



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Edmondson

**Respondent:** Premier Christian Communications Ltd

**Heard via Cloud Video Platform (London Central) On:** 6 October 2021

**Before:** Employment Judge Davidson

## Representation

**Claimant:** Ms L Millins, Counsel

**Respondent:** Mr M Jones, representative

# JUDGMENT FOLLOWING A PRELIMINARY HEARING

The claimant resigned from his employment. His complaint of unfair dismissal therefore fails and is dismissed.

Employment Judge Davidson

Date 7 October 2021

JUDGMENT SENT TO THE PARTIES ON

07/10/2021.

FOR EMPLOYMENT TRIBUNALS

## Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 96 pages, the relevant contents of which I have recorded.

## REASONS

Issues

1. The issue for this preliminary hearing was whether the claimant was dismissed or whether he resigned voluntarily. His unfair dismissal complaint can only proceed if he was dismissed.
2. The respondent contends that he resigned and relies on an agreement signed by the claimant under which he remained employed on furlough until 31 October 2020, when his employment ended by reason of resignation.
3. At today's hearing I have also been asked to consider whether, in the alternative, the claimant was dismissed by the respondent on 31 October 2020 by virtue of the respondent not permitting the claimant to remain in the Government's Coronavirus Job Retention Scheme (also known as the furlough scheme).

Evidence

4. The tribunal heard evidence from the claimant and from Ms S Gurmeseva, the respondent's HR adviser. I also had before me a bundle of 96 pages and an extract from a government press release regarding the extension of the furlough scheme past 31 October 2020.

Background facts

5. The claimant was employed by the respondent as an advertising sales executive from July 2017.
6. As a result of the pandemic, a number of the respondent's staff, including the claimant, were put on furlough from May 2020.
7. The respondent then decided that it needed to make redundancies, including from within the claimant's department. The respondent carried out a selection exercise as a result of which the claimant was identified as 'at risk' of redundancy.
8. The respondent then started a redundancy consultation process with the claimant. The first consultation meeting was scheduled for 22 July 2020 but

the claimant did not attend. Ms Gurmeseva then sent him an email outlining the information she would have given him at the meeting.

9. During the consultation process, the claimant was offered the opportunity to enter into an agreement under which he would remain on furlough until 31 October 2020 and then his employment would end by his resignation. This was an alternative to continuing with the redundancy process.
10. He was undecided about the option and sought legal advice. He asked for some more time to consider the offer and to take legal advice. The following day, the claimant asked Mr Gurmeseva for a copy of the furlough agreement as his solicitor had advised him to see the full copy.
11. It later transpired during the hearing that the claimant had not consulted a solicitor as he was unable to find one in the time allowed and his references to 'solicitor' in email correspondence are to a CAB adviser.
12. Ms Gurmeseva sent the claimant a copy of the template furlough agreement and, shortly afterwards, a copy of the agreement with the claimant's details added.
13. On 10 August, the claimant informed Ms Gurmeseva that if the final decision was to make him redundant, he would not be taking up the furlough option because he had been advised that it would handicap him from taking any further action against the respondent for unfair dismissal as it would count as a resignation. He also noted that resigning would have a severe impact on making claims for future unemployment benefit.
14. Prior to the claimant's final consultation meeting, he submitted a proposal to work on a freelance basis if he was made redundant.
15. The final consultation meeting took place on 11 August and the claimant's dismissal by reason of redundancy was confirmed, to take effect at the end of his notice period which was to be served while on furlough. He was given a right of appeal.
16. Ms Gurmeseva was on holiday from 11 to 14 August 2020.
17. On 14 August 2020, the claimant signed the furlough agreement which had been sent to him on 7 August, with the words 'Commission ??' added in manuscript. He stated that he had been discussing reviving the agreement with Ms Gurmeseva whereas she says this came out of the blue. The claimant accepts that there are no emails between them over this period and that he did not refer to any communication with Ms Gurmeseva over this period in his witness statement. I therefore prefer the respondent's evidence on this point.
18. Ms Gurmeseva changed the wording of the agreement to reflect the new circumstances, namely that the decision had been taken to dismiss the

claimant. The revised agreement included wording to the effect that the dismissal notice had been withdrawn so that the parties could explore alternatives to dismissal. The claimant signed and returned the amended agreement on 14 August 2020.

19. Ms Gurmeseva confirmed that the claimant no longer needed to appeal and that his employment would now end on 31 October as per the terms of the agreement. The claimant replied thanking her for the clarification. He also pointed out that there was a typo in the agreement which referred to being furloughed for the 'period from 31 October' instead of the period to 31 October.
20. The claimant's employment ended on 31 October 2020.
21. On 6 November 2020, the claimant wrote to the respondent noting that the Government had announced the previous day that the furlough scheme would be extended. He claimed that the respondent was obliged to reinstate him to the furlough scheme, delaying his termination date to the revised end of furlough of 31 March 2021.
22. The respondent replied saying that they had considered reinstating the claimant to the furlough scheme but had decided against doing this. The claimant then relied on the erroneous wording in the agreement to contend that the agreement meant that he would be on furlough 'from 31 October 2020'. The respondent restated their position that his employment had ended on 31 October 2020.

### Law

23. The law on forced resignation can be summarised as follows:
  - a. If an employee is told they will be dismissed if they don't resign, there is a dismissal.
  - b. If an employee resigns rather than be dismissed, and the resignation is on terms the employee has negotiated, that is a resignation
  - c. If an employee chooses to resign rather than face disciplinary proceedings, that is a resignation
  - d. If there is a termination agreement without any form of negotiation and discussion and the employee has no genuine choice, that will be a dismissal.

### Findings

*Was the resignation forced?*

24. The respondent relies on the agreement signed by the claimant in which it states that he '*tenders his resignation to take effect on the last day of the 'Furlough Period' without further notice*' and that '*the reason for the termination of employment will be resignation*'. "Furlough Period" is defined in the agreement as '*the further period from 31 October 2020*'. The

respondent states that this is a typo and should read 'further period to 31 October 2020'.

25. Dealing with the typo issue, it is clear from the template document how the error could have taken place in the editing, as the words 'from' and 'to' both appear in the template and the wrong word could have been deleted. The claimant, himself, pointed the typo out at the time and it was apparent to him that it was a mistake. It is unfortunate that the respondent, despite being alerted to the error, did not correct it. However, at the time the agreement was entered into, 'from 31 October' would have made no sense as the furlough scheme was due to end on that date. I therefore find that the agreement must be read as meaning 'to 31 October'.
26. The claimant, in evidence, suggested that reference to the Furlough Period in the agreement must mean the Government Coronavirus Job Retention Scheme which, at the time the agreement was entered into, was due to end on 31 October 2020. I do not accept this as 'Furlough Period' is expressly defined within the agreement as a period either ending on 31 October 2020 (or, without correcting the typo, starting on 31 October 2020). Either way, the period is specific to the date 31 October. In addition, the Coronavirus Job Retention Scheme is defined elsewhere within the agreement as 'the Scheme'. It is unlikely that one agreement would have two different terms for the same thing.
27. The claimant accepts that he was given an option of entering into this agreement as an alternative to going through the redundancy consultation period. He had been made aware of his scoring in the selection exercise and knew he was at risk of redundancy. He was therefore able to make an informed decision whether to accept the resignation option or take his chances with the formal consultation route. Although dismissal was a possible, even a probable outcome, it was not the only outcome. The other outcomes could have resulted from the respondent finding alternative employment options, other employees leaving, the claimant succeeding in changing the respondent's mind through the consultation process or offering (as he did) his own alternative proposals.
28. It has been suggested that the claimant was confused. There is no evidence in the bundle to support this and I am not sure what the implication I am being asked to draw even if he was confused. There is evidence that he was undecided, stressed and even angry but his communications are lucid and cogent and I can see no reason why the respondent should not be able to take them at face value.
29. The agreement which was offered to the claimant on 7 August, prior to the final consultation meeting included a provision whereby both parties warrant that the position '*is not that the Employee will be made redundant or dismissed if he does not resign but that he is at risk of dismissal by reason of redundancy*'.

30. Having considered the matter and taken advice, he correctly identified that if he signed the agreement, it would affect his opportunity to challenge the dismissal through an unfair dismissal claim. It does not really matter who gave him this advice, it was sound advice and he understood it. He decided to reject the resignation option and he therefore retained his right to claim unfair dismissal if he was subsequently dismissed.
31. He was dismissed on 11 August 2020 and this was confirmed to him in a letter dated the same day. The claimant then decided he did want to accept the resignation option. It was no longer on offer, the original offer having been superseded by the dismissal, but the claimant revived it by sending the respondent their original agreement, signed by him dated 14 August 2020. He also raised the issue of commission.
32. The respondent agreed to enter into the agreement. As this was post-dismissal, the dismissal had to be withdrawn and, to reflect this, the wording of the agreement was amended to read '*The redundancy notice given to the employee having been withdrawn...the parties warrant that the position is not that the Employee will be made redundant or dismissed if he does not resign, but that he is at risk of dismissal by reason of redundancy.*'
33. I find that, at the time the claimant revived the agreement, he had been dismissed. He had a potential unfair dismissal claim (not just the opportunity of bringing one as he had prior to 11 August) and chose to discard that in favour of continuing his employment on furlough until 31 October. This was a decision he made freely. At that point, it was not offered to him - he instigated it. He took the view that the agreement was financially more advantageous to him than being dismissed and bringing an unfair dismissal claim. He is entitled to take that view but cannot, at the same time, claim that it was forced on him. I am therefore satisfied that the claimant was not in a 'resign or be dismissed' binary bind.
34. The agreement references the withdrawal of the dismissal to pursue alternatives and includes the warranty that the position is not that the employee *will be* dismissed if he does not resign but that he is *at risk* of such a dismissal. He therefore expressly warrants that this is not a 'resign or be dismissed' scenario. Of course, there is a circular argument that in a 'resign or be dismissed' scenario, the wording of any agreement may state that it is not such a scenario and I need to satisfy myself that this is not the case here. I am satisfied that the claimant made a free and informed decision to resign on the terms of the agreement.
35. In accordance with the terms of the agreement, the claimant's employment terminated on 31 October 2020 without further notice. At that point his employment had ended.
36. I therefore find that the claimant resigned pursuant to the terms of the agreement and was not dismissed. He was aware that he would be losing his right to bring an unfair dismissal claim if he signed the agreement. It

cannot be said that the agreement was offered as an alternative to dismissal, which would bring it within the scope of a forced resignation. In this case, the claimant had been dismissed and he asked for the dismissal to be withdrawn so that he could take up this option, which he considered preferable to dismissal in the knowledge that he would be giving up his opportunity to bring an unfair dismissal claim.

*Was the claimant dismissed by virtue of not being reinstated into the furlough scheme?*

37. Turning to the alternative argument, a few days after the termination of the claimant's employment, the Government announced an extension to the furlough scheme. By that time the claimant's employment had ended. The claimant wrote to the respondent alleging that the respondent was obliged to retain him within the furlough scheme, which would delay his termination to the new scheme end date of 31 March. The claimant's position is that there is an implied term in the agreement that the Furlough Period under the agreement would be extended if the furlough scheme was extended. The claimant relies on the respondent's failure to reinstate him as amounting to a dismissal taking effect on 31 October 2020.

38. I reject this submission. I find no obligation on the respondent, either within the express or implied terms of the agreement or within the terms of the furlough scheme which would require this. I therefore find that there has not been a dismissal by the respondent for not permitting the employment to continue in the furlough scheme.

39. In conclusion, I find that the claimant's employment terminated on 31 October 2020 by reason of his resignation pursuant to the terms of an agreement signed by the claimant on 14 August 2020.

40. His unfair dismissal claim therefore fails and is dismissed.