



# EMPLOYMENT TRIBUNALS

**Claimant:** K Hrabovsky

**Respondent:** Marenka Limited

**Heard at:** London South Employment Tribunal via CVP

**On:** 28 April 2021

**Before:** Employment Judge L Burge

## **Representation**

**Claimant:** Mr Hrabovsky (son)

**Respondent:** Ms Celakova (representative)

# RESERVED JUDGMENT AT A PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Claimant resigned his employment with the effective date of termination being 26 April 2020;
2. The Claimant's claim of unfair dismissal accordingly fails and is dismissed; and
3. The Claimant's claims of breach of contract and/or unlawful deductions from wages were submitted in time and may proceed.

## **The hearing**

1. The Tribunal heard evidence from the Claimant, Karel Hrabovsky via a Czech translator. Martin Spanek, Director of the Respondent, provided a witness statement and gave oral evidence to the Tribunal. A bundle of documents running to 42 pages was provided to the Tribunal.

## **Issues to be determined**

2. The matter came before the tribunal to consider:

- a. Whether the Claimant was dismissed or resigned;
- b. If he was dismissed, on what date was he dismissed
- c. If he was dismissed, and having regard to the date of the dismissal, was the claim issued in time?
- d. If not, was it reasonably practicable to submit the claim in time and if not was it submitted within such further period as the Tribunal considers reasonable?

### **Findings of Fact**

3. The Claimant was employed by the Respondent from 2012 as a kitchen porter/prep chef. There was no contract of employment.
4. Mr Spanek and Mrs Lenka Spanek (the owners of the Hurstwood pub) and the Claimant had a good relationship prior to March 2020.
5. On 15 March 2020 Mr and Mrs Spanek and the Claimant had a disagreement. The Claimant wanted the coming Sunday off but Mr and Mrs Spanek would not allow it given the lateness of the request and because Sunday 22 March was Mother's day, one of the busiest days of the year at the pub and restaurant. Mr Spanek gave evidence that the Claimant did not tell him at the time why he wanted that Sunday off. According to a letter written on 29 June 2020 by the Claimant's son, Mr Hrabovsky (junior) it was because he had sciatica. At the hearing the Claimant gave evidence that it was because he wanted to visit his son, who was busy working in a London hospital.
6. During the disagreement on 15 March 2020 the Claimant gave evidence that Mr and Mrs Spanek said that if he did not come to work on the Sunday he need not return at all. The parties agree, and the Tribunal finds as a fact, that the Claimant said "I quit!". In a draft letter for the Claimant to sign (that he never signed) it stated that he would work his 4 week notice period.
7. At the end of the heated meeting on 15 March 2020 Mr and Mrs Spanek raised the issue of money that they believed the Claimant owed to them. Later that day the Claimant returned with £100 to pay them and Mrs Spanek asked whether he had intended to resign. The Claimant replied that he did. The Claimant gave evidence that he was angry and that although he had said that he quit he did not mean he wanted to leave right away and that he wanted to wait to see if they had a more humanistic approach towards him. The Tribunal finds that this was not communicated to Mr and Mrs Spanek, who were simply told that he had meant to resign.
8. On 17 March 2020 the Claimant gave Mr and Mrs Spanek a medical certificate signing him off work from 16 – 23 March 2020.
9. The Prime Minister announced that pubs, bars and restaurants were to close from 20 March 2020 and the Hurstwood pub and restaurant duly closed. Mr Spanek gave evidence to the Tribunal that all of the other staff at the Respondent were furloughed but that the Claimant could not be because he was on sick pay.

10. On 28 March 2020 the Claimant gave Mr Spanek a second medical certificate signing him off until 6 April 2020.
11. On the morning of 22 April 2020 Mr Spanek emailed the Claimant asking him to get in touch, but he did not do so. Mr Spanek sent a further email that afternoon saying:

*“we assume from the conversations that you genuinely did intend to resign from your role and that your period of sick leave counted as your notice ... If we do not hear from you by Monday 27 April 2020 we will process you as a leaver... If it was not your intention to resign, or if you would like to re-consider your position, please do let me know”.*
12. On 25 April 2020 the Claimant gave Mr and Mrs Spanek another medical certificate dated 22 April 2020 signing him off work from 6 April to 18 May 2020. On 28 April 2020 Mrs Spanek emailed and wrote to the Claimant returning his sick certificate, saying that he was no longer employed and also reiterated “if it was not your intention to resign, or if you like to re-consider your position please do let me know”.
13. The Respondent processed the Claimant as a leaver. Mr Spanek gave evidence that the Claimant was processed as a leaver from 6 April but that the accountant made a mistake on the P45 and put 30 April 2020 as his leaving date. Mr Spanek stated that the Claimant’s holiday entitlement was paid up until 30 April but his pay was paid until 6 April 2020.
14. The Claimant had written 6 August 2020 in his claim form as the date of termination. In cross examination the Claimant said that he must have been confused as he believed he had written the date that he had been told by the Respondent, 6 April 2020.
15. The Claimant continued to submit sick certificates in May 2020.
16. The Tribunal accepts the Claimant’s evidence that his written English is not to a high standard and so he relied on his son to be able to help him. In a letter dated 25 June 2020 Mr Hrabovsky (junior) (the Claimant’s son) wrote to the Citizens Advice Bureau, saying:

*“I do not believe that my father intended to resign, but we did not confirm that in writing as we did not want to make any decisions until my father’s condition had been ascertained by the GP and the back specialist.”*
17. The letter was relied on by the Claimant as being an accurate version of events. The Tribunal finds as a fact that the Claimant never told Mr and Mrs Spanek either orally or in writing that he was thinking about or that he wanted to retract his resignation. He also never told them that he wanted to continue being employed by the Respondent.
18. At the time the Mr Hrabovsky (junior) was working shifts in a London Hospital. Mr Hrabovsky (junior) and the Claimant managed to get advice from a Citizens Advice Bureau, although it is not clear when that advice was obtained.

19. The Claimant contacted ACAS on 21 July 2020 and issued the Certificate on 30 July 2020.
20. On 31 July 2020 the Claimant presented his claim.

### **Time limits and extension**

21. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order and sections 23 and 111 of the Employment Rights Act 1996 provides that the time limit for bringing a claim is ordinarily within three months of the date of any effective date of termination/unlawful deduction/dismissal, subject to an extension of time to facilitate early conciliation. Where an employee can show that it was not reasonably practicable for them to present the claim in time an employee can be given a further extension. The same principles apply to breach of contract claims. The burden is on the claimant to show that it was not reasonably practicable to present the claim in time. Reasonably practicable does not mean “reasonable” nor “physically possible”. It means “reasonably feasible” (*Palmer v Southend on Sea BC* [1984] ICR 372).

### **Conclusions and associated law**

22. Unambiguous words of dismissal or resignation may be taken at face value without the need for any analysis of the surrounding circumstances (*Sothorn v Franks Charlesly and Co* 1981 IRLR 278, CA). However, in certain circumstances, such as in this case where resignation is given in the heat of the moment, a Tribunal can find that there was no real resignation (*Sovereign House Security Services Ltd v Savage* 1989 IRLR 115, CA). In this case the Claimant was clear with his words on the day he resigned, 15 March 2020, and crucially was also clear later on 15 March when he confirmed that he had meant to resign. He also did not respond to Mr and Mrs Spanek’s letters asking whether he had meant to resign. While the Claimant gave evidence that he had not in fact decided to resign, at no time did he communicate this with Mr and Mrs Spanek and so they were entitled to take him at his word.
23. The Claimant verbally resigned his employment on 15 March 2020. Given that Mr and Mrs Spanek wrote a draft letter for him in which it said that he would be working his notice, it is clear they understood that his resignation was with notice. The Claimant also submitted sick certificates so the Tribunal concludes that he also believed that there was a notice period.
24. On 22 April 2020 Mr Spanek emailed the Claimant twice, the later email saying “we assume from the conversations that you genuinely did intend to resign from your role and that your period of sick leave counted as your notice”...If we do not hear from you by Monday 27 April 2020 we will process you as a leaver... If it was not your intention to resign, or if you would like to re-consider your position, please do let me know”. In fact they did hear from the Claimant before that date, on 25 April 2020, although it was only to submit a further sick certificate and not to address the question of resignation.

25. On 28 April 2020 Mrs Spanek told the Claimant he was no longer employed and returned his sick certificate.
26. As there was no contractual term as to notice, the Tribunal can imply a term at common law that reasonable notice be given. Mr Spanek gave evidence that the Respondent had taken advice on the notice period and that they had been told notice should be from 15 May 2020 until 6 April 2020 (3 weeks and one day). The Claimant submitted that the appropriate notice period was six weeks. The Tribunal concludes that the reasonable notice period in this case was six weeks. This is based on the Claimant's length of service and accords with the actions of the parties. The Tribunal concludes that the Claimant resigned on 15 March 2020 with 6 weeks' notice and so his employment with the Respondent terminated on 26 April 2020.
27. The Claimant therefore submitted his claim in time.

Employment Judge L Burge

Date: 12 May 2021

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