



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms MM Reis Mano

**Respondent:** Regional Care Peterborough

**Heard at:** Bury St Edmunds (CVP)

**On:** 22 July 2021

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** Mr N Reis, solicitor

**For the Respondent:** Mr G Hine, solicitor

This has been a remote hearing on the papers to which the parties/consented did not object. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

## JUDGMENT

- (1) The claim of unfair dismissal succeeds.
- (2) The claim of compensation for two weeks untaken annual leave succeeds.
- (3) The Claimant is entitled to compensation in the sum of £14,856 in respect of her claim of unfair dismissal.
- (4) The Claimant is entitled to compensation in the sum of £923.06 in respect of her claim for untaken annual leave.

## REASONS

### Introduction

1. This was claim of unfair dismissal and compensation for outstanding holiday entitlement as at the date of dismissal. I heard evidence from the Claimant, and for the Respondent from Mr M Cole, owner and manager of the Respondent company. I was also referred to a bundle of documents. On the basis of that evidence, I make the following findings of fact.

### **Facts**

2. The Respondent is a domiciliary care agency. The Claimant started employment with the Respondent on 1 March 2018 as a Care Co-ordinator and in June 2019 she was promoted to the position of Care Manager. On 3 December 2018 the Claimant spoke to Mr Cole about also engaging her partner, Mr Jorge Rocha (JR), and as from 6 December 2018 he was contracted to provide services for the Respondent on a self-employed basis. Soon afterwards he began to be regularly rostered to provide night-care services to an individual (PL) whose partner, SN, had engaged the Respondent to provide those services.
3. In early 2019 Mr Cole raised the wages of carers engaged on dayshifts from £8.50 an hour to £9.00 an hour. The pay rise did not apply to carers while engaged on nightshifts. JR told Mr Cole that SN had offered to employ him directly for more money and therefore he should also be given the same pay rise for his nightshift work. At approximately the same time the Claimant also became aware that SN was interested in offering JR employment caring for PL. In the event, Mr Cole did not extend the pay rise to the nightshift
4. On 26 February 2019 at 19.15 SN sent Mr Cole an email stating that as from 1 March she didn't require any more care services from the Respondent in respect of PL.
5. On 27 February 2019 at 22.35 Mr Cole spoke to the Claimant on WhatsApp. The call lasted 1 minute 37 seconds.
6. Mr Cole says he asked the Claimant if she was aware that SN had terminated her contract with the Respondent and that the Claimant told him she was fully aware but that she and JR needed the extra money. Mr Cole also says that he told the Claimant she would need to think about her position in the office as he felt that the trust between them had been broken.
7. The Claimant has a different account of the call. She says Mr Cole told her that SN had terminated her contract, that she (the Claimant) had been sacked and that she was not to set foot in the Respondent's premises again.
8. At 22.42 (5 and ½ minutes after finishing his call to the Claimant) Mr Cole sent a WhatsApp message to the Respondent's Trainee Coordinator, the Quality Compliance Office and the Field Care Supervisor stating: "Hi, please note Marta dnt work with Regional Care anymore and should not be allowed into the office at any point from today...no report or information should be shared with her.'
9. Mr Cole purported to explain away that message on the basis that after his conversation with the Claimant he had been made aware she was spreading

untrue rumours amongst the staff that she had been sacked, and further that he had been informed that the physical copy of SN's contract had been removed from the office and he believed the Claimant had removed it.

10. I do not believe that explanation. I accept the Claimant's version of events. First, there was only a very short time between the timing of Mr Cole's call with the Claimant and the sending of his WhatsApp message. In those few minutes it would have been impossible for the Claimant to have spread untrue rumours, and for Mr Cole to have been informed of that fact, and for someone to have gone to the Respondent's offices, discovered the contract was missing (if indeed it was) and informed Mr Cole about that as well. Secondly, and in any event, telling the other senior members of the Respondent that the Claimant didn't work for the Respondent anymore and that she wasn't allowed in the office, is plainly incompatible with Mr Cole's assertion that he had simply told the Claimant to reflect on the difficulty of her position but expected her to carry on working as normal.
11. On 28 February 2020 Mr Reis wrote to Mr Cole on behalf of the Claimant stating he understood that the previous day Mr Cole had "sacked" the Claimant and told her not to go back into the office. He asked Mr Cole to reconsider the dismissal.
12. On 3 March 2020 the Claimant was sent a WhatsApp message asking her to return her office key.
13. On 5 March 2020 Mr Cole replied to Mr Reis's letter, asking for evidence that the Claimant was dismissed and stating he was investigating the matter as an unauthorized absence as the Claimant had not turned up for work since 28 February 2020. He further stated that if Mr Reis continued to have contact with him on the issue he would file a case of conflict of interest against him.
14. Also on 5 March 2020, Mr Cole sent the Claimant a letter asking her to attend a formal disciplinary hearing on 9 March 2020 because she had been absent from work since 28 February 2020 although "he had tried without to success to contact her on her mobile phone". I do not believe that Mr Cole tried to contact the Claimant on her mobile phone between 28 February and 5 March 2020. There is no evidence of any attempts in the bundle and given that I have found Mr Cole told the Claimant that she was sacked and not to set foot in the office, he would have no reason to contact her. Mr Reis replied stating that the Claimant was not in a "mental condition to attend what you call a Disciplinary Hearing which is no more than a product of your imagination".
15. On 9 March 2020 Mr Cole sent the Claimant a further letter asking her to attend a formal disciplinary hearing on 9 March 2020 because she had been absent from work since 28 February 2020 although "he had tried without to success to contact her on her mobile phone". Again, I do not believe that Mr Cole tried to contact the Claimant on her mobile phone between 28 February and 9 March 2020. The disciplinary process in respect of the Claimant's supposed unauthorized absence from work was a fiction created by Mr Cole in an attempt to disguise the Claimant's summary dismissal on 27 February 2020.

16. On 11 March 2020 Mr Cole sent the Claimant a further letter purporting to dismiss her. In addition to being absent from work, Mr Cole stated that he was also dismissing her for a number of other matters, including spreading false news as regards her dismissal, not fulfilling her role, not reporting significant conversations between carers, including her partner JR, and/or not attempting to dissuade JR from poaching a client (SN).

## **Conclusions**

### Unfair dismissal

17. Since I have found that the Claimant was summarily dismissed in a WhatsApp call on 27 February 2020, it necessarily follows that she was unfairly dismissed.
18. Mr Hine accepted that if I found the Claimant had been summarily dismissed on 27 February 2020 the dismissal would be procedurally unfair, however he submitted that the Claimant would have been dismissed for a fair reason shortly afterwards in any event. There were two reasons advanced for this: first, that the Claimant had not been performing her role, and/or, secondly, that she had breached the terms of her contract because she had been instrumental in SN's decision to employ JR directly and terminate her (SN's) contract with the Respondent.
19. As regards the allegation that the Claimant had not been performing her role, in his witness statement Mr Cole stated that the Claimant's conduct and performance had declined since June 2019 and that her management of her team was inadequate. He said in evidence that he had given her a verbal warning. There was no documentary evidence of such a warning in the bundle, or of the Claimant's alleged inadequate performance.
20. Mr Cole further stated that on 20 February 2020 he had launched an investigation against the Claimant triggered by several reports from carers, clients and office staff about the Claimant's behaviour and treatment of them. Mr Cole said he had not told the Claimant about the investigation, which was why there was no evidence of any communication with her about it, but relied on a typed letter of resignation from a Mr Peter Nordoff purportedly dated 3 February 2020 complaining about the Claimant, an unsigned letter of complaint (about the Claimant) from a Ms Ana Sofia, purportedly dated 24 February 2020, an unsigned letter of resignation from a Ms Caroline Forshaw, purportedly dated 25 February 2020 and an unsigned complaint (about the Claimant) from a Ms Blessing Osagie, purportedly dated 26 February 2020. The only one of these documents that pre-dates 20 February 2020 is the resignation letter of Mr Nordoff dated 3 February 2020. In this respect the Claimant gave clear and unchallenged evidence that Mr Nordoff was a friend of Mr Cole who had resigned from the Respondent some time in 2019 and well before February 2020. The Claimant also gave clear and unchallenged evidence that Ms Forshaw was a friend of Mr Cole who had also resigned from the Respondent some time in 2019 and well before February 2020. Further, although Mr Cole

said in evidence that these four statements/documents had been emailed to him in February 2020, there was no evidence of such emails in the bundle.

21. I find that there was no concern about the Claimant's conduct or performance or any investigation prior to SN's email of 26 February 2020, and that the four statements/documents referred to above were written after the Claimant's dismissal for the sole purpose of attempting to construct a defence to the claim of unfair dismissal and/or to reduce the Claimant's entitlement to compensation. They constitute an attempt both to damage the Claimant's reputation and to mislead the Tribunal.

22. As regards the alleged breach of contract. Mr Hine relied on clause 22.2 of the Claimant's employment contract:

"During the term of your active employment with the Company and for a period of twelve months thereafter, you will not divert or attempt to divert from the Company any business the Company had enjoyed, solicited, or attempted to solicit, from its customers, prior to termination or expiration, as the case may be, of your employment with the Company."

23. Mr Hine submitted that the Claimant had diverted the business the Respondent had enjoyed with SN to JR. In this respect he submitted the Claimant must have been instrumental in persuading SN to employ JR. He relied on an email dated 4 March 2020 that SN had sent to JR and JR had forwarded to Mr Reis for approval, prior to SN sending the email to the Respondent, in which SN explained her reasons for wanting to employ JR directly; (namely that she derived no advantage from using the Respondent because they seemed unable to provide cover if one of the carers went sick or was on holiday, and that many of the carers were not adequately trained). Mr Reis submitted this was evidence of collusion between the Claimant, JR and SN.

24. I do not accept this submission. The Claimant gave clear and convincing evidence that, apart from initially setting up the contractual arrangements with SN, she didn't have contact with SN and that SN dealt with Mr Cole directly. This is borne out by the fact that SN's email of 26 February 2020 terminating her contract was sent to Mr Cole. The Claimant agreed that she knew SN was thinking of offering to employ JR directly but said this was common knowledge and Mr Cole himself was aware of the possibility because JR had told him the position when asking for a pay rise. The Claimant was adamant that she had not sought to persuade SN to employ JR and said she was not even aware of SN's email of 26 February 2020 until her conversation with Mr Cole on 27 February 2020. I accept the Claimant's evidence. I further accept her explanation for the email of 4 March 2020, which was simply that since Mr Cole had summarily dismissed her, and was accusing her of stealing his client, SN was concerned not to say anything to Mr Cole that might make the Claimant's situation worse. In this respect it is also notable that SN's email is sent to JR, rather than to the Claimant.

25. I am therefore not satisfied that the Respondent had grounds for fairly dismissing the Claimant on 27 February 2020, or any time shortly thereafter.

26. In the light of these findings, I turn to consider the issue of compensation.
27. The Claimant's effective date of termination was 27 February 2020 by which time she had accrued 2 years' service (section 97(2) Employment Rights Act 1996 (ERA)) and was 45 years old. Her gross weekly pay was £461.53. Pursuant to section 119 ERA she is therefore entitled to a basic award of £1,384.59.
28. As regards a compensatory award, it appears from her pay slips that at the time of her dismissal the Claimant's net weekly pay was £381.85. Although she is claiming compensation for 45 weeks of loss, Mr Hine submitted that the compensation should be limited to 26 weeks' loss.
29. The Claimant says that she was deeply shocked and traumatized by her dismissal and then shortly afterwards the Covid-19 Pandemic struck which made everything worse because she couldn't even get out of her house. As a result, she suffered from (and still suffers from) panic attacks and had a breakdown requiring help from her doctor and counselling. She couldn't contemplate resuming a career in the care sector, however for the last two months she has worked part-time in an administration role for JR, who, in addition to his work for SN, has started a small courier company. The Claimant also accepted that in about July 2020 she had done some advisory work for a friend who has a small care company for which she had been paid £1,500. The bundle contains three Fitness for Work Statements covering the period 26 March 2020 to 9 June 2020, all stating that the Claimant was not fit for work because of 'Anxiety and Depression'.
30. In the light of the above I consider it is just and equitable to award the Claimant £10,000 for compensatory loss. This is a little over 6 months (or 26 weeks) net pay. While I accept that the Claimant's ill-health may well have extended beyond that 6-month period, I note that the Fitness for Work Statements only cover the period up until 9 June 2020 and that the Claimant was fit enough to do some work for a friend during July 2020. I also take account of the fact that it appeared in evidence that the Claimant's ill-health had been affected by the onset of the Pandemic and I am not satisfied that after 6 months her inability to work would necessarily have been attributable to her dismissal rather than the stress and unhappiness caused by the Pandemic.
31. As regards loss of statutory rights, the Claimant claimed £500, and this was not contested by Mr Hine.
32. The total amount of compensation to which the Claimant is entitled for her unfair dismissal (prior to the consideration of uplift) is therefore £11,884.59.
33. I now consider the question of uplift for failure to follow the ACAS Code pursuant to s.207A Trade Union and Labour Relations (Consolidation) Act 1992. Plainly the Respondent failed to follow the ACAS Code; it failed to follow any procedure at all, and I find that failure was unreasonable. Mr Cole dismissed the Claimant summarily in a phone-call that lasted less than two minutes, refused Mr Reis' attempt to resolve matters amicably, and

subsequently tried to cover up what had happened by purporting to instigate a fictional disciplinary procedure, concoct fictional conduct issues against the Claimant and fabricate evidence. In these circumstances I consider it appropriate to award the maximum uplift of 25%.

34. The Claimant's award of compensation for unfair dismissal is therefore increased to £14,856.

Annual Leave

35. As regards holiday pay the Claimant stated that she was owed two weeks' holiday pay. Mr Hine questioned the likelihood of this being true, given that the Claimant was dismissed at the end of her leave year. However, the Claimant insisted it was true. She said she had been due to go on holiday earlier in the year but had been telephoned by Mr Cole and told she couldn't take annual leave after all because she was needed at work. Since Mr Cole has not produced any records of the Claimant's annual leave, I accept the Claimant's evidence on this matter and find that she is entitled to two weeks' leave, namely £923.06.

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**Employment Judge S Moore**

Date: 28/7/2021

Sent to the parties on:

19/8/2021

For the Tribunal:

N Gotecha