



EMPLOYMENT TRIBUNALS

Claimant: Mr R Das

Respondents: (1) Boleyn Road Practice (a partnership)
(2) Mr M Rafiq
(3) Dr S Rafiq

Heard at: East London Hearing Centre **On: 15 September 2021**

Before: Employment Judge O'Brien (sitting alone)

Representation

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT having been sent to the parties on 16 September 2021 and reasons having been requested in accordance with Rule 62(2) of the Rules of Procedure 2013.

REASONS

1. In an ET1 presented on 23 January 2021 the claimant complained of wrongful dismissal, a failure to pay statutory redundancy pay and unpaid holiday pay. In the response, drafted by solicitors, the second respondent resisted the claim and asserted amongst other things that the claimant's employment had transferred to a successor practice, and indicated that an application would be made to add that practice (amongst others) as a respondent. However, that application was never made; indeed, the second respondent subsequently began representing himself and withdrew the application.

2. In other cases against the respondents, arising out of the same circumstances, the second respondent applied for a stay of proceedings. The basis of those applications was the second respondent's assertion that the Boleyn Road Practice had been forced to close because of the unlawful withholding of funds by the NHS, that he was attempting to resolve that issue and that he should be allowed to do so before consideration of this claim. On occasion, he had asserted that to allow the claim to proceed would be a tacit acceptance on his part that the withholding of funds had been lawful.

3. He does not appear to have made such an application in this case. Had he done so, I would have refused it in any event. There is no evidence that any formal action had by the time of this hearing commenced regarding this dispute despite some time having now passed since the events in question nor would I have been persuaded that requiring the respondents to answer the claimant's case would cause any prejudice. The claimant, on the

other hand, was entitled to have his case heard without delay, and would suffer clear prejudice if the matter were stayed.

4. The second respondent did not attend today, without any explanation for his absence. Consequently, I decided that it was in the interests of justice to proceed in the respondents' absence.

5. The claimant's claim was set out in his ET1 claim form, and made clear that he had been employed by Boleyn Road Practice. As confirmed in the response, Boleyn Road Practice is a partnership between Mr M Rafiq and his wife, Dr S Rafiq. I had dealt recently with other claims against the second respondent arising from the same circumstances and had amended the claim so that the partnership was named as respondent as well as the individual partners, rather than Mr Rafiq alone, notwithstanding Mr Rafiq's objections. I was satisfied therefore that the respondents were aware of the likelihood that the same amendment would be made in this case.

6. I considered it necessary in the interests of justice to amend the claim so that the partnership was named as respondent as well as the individual partners. Given that the relationship between the respondents, I waived service of the case documentation on the first and third respondents.

Findings of Fact

7. The claimant was born on 23 December 1981. He was employed by the respondents as reception manager on 13 April 2015 and remained employed in that capacity until 25 September 2020.

8. The respondent partnership is a GP practice, the partners being Dr S Rafiq (the third respondent) and Mr M Rafiq, her husband (the second respondent).

9. The claimant's remuneration was specified in his ET1. His monthly salary was £2,647 gross or £2,100 net. He breaks those down further into a daily rate in his narrative, where he confirms that 6 days' pay equated to £741 gross (in other words £123.50 a day or £617.50 per week based on a 5-day working week). No alternative figures were given in the respondents' ET3. I was satisfied in the circumstances that the claimant's weekly pay was £617.50.

10. The background to this claim is a dispute between the respondents and the local NHS Commissioners in respect of the termination on 25 September 2020 of the Practice's NHS contract following an unfavourable CQC report. In a nutshell, it is the respondents' position that nefarious activities, conspiracy, fraud and so on by the Commission resulted in the practice being significantly under-resourced, which led in turn to the unsatisfactory CQC report and to the termination of the NHS contract. The respondents therefore argue that what occurred was not of their own doing, but rather circumstances forced upon them. I cannot and do not make any findings of fact as to whether the Commission acted in the way alleged.

11. The practice closed on 25 September 2020, and the claimant had no role available at the practice thereafter. Only one week's notice was given and no further payment in lieu of the remaining notice was made to the claimant.

12. The respondents have adduced no evidence that the claimant's employment was transferred to another employer, by reason of TUPE or otherwise. Therefore, I find that he was dismissed by the respondents on 25 September 2020.

13. The respondents' need for employees to carry out reception manager work, or indeed any work, had ceased. Consequently, I find the reason for the claimant's dismissal to have been redundancy.

14. The claimant's leave year ran from 1 April to 31 March. At the date of termination of his employment, the claimant had 6 days' accrued but untaken holiday.

The Law

Redundancy

15. Dismissal by redundancy is defined in s139 ERA, and in particular subsection (1) provides:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

Holiday Pay

16. Unless the relevant contract provides for a more generous entitlement an employee/worker is entitled to 5.6 weeks' paid leave every year (regulations 13, 13A and 16 of the Working Time Regulations 1998). The employee/worker is entitled on termination of engagement to payment in lieu of accrued and untaken holiday (regulation 14).

Notice Pay

17. An employee may bring a claim in the Employment Tribunal for damages for breach of contract arising from or outstanding on termination of his employment under article 3 of the Employment Tribunals Extension of Jurisdiction Order (England and Wales) Order 1994.

18. An employee who has been employed for more than one month but less than two years is contractually entitled to a minimum of a week's notice of termination of employment and thereafter is entitled to one week's notice per completed year of service, to a maximum of 12 weeks' notice (s86 ERA).

Conclusions

19. The claimant was dismissed by the respondents on 25 September 2020 by reason of redundancy. He had by then been employed by the respondent for around 5 ½ years and was aged 38. His weekly wage was £617.50. The statutory cap of £538 applies. He is, therefore, entitled to a redundancy payment of £2,690.

20. The claimant was dismissed with only 1 week's notice and no payment in lieu of the remaining statutory notice. He was entitled to 5 weeks' notice; however, he obtained replacement work after one week and is claiming only 1 week's loss of earnings. Consequently, I award damages for breach of contract in the sum of £617.50.

21. The respondent made no payment to the claimant in lieu of his accrued but untaken holiday entitlement of 6 days. The claimant worked a 5-day week, making his daily rate of pay £123.50. Consequently, he is entitled to an award of £741.

22. The respondents are jointly and severally liable for the matters above and shall pay the above sums, totaling £4,048.50, by 29 September 2021.

Employment Judge O'Brien
Dated: 17 December 2021