



EMPLOYMENT TRIBUNALS

Claimant: Ms D Date

Respondent: Hallmark Property Management Ltd

Heard at: CVP **On:** 2 September 2021

Before: Employment Judge Tuck QC

Appearances

For the claimant: In person

For the respondent: Ms Wood, consultant.

JUDGMENT

- 1. The name of the Respondent is amended by consent, to Hallmark Property Management Ltd.**
- 2. The claimant's claim of breach of contract is dismissed.**

Reasons.

1. The claimant was employed by the Respondent as a Senior Property Manager between 23 January 2020 and her dismissal on 27 July 2020. Having obtained an ACAS EC Certificate on 9 October 2020, she presented an ET1 on 3 November 2020 complaining of breach of contract.
2. The sole issue is this: during the claimants six month probationary period she was entitled to one months' notice of dismissal. After a successful completion of the probationary period that entitlement increased to two weeks. Did the claimant successfully complete her probationary period on 23 July 2020, six months after her employment had commenced?
3. This hearing was conducted, with the consent of the parties, via CVP. I heard evidence from the Claimant and the Managing director of the Respondent, Mr T Whelan, and was provided with a joint bundle of documents consisting of 110 pages.

4. The relevant provision of the claimant's contract of employment includes the following :

"If the company is satisfied that you have reached the required standards your permanent status will be confirmed..."

"The company reserves the right to extend the probationary period if necessary.... Your employment will then either be confirmed or terminated giving the notice detailed in the notice section."

Notice:

After 1 month's service you are required to give and are entitled to receive the following notice to terminate your employment:

Over 1 month but during probationary period – 1 month

After the successful completion of probationary period – 2 months

5. On 26 July 2020 a letter was prepared to the claimant – she saw this on Monday 27th July 2020, terminating her employment with effect from Monday 27 July. She was paid one month's notice.
6. The claimant's case is that on the six month anniversary of her employment commencing – 23 July 2020 - her probationary period was successfully completed as she was not told to the contrary.
7. The Respondent's case is that it had received concerns about the claimant's performance, and that it did not confirm her employment at the end of the probationary period. Her entitlement was therefore 1 month, which she was paid.
8. Mr Whelan in evidence told me that it is his practice to hold meetings to confirm the successful completion of probationary periods and to write confirming permanent employment. He considered the claimant's position on 26th July rather than 23rd July simply because "23rd fell by the way".

Law

9. Section 1 of the Employment Rights Act 1996 provides that certain terms of employment should be set out in writing. This includes probationary periods, which are defined as follows:

In this section 'probationary period' means a temporary period specified in the contract of employment or other worker's contract between a worker and an employer that –

- (a) commences at the beginning of the employment, and
- (b) is intended to enable the employer to assess the worker's suitability for the employment.]

10. Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, HL, held that a contract should be interpreted not according to the subjective view of either party, but in line with the meaning it would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”.

Conclusion.

11. A probationary period is clearly designed to permit an employer to consider over a set period of time, whether the employee they have engaged is suitable for the job.
12. I am not concerned in this case with whether the claimant’s performance was or was not satisfactory as a matter of fact. It is sufficient to say that Mr Whelan had formed the view that he did not wish to confirm the claimant’s employment having regard to *his* assessment of her performance during the probationary period.
13. The Claimant’s contract states in three places that at the end of the probationary period, permanent employment “will be confirmed” . This is expressly conditional on the company being satisfied that an appropriate standard has been reached. Neither the contract nor the handbook deal with how this confirmation is to be achieved. Whilst Mr Whelan was of course aware of his practice of doing so in writing, I have no evidence to suggest Ms Date was aware of this.
14. I am unable however to accept that Mr Whalen having written his letter on Sunday 26 July rather than on Thursday 23 July gave rise to a confirmation of the claimants employment and a right to two months’ notice rather than one month. He did not consider the condition of “an appropriate standard being reached”, had been met. While strictly speaking therefore the 6 month probationary period may have ended on 23 July, the contract had not been confirmed (eg by the passage of time and nothing to the contrary being said) by 26 or 27 July.
15. Accordingly, the claimant was entitled to one months’ notice pay which she received. Her claim fails and is dismissed.

Employment Judge Tuck QC

Date: 2 September 2021

Sent to the parties on:

27 September 2021

For the Tribunal: