



EMPLOYMENT TRIBUNALS

Claimant:
Mr C Stewartson

Respondent:
Reus Construction Ltd

Heard at: Manchester CVP **On:** 30th September 2021

Before: Employment Judge A Frazer

Representation:

Claimant:
In person

Respondent:
Mr S Hoyle (Solicitor)

JUDGMENT AND REASONS

JUDGMENT

- 1) The Claimant's claim for the balance of his notice pay is well founded.
- 2) The Respondent shall pay the Claimant the sum of **£1, 801.75**.

REASONS

Introduction

1. The Claimant was employed as a Commercial Manager by the Respondent from 4th December 2020 to 13th May 2021. On 17th June 2021 the Claimant filed an ET1 to the Tribunal claiming the balance of his notice pay. The

Respondent paid him one week's pay when he claims he ought to have been paid his full contractual entitlement of four weeks. The Response was filed on 21st July 2021. I received a bundle of documents running to 54 pages alongside an email produced by the Claimant from Sarah Adlington dated 10th May 2021 at 1300 and the final payslip for the Claimant for May 2021. I heard oral evidence from the Claimant and from Mr and Mrs Adlington. I heard closing submissions from both the Claimant and Mr Hoyle and I reserved my decision.

The Claim, Response and Main Issue

2. At paragraph 8.2 of his claim form the Claimant stated that on 13th May 2021 he was issued with a letter from Mrs Adlington stating that the business had terminated his contract and would be placing him on gardening leave for four weeks' notice during which he would receive full pay. He said that he signed this letter and sent it back to the Respondent on 15th May 2021. He said that he subsequently received a further letter from the Respondent stating that they would now only be issuing him with one week's notice as his contract was void.
3. At paragraph 5.2 of the Response it was stated, '*failure to provide the relevant documents made the contract void therefore statutory notice was paid. The Claimant was informed this via an amended letter.*'
4. The main issue in this case, which was agreed with the parties at the start of the hearing, is whether or not the Claimant's contract was voidable such that he would not be entitled to four weeks' notice on termination. Having heard evidence and submissions the relevant facts that I found are set out below.

Submissions

5. On the part of the Respondent Mr Hoyle submitted that the Claimant's work was conditional on him performing the work and providing the documentation. The Claimant had avoided providing references. He said that he did not want to resign and that he did not want to take on the directorship. The email of 13th May sent out to the Claimant was not a collateral contract as there was no consideration provided. The Claimant's breach of the condition to provide references and copies of his qualifications entitled them to repudiate the contract such that were not bound to give the Claimant contractual notice.
6. On the part of the Claimant he said that he showed his qualifications and driving licence to the Respondent in December when he was recruited. Nothing was mentioned about his qualifications in the January. He said that he sent the email to Mrs Adlington explaining about his qualifications in May and that this was accepted. He said that he was not resigning at the meeting on 13th May and that he was told at the meeting that he should go home early. He was subsequently asked to sign up to the garden leave on four weeks' notice which he duly did.

Findings of Fact

7. The Claimant had an interview with the Respondent on 2nd December 2020 for the post of Commercial Manager. He started with the Respondent on 4th December and was subject to a three-month probation period in that role. At that point in time the Claimant was not provided with a full written contract of employment.
8. The Claimant maintains that he showed the Respondent his qualifications that were on his phone when he was at his interview and that he also showed them his driving licence, which was scanned. The Respondent disputes this and Mr Adlington's evidence was that the Claimant was chased for evidence of his qualifications, right to work in the UK and references from when he started employment. After the Claimant commenced employment he worked for the Respondent as a Commercial Manager for several months and completed his probation.
9. On 1st April 2021 Mr Mr Adlington wrote to the Claimant offering him the position of Commercial Director. The offer was expressed to be subject to the Respondent receiving two satisfactory job references and proof of the right to work in the UK. Mr Adlington stated *'after checking our records please send a copy of your passport and P45 from your previous employment'*. Mr Adlington sent the Claimant a copy of Terms and Conditions and it was made clear to him that those terms and conditions would be the terms and conditions of his employment. One of the main conditions was that he was to be paid monthly in arrears. The Claimant was requested to sign the terms and conditions and return them to the Respondent.
10. On 7th April 2021 at 0755 the Claimant emailed Mr Adlington to seek further clarification before he signed the terms and conditions. The Claimant queried why he was being placed on probation for 6 months when he had already been on probation during his employment with the Respondent; when he would be paid every month and who he would send a holiday request to. Mr Adlington responded to his queries at 1037 that morning. Subsequently the Claimant declined the position of Commercial Director and the further probation period but remained employed as Commercial Manager.
11. On 10th May 2021 at 0927 Sarah Adlington wrote to the Claimant in the following terms as she had met with HR and the new accountant: *'please could you send me your current CV, a copy of your passport or driving licence for our records, a copy of your qualifications and the names of 2 referees I can contact for a reference. After checking the files we don't seem to have these and we require them as a legal requirement. I also need to discuss your contract and issue you an up to date one without the directorship.'*
12. By return at 0935 the Claimant wrote *'Please find attached copy of my current CV. I will scan my driver's licence tomorrow when I have my wallet (it's at home at the moment). Qualifications – this was clear within my CV and I cannot provide a copy as my original is packed away in a frame due to the*

house move. I will try and take a photo of it and will issue this. Also in terms of references this would have been required at the start of my probation not after I have been and signed a contract. I do not have details of any references in which [sic] I can provide.'

13. At 1300 Mrs Adlington replied, *'Thank you very much for forwarding on your CV. With regards to the references I have spoken to HR who have advised that it is unconventional to ask for references following a probation period, but we are still legally able to request them if required. You have to give us your permission to approach previous employers for references. So are you happy for us to contact your most recent employer, just so that we have a reference on record moving forward? Apologies for not requesting this earlier. If you could take a pic of your certificate when you have a chance that would be great. Also as you have rejected the previous contract that you signed (including the Directorship) we will have to amend this and re-issue with the new details. I will discuss the terms with Nigel and get this sent to you in due course. Can I also ask if you require the use of the work mobile? We are more than happy for you to have one, as I mentioned it has unlimited minutes, data and texts for you to use. Although as you are office based please let me know if you feel you will get the use out of it.'*
14. The Claimant replied at 1302: *'I decline to have any of my previous companies contacted. In terms of my contract surely this is just removal of my Directorship offer and re-issue? In terms of my company mobile phone – I requested this as I do not wish to have my personal mobile number being handed out as was previously the case.'*
15. In evidence the Claimant said that from his point of view the Respondent ought to have followed up references at the start of his employment and that he felt that he had already proved himself in the job. He said that he understood that the Respondent had used the references request to push another employee out of the company and he felt that this may happen to him too so he was defensive. He went on to explain that more recently he had moved house and his qualifications were in boxes which was why he was unable to supply the certificates straight away upon request. The Respondent's position was that he was being deliberately evasive.
16. On 12th May the Claimant wrote to Mr and Mrs Adlington to say that he felt that his role was undervalued and not clear. The Claimant was concerned that the Respondent was intending to recruit additional staff including a quantity surveyor whom he felt would overlap his role. He went on to say: *'If this is the case of what the business direction is going down then I will be requesting a formal meeting to submit my 4 week notice period as I feel I bring more than substantial experience to the business and have kept this business updated and commercially profitable since I started in December.'* The Claimant requested a meeting before the end of the week to get matters resolved. The Respondent understood the email as meaning that the Claimant had wanted to give notice whereas the Claimant's evidence was that he had meant that he wanted to resolve things and move forwards.

17. The Claimant then met with Mr and Mrs Adlington on 13th May. He said that he wanted to have the meeting to establish his role as he felt that he was manning the office on his own and doing all aspects. He felt undervalued. The Claimant queried the Respondent's need to recruit when he could do all the work himself. He was told that that was not his decision. The meeting concluded with the Claimant being sent home early. The Claimant's refusal to give references was not discussed at the meeting in my finding as the focus was the Claimant's concerns about his role and the Respondent's plans to recruit.
18. In my finding the Respondent decided to dismiss the Claimant after the meeting had taken place and accordingly it sent him the letter dated 13th May 2021. This said: *'Following your email dated 11th May 2021 and our meeting today we believe that it is in the interests of all parties that your contract is terminated. As you are aware your contract provides one month's notice period which will mean that your final day of employment will be the 13th June 2021. However instead of requiring you to work your notice period the Company has decided to place you on garden leave with effect from today, 13th May 2021.'* The letter went on to describe the parties' obligations during the period of garden leave. The Claimant was requested to sign up to the terms of his garden leave which he signed and sent back to the Respondent on 15th May.
19. On 17th May 2021 Mrs Adlington wrote to the Claimant to say that she had taken further advice and that due to the fact that he had rejected the contract and had not provided as requested names and addresses of referees that they could contact and documents proving his right to work in the UK including a copy of his passport, a P45, a copy of his CV and any qualifications and certificates relevant to his job. The Respondent asserted that the contract dated 1st April was void and that he was therefore only entitled to statutory notice.

Conclusions

20. The Claimant rejected the offer of Commercial Director which was made to him on 1st April. The correspondence indicates that the Respondent was going to get a written contract re-issued to the Claimant but this was never done. The Claimant's view was that he had signed up to everything in the contract on 1st April save as to the role of Commercial Director and probation period. The Respondent seems to have agreed with this as Mrs Adlington's email of 10th May said *'I also need to discuss your contract and issue a new one without the directorship.'*
21. What is clear from the correspondence is that the term as to the provision regarding one month's notice as set out in that contract was agreed. The Claimant mentioned his understanding of the 4 weeks' notice in his email of 12th May and the Respondent relied on it in its letter to the Claimant of 13th May by saying *'as you are aware your contract provides one month's notice period'*.

22. A request for documentation having been made of the Claimant on 1st April, a further request was then made by Mrs Adlington on 10th May. It was not expressed to the Claimant on 10th May that this was a condition of his contract of employment. Rather it was put as a follow up after Mrs Adlington had spoken to the accountant and to HR. She accepted that it was unconventional for an employer to request references following the expiry of a probation period but that legally they could do so. The Claimant declined to provide the references. He said that he was going to provide a photo of his driving licence when he laid his hands on his wallet but this he did not do before he was sent notice of termination. Mrs Adlington agreed that the Claimant could take a photo of his qualifications and forward them to her in due course.
23. A request for references and documentation evidencing the right to work was made before the Claimant commenced employment. The Claimant said that he showed his driving licence and qualifications to the Respondent on 2nd December and copies were taken. I find that it is more likely than not that he did this because he would have needed to prove that he could work in the UK. However I find that this was done by phone display informally at interview and that the Respondent did not take copies. This is why the further requests were made on 1st April and on 10th May as nothing was on file.
24. The Claimant worked without having provided documents throughout his probation period. He was not formally chased for these in my finding or warned of any consequences for failure to provide them. I was not provided with evidence of letters or emails of reminders or requests before 1st April.
25. An employer must make it clear to an employee that an offer is subject to a condition if, in the event of the condition not being satisfied, it wants to rely on the condition to vitiate the contract (**Stubbes v Trower, Still and Keeling [1987] IRLR 321 CA**). In that case a firm of solicitors failed to indicate to a prospective articulated clerk that their offer of articles was conditional upon him passing his final exams. The firm was subsequently unable to renege on its offer of employment.
26. I have had regard to the offer letter for the Commercial Directorship on 1st April 2020. The offer of that role (Commercial Director) is expressed to be subject to the provision of references, ID, CV and qualifications. The Claimant rejected that role. The condition only applied to the offer (and acceptance) of that role.
27. As I have set out above what was clear was that the term as to notice was agreed because that is reflected in the subsequent correspondence from the parties.
28. As a matter of construction in my finding, even if there is any ambiguity in the terms of the condition expressed in the letter of 1st April (and I find that there is not) the *contra proferentem* rule applies. This provides that where there is any ambiguity it must be construed against the party seeking to rely on it. I find that if there was any ambiguity as to whether it was the offer of

Commercial Director that was conditional on the provision of documents and not the Claimant's employment generally, the offer should be construed against the Respondent.

29. In conclusion therefore while there is evidence that the parties agreed that the requirement for a month's notice upon termination applied, the request for documentation was subject to the Claimant's acceptance of the offer of Commercial Director such that if that role were rejected, that condition would also fall away. The role was rejected and the condition therefore fell away. The four weeks' notice therefore applies.

30. The Claimant seeks compensation of £2, 571. He accepted that the notice pay that he had received from the Respondent needs to be deducted from this. I was provided with a final payslip which showed that he was paid 14 days' pay at £153.85 (Mrs Adlington clarified it should read 'days' not 'hours'). This included his 9 days' work to date plus his 5 days' notice which was £769.25. He is therefore owed £1, 801.75 and I make judgment accordingly.

Employment Judge A Frazer
Dated: 20th October 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
28 October 2021

FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2407619/2021**

Name of case: **Mr C Stewartson** v **Reus Construction Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant judgment day" is: 28 October 2021

"the calculation day" is: 29 October 2021

"the stipulated rate of interest" is: **8%**

For the Employment Tribunal Office