



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Dixitha Patel

v Door to Door Transport Solutions Ltd

Heard at: Watford Employment Tribunal **On:** 25 January 2021

Before: Employment Judge George (sitting alone; remotely)

Appearances

For the Claimant: No attendance; no representation

For the Respondent: Paul Pearson, director

JUDGMENT

1. The identity of the respondent is confirmed to be Door to Door Transport Solutions Ltd.
2. The respondent is to pay to the claimant the sum of £103.84 gross in respect of arrears of wages to be paid after deduction of tax and national insurance contributions.
3. The claim for notice pay is dismissed.

REASONS

1. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was (V) – by Cloud Video Platform (or CVP). A face-to-face hearing was not held because it was not practicable due to the coronavirus pandemic and all issues could be determined in a remote hearing. The documents that I was referred to are the claim form and respondent's defence, and the following documents which were forwarded to the Tribunal by the respondent on 22 January 2020: an exchange of texts dated 1 November 2019 between the claimant and Jaycee Clusker; 4 pages of the claimant's payslips dated between 30 April 2019 and 31

October 2019; an email exchange dated 4 November 2019 between the claimant and Jaycee Clusker; a spreadsheet of holiday pay calculations.

2. The Tribunal had directed that the parties bring the documents upon which they wish to rely to the hearing. The respondent had not copied the email by which it sent those documents to the claimant which was in breach of the rule 92 of the Employment Tribunals Rules of Procedure 2013 requirement that they send a copy of all correspondence to the parties and say that they have done so. The respondent should send copies of the documents which they relied upon before me to the claimant as soon as possible. The claimant had not sent any documentation to the Tribunal before the hearing.
3. The start of the hearing was slightly delayed due to technical difficulties with the CVP network. When the Tribunal emailed the claimant to explain that there was a delay to the start of the hearing, we received an email from her timed at 10.22 am stating

"Please note I will not be able to join the hearing as I have had bereavement in the family. Please continue the hearing without my presence. "

4. Mr Pearson attended on behalf of the company. He asked that I should continue with the hearing as requested by the claimant. I pointed out that the claims brought by the claimant were for unpaid wages for 1 November 2019 and there did not appear to be anything in the response which explained why the respondent should not pay her for that. He accepted that the claimant had worked that day until she had been called into the meeting which was central to notice pay claim and that the respondent should probably pay her for those hours, subject to having overpaid her holiday pay entitlement on termination of employment.
5. I pointed out that there was nothing in the response which said that the claimant owed the respondent for overpaid holiday pay (either as an employer's contract claim or as a factual allegation that a deduction had been made from her final payment for that reason) and no contractual documentation had been supplied which was relied upon to show that they could deduct her holiday pay. These arguments could not be run by the respondent without changing their response in order to do so.
6. In the circumstances of the claimant consenting to the hearing going ahead in her absence I was of the view that it was in accordance with the overriding objective of saving cost and avoiding delay to do so. However, my view on whether it was right to go ahead in her absence would have been different if the respondent wanted to change or add to their reasons for not having to pay compensation to the claimant. Given that indication, Mr Pearson said he was happy to go ahead with the defence to the wages claim and notice pay claim as originally set out in the response.
7. Mr Pearson gave evidence under affirmation and explained the documents provided to me. In general, I found him to be a credible witness and my

findings of fact are based upon his oral evidence, supported by the documents where those are available.

The Issues

- 8. It was effectively accepted by the respondent that the claimant had not been paid for 1 November 2019 and therefore the issue for me to decide was what was the amount of any deduction made by failing to pay her for 1 November 2019.
- 9. The claimant also claimed notice pay. She claimed that she had been effectively forced to resign. This seemed to me to be a claim of wrongful dismissal: that it was in effect the respondent who was responsible for the termination of the employment because she had been told that she should either resign or she would be dismissed. Therefore, the issue was whether, in reality, it was the respondent who was responsible for the termination of the claimant's employment: either because Mr Pearson told her that she should resign or be dismissed or because they behaved in a way which repudiated the contract leaving her with no option but to resign.

Findings of Fact and Conclusions on the issues

- 10. This is a brief chronology of events:

15.04.2019	The claimant started employment with the respondent as a Traffic Desk Clerk
1.11.2019	The effective date of termination (on ET1 accepted by R)
4.11.2019	Exchange of emails between the claimant and JC
2.12.2019	Early conciliation Day A
18.12.2019	Early conciliation Day B
16.01.2020	Claimant presents a ET1 claiming unfair dismissal, notice pay and unpaid wages for 1 November 2019.
4.2.20	The unfair dismissal claim was rejected for lack of qualifying service. Notice pay and arrears of pay claims accepted.
10 Feb 2020	ET3 form responding to the claim – respondent agrees dates of employment. The respondent defended the notice pay claim on basis that the claimant resigned without notice/"did not work her notice period and had no intention in doing so."

- 11. I find that the claimant did resign her employment with the respondent. On 1 November 2019 there was the latest of more than one meeting between Mr Pearson and the claimant in which he explained that there were aspects of her role which she was not carrying out as effectively as they needed her to; in particular communicating with customers when deliveries were delayed in order to provide a service to them. This was an informal

meeting but was more seriously intentioned than previous meetings held during her 6-month employment because not only did Mr Pearson reiterate that things were not going as planned but he also warned that if the claimant couldn't work as they needed then they would need to take disciplinary action which might include verbal or written warnings. Mrs Patel was, understandably, upset and responded by saying that she would rather resign than be sacked and said something to the effect "*what would you do if I resigned*". Mr Pearson replied that he would accept a resignation.

12. Ms Patel left the meeting and left the building. In doing so, she left work slightly early. In the text exchange she told JC "*please can u send a copy of my payslip when u get a chance*" "*I walked out as I was asked to resign*" and "*This was planned I'm aware of it so it's fine.*" JC replied by saying "*nothing is planned in the outcome and it's certainly not ideal with P not being in the office a lot next week so I don't see how anything would have been planned.*" The claimant then responded "*I've left let's leave it as that now. Thanks for all ur support u have given me I appreciate it a lot. Good luck with everything xxx.*" The tenor of the claimant's texts concern her having resigned her employment although she says that she was asked to do so. The respondent understood this to be clear communication of resignation.
13. Consistent with this, on the morning of 4 November, the claimant removed her belongings from the workplace before 8 am. It would have been advisable for the respondent to write to the claimant to tell her what they had understood by what she said and that they accepted the resignation. Some employers ask employees to reconsider decisions taken in the heat of the moment. However, I am satisfied that in terms of the contractual construction to put on what happened, the claimant communicated through conduct and words that she intended to resign and the respondent accepted that.
14. I have considered the claimant's allegation that she was given an ultimatum by Mr Pearson that if she did not resign she would be dismissed. I accept that it was the claimant who first mentioned the prospect of her resigning – Mr Pearson did not link it to the capability/conduct process which he had told the claimant the respondent would have to follow if things did not improve. The discussion was to inform the claimant that a formal disciplinary process would have to follow if the informal warning about performance didn't result in improvements that the respondent thought were necessary. The discussion about resignation was initiated by her. The claimant didn't actually resign in the meeting although Mr Pearson told her if she resigned her resignation would be accepted. However the claimant appears to have considered that by leaving her place of work she was leaving her job, hence the texts to JC.
15. Although on 4 November 2019 at 16.44 the claimant submitted a sick note, once a resignation has been accepted it cannot be withdrawn unilaterally. When JC queried why the sick note had been sent because they had

taken the claimant to have resigned, Mrs Patel said that she had merely left for the day. Ms Clusker responded to that email and referred, among other things, to the text which I have quoted above as amounting to a resignation.

16. I have concluded that the claimant resigned with immediate effect giving no notice. Therefore, no notice pay is payable by the respondent. For the avoidance of doubt she did not resign in circumstances where she could consider herself to be dismissed nor was it effectively the respondent who terminated the employment by giving her an ultimatum that she should resign or be dismissed.
17. For those reasons the claim for notice pay is dismissed. The respondent accepts that they should pay the claimant for the hours worked on 1 November 2019. Mr Pearson said, and I find, that the claimant worked 8 hours on that day and, to judge by her payslip for October 2018, her hourly rate was £12.98 gross. This amounts to £103.84 gross for the 8 hour working day which should be paid after deduction of tax and national insurance contributions.

Employment Judge George

Date: ...25 January 2021

Sent to the parties on:

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For the Tribunal Office