shared with the team at the daily stand-in today that he needed time off this afternoon to talk about his exit. Which gives me a clear understanding of his thinking and his unhappiness. I do not think making adjustments will change the root cause. I would not like Mirek to continue to be unhappy working in the team...”

Given this. I would like to remove Mirek from the project with immediate effect.”

14 Mr Gove did not in that email set out the detail of the conversations that he had had with the Claimant and the other members of the team. Mr Trewin had considered the meeting to have been positive and could not understand what had led to Mr Gove reaching the conclusion that he had. He sent Mr Gove emails to try to persuade him to change his mind.

15 On 9 April the Claimant sent Mr Trewin an email in which he informed him that he was resigning from his position with the Respondent and was giving them one month's notice with effect from that day or from 31 March, when he had first resigned.

16 On 14 April Mr Gove sent Mr Trewin an email in which he set out in detail what the Claimant had said to him and to other members of the team. Mr Trewin was surprised to receive that. The Claimant had told him that he was frustrated with certain things, but he had not been aware that the Claimant had been communicating his views to the rest of the team.

17 On 15 April Mr Trewin dismissed the Claimant with immediate effect. He said that the Claimant's conduct had amounted to gross misconduct and, in any event, his refusal to work with the client had left him in a position where he had no other work for the Claimant.

Conclusions

18 The Claimant's unilateral declaration to stop working on the project to which he had been assigned by the Respondent and to communicate that to the client before raising it with the Respondent amounted to a repudiatory breach of his contract of employment. It was a refusal to do the work to which his employer had assigned him and the communication of that directly to the client, and the manner in which it was communicated, damaged the Respondent's relationship with its client. When Mr Trewin tried to resolve the difficulties created by the Claimant's conduct, the Claimant compounded matters by making the remarks that he did to Mr Gove about the client. The result of his actions was that the client no longer wanted him on its premises and he could not do the work which he had been employed to do. His conduct seriously damaged the Respondent's relationship with its client and its reputation. The Claimant was perfectly entitled to resign from his job. The correct way in which to do that would have been to speak to his employers and to give them one month's notice and not to make any adverse remarks to the client. That would have given the Respondent an opportunity to find a replacement for him and to maintain its relationship with the client. As a result of the Claimant's repudiatory conduct, the Respondent was entitled to dismiss him summarily.

Employment Judge - Grewal

Date: 23/11/2020

REASONS SENT TO THE PARTIES ON
23/11/2020.

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FOR THE TRIBUNAL OFFICE

