



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Cohrs

**Respondent:** Viridor Waste Management Limited

**Heard:** Remotely by video link

**On:** 20 August 2021

**Before:** Employment Judge S Shore

## REPRESENTATION:

**Claimant:**

**Respondent:** Ms L Taylor, Counsel  
Mr D Patel, Counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claims breach of contract (failure to pay notice pay) was not well-founded and fails.

# REASONS

## Background

1. The claimant was employed as a Senior Operations Support Manager by the respondent from 4 May 2020 until 3 November 2020. He started early

conciliation with ACAS on 29 October 2020 and obtained an early conciliation certificate on 10 November 2020. His ET1 was presented on 11 November 2020.

### **Issues**

2. No list of issues had been agreed, so I discussed the issues with the representatives and it was agreed that they were as follows:
  - 2.1. What was the claimant's contractual notice period?
  - 2.2. Did he enter into a new agreement with the respondent that changed his notice period?
  - 2.3. Was he paid his full notice entitlement?
  - 2.4. What, if anything, is he owed?
  - 2.5. Does the cap of £25,000 apply?

### **Hearing**

3. The relevant law in this case is contained in Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994, which allows claimants to bring a claim for breach of contract.
4. The parties had prepared a bundle consisting of 73 pages. If I refer to a page in the bundle, I will indicate its page number in square brackets [ ].
5. Witness evidence given by the claimant, Philip Piddington and Jennifer Walters from witness statements.
6. The parties had also produced a list of agreed facts.

### **Findings**

7. All findings of fact were made on the balance of probabilities. If a matter was in dispute, I will set out the reasons why I decided to prefer one party's case over the other. If there was no dispute over a matter, I will either record that with the finding or make no comment as to the reason that a particular finding was made. I have not dealt with every single matter that was raised in evidence or the documents. I have only dealt with matters that I found relevant to the issues I have had to determine. No application was made by either side to adjourn this hearing in order to complete disclosure or obtain more documents, so I have dealt with the case on the basis of the documents produced to me. I make the following findings.
8. The parties agreed a number of facts as follows:

- 7.1. Mr Cohrs was employed by Viridor Waste Management Limited from 4 May 2020 to 3 November 2020 as a Senior Operations Support Manager.
- 7.2. The contract at pages 24 to 32 of the bundle is the contract Mr Cohrs signed when he began his employment.
- 7.3. Mr Cohrs was written to on 25 June 2020 by Simon Hicks (then MD) regarding a new role [33]
- 7.4. On 16 August 2020, Mr Cohrs made amendments to the role profile, which was under discussion [34-38].
- 7.5. Mr Cohrs was written to on 5 October 2020, to inform him that his contract would end on 3 November 2020 [47-48].
- 7.6. Mr Cohrs' earnings were £7,599.50 net per month.
8. I find that the contract issued to Mr Cohrs at the start of his employment is the starting point for this claim. It was not disputed that the contract [24-32] was a fixed term contract that began on 4 May 2020 and was set to end on 3 November 2020, "unless the contract was terminated earlier in accordance with clause 20".
9. Clause 20 appears to me to be an unusual clause to appear in this contract as it provides that both the employee and employer had to give six months' notice to terminate the employment. I find that the only sensible meaning that can be attributed to the terms (which appear to be incongruous) is that clause 2 takes precedence over clause 20. If it does not, then clause 2 is meaningless, which makes the fixed term meaningless. That cannot have been the intention of the parties and it was not argued that the parties' intentions were to create anything other than a fixed term contract.
10. Clause 27.1 provides that the contract contains all of the agreement between the parties and takes precedence over any previous documents or discussions. I therefore find that whatever Mr Hicks may have had in mind for the claimant's role in the future and whatever he may have communicated to Mr Cohrs before his employment contract was signed is immaterial to this case, as it can't form part of the contractual relationship between the parties.
11. The claimant signed the contract and agreed that he was bound by it.
12. Clause 21 allowed the respondent to make a payment in lieu of notice.
13. On 30 June 2020, the MD, Simon Hicks, wrote to Mr Cohrs [33] to advise him that he would be accountable for leading the Polymers function in the recycling business unit. His job title was to remain the same "for the interim period whilst we work with you to shape and form the future of the Polymers activity at our Skelmersdale and Avonmouth assets."
14. That exchange was not contended by the claimant to constitute a change in his job role or contract. I accept the evidence of Mr Piddington that the claimant has expertise and experience in this area of industry. I do not find it unusual that an

expert on a fixed term contract would be used to assist a business to formulate its future strategy. Mr Piddington gave unchallenged evidence that the polymers business unit was in some difficulty at the time.

15. Mr Hicks left his role in July 2020 and Keith Trower was appointed MD of Polymers. Mr Piddington gave unchallenged evidence that Mr Trower's expertise and experience was not in the technical aspects of the Polymers business, so I do not find it unusual that C was relied upon to add his expertise to the ongoing restructure of the business.
16. The central issue in this case centred on a meeting between Mr Cohrs, Phil Piddington, who was CEO of Viridor at the time, and Keith Trower on 7 August 2020. I find that the claimant has not shown on the balance of probabilities that the meeting was pre-planned or that it had been called to discuss the claimant's position and role. I make that finding because there are no documents that corroborate the claimant's evidence and I find that there would have been something that could have been produced. I prefer Mr Piddington's evidence that the meeting was an opportunity for Mr Trower to speak to Messrs Cohrs and Piddington, as they were on site. I also accept Mr Piddington's evidence that Mr Trower was very busy because it was a transitional time for the business.
17. I find that the claimant's evidence about what was said or agreed at this meeting was somewhat vague and lacking in credibility. I am not saying that he has lied to the Tribunal: I am saying that the key parts of his evidence are about what he would have expected or what he had experienced in his business life. I find that the evidence points to the most likely scenario of what happened at that meeting to be that there was a discussion around the future plans for the Polymers business, rather than an offer was made to the claimant, which he accepted, to become Operations Director for the Polymers business and thereby entered into a new permanent contract that superseded his fixed term contract. I make those findings because:
  - 17.1. The claimant did not make the specific allegation about the 7 August meeting until his second witness statement dated 13 August 2021. It is not in his ET1, or his first witness statement. The events of 7 August 2020 seem to first appear in the claimant's application to vary his claim that was granted by EJ O'Dempsey on 21 April 2021. I appreciate that he was advised by an HR specialist, rather than a lawyer, but it seems to me to be a fundamental part of the case presented today.
  - 17.2. The ET1 [7] is totally silent on the events of 7 August and seeks to rely on the wording of clauses 20 and 21.
  - 17.3. I prefer Mr Piddington's evidence because it is not contradictory, is internally consistent and is supported by the documents to a much greater degree than that of Mr Cohrs.
  - 17.4. I find that Mr Patel's submissions on the documents and the interpretation that should be placed on them to be correct. Specifically, I find:

- 17.4.1. There was no document produced to me that indicated that anyone at the respondent knew about or was asked to do anything about the asserted appointment of a senior officer of the Polymers business on a salary of what I have to assume would have been about £150,000 per annum;
- 17.4.2. I do not accept Ms Taylor's argument that it is often the case that senior managers are appointed on a verbal agreement and handshake and that contracts and other such documents are left until later. Mr Cohrs may trust people, but it is not my experience of business or representing people in, and judging employment tribunals for more than 30 years that there is not one scrap of paper even asking HR to start drawing up a contract;
- 17.4.3. I find Mr Piddington's evidence that the structure of the business is decided, then the job description of the head person set out then they are appointed to formulate the make-up of the team is credible and one that I recognise from my experience;
- 17.4.4. I find that the C's email to Mr Trower of 16 August 2020 [34] and the redrafted document [35-38] contain nothing other than comments about and suggests changes to the role of Operations Director for Polymers. There is nothing in either document that suggests Mr Cohrs had been offered and had accepted the job;
- 17.4.5. I find that there was no more on 7 August than a discussion about the future of the Polymers unit and that the claimant was asked if he would be happy to make his position permanent in any new structure. On no interpretation is that an offer of. New job. Nor is it an acceptance of one;
- 17.4.6. There was no challenge to the authenticity of the email exchange between Mr Trower and Mr Piddington on 19 and 20 August [39-40]. I find that the phrase "Do not appoint but run selection process as he is on contract until November" can only mean that Mr Piddington, who was in the room on 7 August, did not think that the claimant had been offered and had accepted a new job on a permanent basis effective immediately at that meeting. I do not accept Ms Taylor's interpretation that Mr Piddington's words were some devious plan to cheat Mr Cohrs out of the new job;
- 17.4.7. I agree with Mr Patel's comments about the total lack of any challenge by the claimant to his being told he was leaving on 3 November (per the original contract) in the letter of 5 October 2020 [48];
- 17.4.8. I also agree with Mr Patel that the claimant's subsequent correspondence [49, 50, 51] gives absolutely no indication that he believed he had been appointed to a new permanent role on 7 August 2020. I appreciate that he may have thought that there was no point in complaining once Mr Trower had made the decision, but I find the total lack of anything that could be considered a grievance or

complaint to be indicative of the claimant accepting that his employment was ending by effluxion of time.

**Decision**

18. The onus of showing that there was a variation of the terms of his contract is on the claimant. He has failed to meet the evidential burden on him.

19. Applying the findings of fact above to the issues, I make the following findings:

2.6. The claimant's contractual notice period was set on the commencement of his employment on 4 May 2020 and was set to expire by effluxion of time on 3 November 2020.

2.7. The claimant did not enter into a new agreement with the respondent that changed his notice period.

2.8. All the other issues were not determined, as the claim failed at point 2.

20. I therefore find that the claimant's claim fails.

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. It was not practicable to hold a face to face hearing because of the Covid19 pandemic.

Employment Judge S Shore

Date 20 August 2021

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