



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Feeney

**Respondent:** Gotham Newco 2 Ltd

**Heard at:** Manchester (remotely, by CVP)

**On:** 11 August 2021

**Before:** Employment Judge Rice-Birchall

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Henry, Croners

# JUDGMENT

The claimant's effective date of termination of employment was 10 July 2020. Accordingly, his complaint of unfair dismissal, which was brought on 6 June 2020, fails and is dismissed.

# REASONS

## Background

1. This claim was listed for an open preliminary hearing to determine the claimant's effective date of termination. The respondent said the effective date of termination was 10 July 2020, when the claimant's employment was terminated. At the preliminary hearing, the claimant said that his What's App message, sent in April 2020 was a resignation.

## Evidence

2. The Judge had before her a bundle of documents which contained extracts of the What's App message the claimant relied upon as his resignation. Neither party were able to obtain or had in their possession the full transcript of that message.
3. The claimant had prepared a witness statement and gave evidence.

## Facts

4. The claimant was employed by the respondent as a manager at one of its restaurants. He had been employed in that role since October 2013.
5. The claimant has a young child with a disability, such that she was vulnerable during the coronavirus crisis.
6. On 5 March 2020, the claimant walked out of work after a meeting with his manager and HR to address a conduct issue.
7. On 23 March 2020, the claimant walked out. In his claim form, he cited 23 March as the date of termination of his employment. However, he returned to work.
8. On 9 April he handed in his resignation, in writing, which specifically stated that; "it's probably best I leave with immediate effect as I can't work currently". That was clear and unambiguous language, but, in fact, the claimant retracted that resignation (confirmed by letter dated 20 April from the respondent to the claimant) and took some annual leave, and then unpaid parental leave, until 25/6 April when he agreed to work again for the respondent.
9. He sent a What's App message to the respondent in a group chat (which included his work colleague) which said, inter alia...."So I am making a stand and refusing to work for the sake of my own health and my employees health what is it going to take for one of yous to open your eyes....won't allow me to be furloughed that the government pay. And the only time off I'm allowed to take to care for her is 4 weeks unpaid leave which isn't long enough....so I really don't understand how I can work and provide essential care for my daughter who is shielding...it isn't safe for me to be around her if I have to work...you could furlough me and a lot of other people but that would be bad for the company as all the restaurants are shut why don't they open a delivery service...anyway you choosing not to furlough me or grant me 8 weeks paid or unpaid leave I will instruct my staff no one is working as it isn't safe to do so and I will instruct a solicitor to fight this as I have had enough of how you are treating me and everyone else I will approach the press and take any action necessary to make the public aware.....just thought yous all deseve to know and deserve to know how they are treating me well all of us for that matter and its about time we stand up for what's right so I ask you all to do the same if we all refuse to work they have to start listening and answering us adequately."
10. The claimant says he sent that What's App message on 26 April. Correspondence from the respondent indicates that it was sent on 30 April 2020.
11. He claims the respondent then did not seek to contact him, however there is an email sent to him by Will Bithell on 4 May acknowledging the concerns he had raised and granting him a further four weeks' parental leave.
12. On 25 May 2020, he approached ACAS, and obtained an ACAS certificate on 28 May 2020. This is what the case summary from the first preliminary

hearing on 28 May 2021 states: “On 25 May he contacted ACAS to find out his rights on parental leave.”

13. This was followed up on 1 June with a confirmation that the respondent would continue to offer the claimant unpaid parental leave for a further four weeks.
14. The claimant made a claim to the Tribunal on 6 June 2020.
15. The respondent believed the claimant to be on unpaid parental leave, made efforts to contact him to which he did not respond in late June and early July and invited the claimant to a disciplinary hearing. The claimant did not attend but was dismissed at a reconvened disciplinary hearing in his absence. The claimant did not attend but the respondent sought to dismiss him in his absence on 10 July 2020.

### Law

16. As the majority of the Supreme Court in *Société Générale, London Branch v Geys* [2013] IRLR 122, put it, it is: "an obviously necessary incident of the employment relationship that the other party is notified in **clear and unambiguous terms** that the right to bring the contract to an end is being exercised, and how and when it is intended to operate." (*Paragraph 57.*)
17. Both parties must understand what has taken place. Once notice has been given, both parties should be sure that the employment is going to come to an end on a particular date.
18. The notice must specify the date of termination or at least contain facts from which that date can be ascertained or inferred (*Mitie Security (London) Ltd v Ibrahim* UKEAT/0067/10).

### Conclusions

19. The claimant knew how to construct a resignation in clear and unambiguous terms, as demonstrated by his resignation of 9 April.
20. The claimant alleges he resigned by sending the What's App message to the group chat. However, in stark contrast to his resignation on 9 April, the language in the What's App message was no clear and unambiguous and could be defined as a “call to arms” to his colleagues rather than a resignation.
21. The What's App message ends: “I ask you all to do the same if we all refuse to work...”. That is not the language of a person resigning, with immediate effect, from their employment with the respondent. That is the language of a person seeking to make a point to their employer and seeking their colleagues' assistance in doing so.
22. Further, no end date is apparent from the What's App message.
23. The claimant relied heavily on the fact that he approached ACAS on 25 May, and asks, rhetorically, why he would have done that if he hadn't resigned. However, the case management summary from the previous preliminary

hearing indicates that he approached ACAS about parental leave. In any event, approaching ACAS does not indicate that he had resigned in clear and unambiguous terms.

Employment Judge Rice-Birchall

Date: 14 August 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 August 2021

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