



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Williams  
**Respondent:** Everon UK Ltd  
**Heard at:** Exeter, by Video **On:** 07 January 2021  
**Before:** Employment Judge Smail  
**Representation**  
**Claimant:** In Person  
**Respondent:** Mr T Hussain Consultant

**JUDGMENT** having been sent to the parties on 7 January 2021 and written reasons having been requested late on the alleged basis that the Judgment, although sent in the post to the Respondent, was not received by them; the following reasons are provided which must be read alongside the Judgment:

## REASONS

1. By a claim form presented on 25 June 2020, the Claimant claims notice pay. The Claimant was employed by the Respondent between 7 May 2019 and 23 March 2020 as a Regional Sales Manager. The Claimant was dismissed without notice on 23 March 2020. The Claimant was entitled to 3 months contractual notice.
2. The Respondent's defence to the claim is that the Claimant was released from her employment on the grounds of 'underperformance/gross misconduct due to breach of contract because she was working as a RGN at the same time as she was employed by the Respondent which was in breach of her contract of employment'. The Respondent's case, then, is that the claimant was in repudiatory breach of contract, entitling them to bring the contract of employment to an end without paying notice by accepting the breach.
3. The Claimant was dismissed by Peter Kerly the UK Country Manager. He had only recently joined the company. The Claimant had been recruited by Kean Crispin, the previous manager. Paragraph 1 of the dismissal letter dated 23 March 2020 (sent on 24 March 2020) says "1. Immediate release of employment without pay meaning you are free to take up employment at any time". Paragraph 2 states "Three months notice of employment in line with your contract of employment your notice period shall be three months from the date meaning that your last day of employment shall be 23 June 2020. He goes onto say "The decision has also been taken due to the fact that your achieved sales and revenue income has not been in line with company

expectations which as I am sure you will appreciate has contributed to this situation”.

4. What he does not say in this letter, is that there is any reliance upon an alleged repudiatory breach of contract committed by the claimant so as to entitle termination of the contract without giving and paying notice. That is not in this letter. Mrs Williams would legitimately expect having received this letter that she would be paid her notice. Not achieving targets would not be a repudiatory breach of contract. She was not in any event made aware that her performance was unsatisfactory.
5. In the course of negotiations between her solicitor and the respondents in April 2020, it was then asserted by the respondent that they had ‘discovered’ that the claimant was in fact, they say, in repudiatory breach of contract because she had worked night shifts as a nurse for the NHS. This is how they now defend the claim. They point to Clause 4 of the contract of employment which provides:

“During her employment the employee is not entitled to undertake any other additional employment or work whether paid or unpaid outside the company without the express consent of the company, such consent not to be unreasonably withheld. However, consent will be withheld if in the reasonable opinion of the company such additional work is in conflict with her duties and/or the interest of the company and/or is in competition with the business from time to time conducted by the company. Notwithstanding the aforementioned, the employee may continue her current work during the part-time engagement until 31 June 2019”.

6. The claimant is a registered nurse as was known to Mr Kerly and the then line manager Mr Crispin who recruited her. The claimant was keen to maintain her registration. That means for a few hours a year she had to do the job of a nurse. I accept from the claimant that this was indeed an attractive feature of her application because the company sells devices to care homes. The devices are worn by residents in care homes. There is, for example, a watch-type device which can send alarm signals. An alarm is raised to those caring for the residents many of whom will be nurses. It was thought, and I accept from the claimant, that it was relevant, and it was not in conflict with the business of the respondent, for her to maintain her registration. She did maintain her registration, she worked during the course of her employment on 3 night shifts: 19 July, 25 October, 29 November 2019.
7. This was expressly authorised by her line manager Mr Crispin. The whole premise behind the respondent’s attempted defence is wholly misconceived. First of all, the work was expressly authorised by her line manager. Secondly, it was not in conflict with the respondent’s business: on the contrary, it was entirely in keeping with it. The claimant wanted to maintain her registered nurse qualification. It was relevant to the business of the respondent and there were only three occasions on those dates; the last of which was four months prior to the notice of dismissal on 23 March 2020.
8. I note the Respondent was under trading financial pressure. That was the reason for dismissing the Claimant. They have contrived a defence to seek to avoid paying her notice.

9. There is no basis whatsoever to the respondent's case that it was entitled not to pay notice because of events apparently discovered in April. Nothing new was discovered in April. Mr Kerly knew the position even before joining the company. Had there been the most minimal of investigations, it would have been discovered that there were only three occasions and a perfectly good reason. I have no hesitation whatsoever in rejecting this misconceived and contrived defence and ordering the respondent to pay compensation.
10. There is, however one further matter, which is that this is a claim for breach of contract. Prima facie, the claimant is entitled to three months net salary but if by reason of being released from her contract, she earned money, in particular as a nurse or indeed as anything, she has got to give credit for it. That is something she has not thought about yet. The Judgment makes provision for that matter to be taken into account and credited.
11. There is also an application from the claimant for costs. I understand her position on that. I will hear Mr Hussain on costs.

Costs

12. This defence is entirely without merit and contrived. It was not reasonably raised. It had no reasonable prospects of success. The claimant's instructing of solicitors and incurring £1,692 costs was entirely reasonable, in the circumstances. This is a clear case for ordering costs against the respondent. I exercise my discretion to do so. As to means: I take into account this is a limited company. It should be able to pay the costs, if it is still trading.

**Employment Judge Smail  
Date: 12 July 2021**

Reasons sent to the Parties: 20 July 2021

FOR THE TRIBUNAL OFFICE