



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N N Begum

**Respondent:** (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 30 December 2020 the claimant complained of wrongful dismissal and a failure to pay statutory redundancy 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 and the second respondent subsequently began representing himself and applied for a stay of proceedings.

2. The basis of the application to stay 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. The second respondent also claimed that he was he did not feel physically or mentally fit to participate in proceedings. However, there was no evidence that formal action had by the time of the application (or indeed by the time of this hearing) commenced regarding this dispute despite some time having now passed nor was any evidence provided of the second respondent's state of health.

3. Regional Employment Judge Taylor asked in reply for the claimant's comments and indicated that the application would be refused if the claimant objected. The claimant applied

shortly afterwards for a postponement because she had lost union representation. Judge Taylor refused both applications and the matter remained listed for today.

4. The claimant attended and indicated that she was content to proceed; however, the second respondent did not attend. I was given no reason to depart from Judge Taylor's recent decision. In particular, I was provided with no evidence of the second respondent's unfitness to participate. 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 her ET1 claim form, and made clear that she 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 another claim 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 1 September 1959. She was employed by the respondents as a practice nurse on 1 April 2004 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 her ET1. Her monthly salary was £1,032 gross or £755 net. The accuracy of those figures was accepted in the respondents' ET3.

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 I describe below was not of their own doing, but rather circumstances forced upon it. 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. No period of notice was given nor payment in lieu of notice 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 she was dismissed by the respondents on 25 September 2020.

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

### The Law

#### Redundancy

14. 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.

#### Notice Pay

15. 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.

16. 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

17. The claimant was dismissed by the respondents on 25 September 2020 by reason of redundancy. She had by then been employed by the respondent for around 16 ½ years and was aged 61. Her weekly wage was £237.50. She is, therefore, entitled to a redundancy payment of £5,700.

18. The claimant was dismissed without notice. She was entitled to 12 weeks' notice and so suffered damages for breach of contract totalling £2,850.

19. The respondents are jointly and severally liable for the matters above and shall pay the above sums, totaling £8,550, by 29 September 2021.

**Employment Judge O'Brien  
Dated: 17 December 2021**