



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 9/2/2022

Claimant: Ms L Lawrence

Respondent: SamKnows Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: Ms R Honer (TU rep)

Respondent: Mr A Salter (CEO)

JUDGMENT

1. The Respondent breached the Claimant's contract.
2. The Claimant having been fully compensated for the breach by the Respondent in September 2021, no damages are awarded.

REASONS

1. The Claimant claimed a breach of contract by the Respondent. The breach was said to consist in the Claimant's probation being unilaterally extended by the Respondent, as a consequence of which the Claimant had lost benefits which were limited in the claim form to £5000.
2. In clarifying the Claimant's case at the beginning of the trial, Ms Honer stated that the Claimant claimed £1000 being the cost of lost healthcare and £4000 damages for injury to feelings. I explained that the Tribunal has no jurisdiction to award damages for injury for feelings in breach of contract claims. The claim proceeded in relation to the loss of healthcare benefits only.
3. I heard evidence from the Claimant and then from Mr Salter. I was shown the employment contract, a letter from Mr Salter dated 31 March 2021 and an AXA insurance quote.
4. The Claimant was employed from 1/12/20 to 1/7/2021 as a Senior Product Designer by the Respondent which provides expertise about internet technology.
5. Relevant provisions of the Claimant's employment contract were as follows:

"PROBATIONARY PERIOD

- 3.1 *There is a probationary period of 3 months. At the end of this period the position will be reviewed and if satisfactory, the continuation of your employment will be confirmed.*
- 3.2 *During the probationary period either party can terminate employment by giving one week's notice.*
- 3.3 *Once your probation of period of 3 months has ended and both parties agree to continuation of the employment, as per the contract, the employee will qualify to apply for company benefits.*

23.1. No amendment to the provisions of this Agreement shall be effective unless in writing and signed by both parties or their duly authorized representatives."

6. The Respondent's company handbook was not produced but on the oral evidence I find that the benefits referred to in clause 3.3 included private healthcare insurance paid for by the Respondent.
7. The Claimant's three month probation was due to end on 28/2/2021. However, on 26/2/2021 Mr Salter purported to extend the Claimant's probation until 31/3/21. He did so unilaterally. This was ineffective because the contract did not provide for probation to be extended. While the contract could have been varied in writing signed by both parties the Claimant did not so signify.
8. As the Claimant's contractual probation ended on 28/2/2021 and was not effectively extended she was entitled after 28/2/2021 to apply for and receive such post-probation company benefits as would be suitable for her.
9. The Claimant gave clear evidence, which I accept, that she asked a Mr Ruber (a manager who has since left the Respondent's employment) in about March 2021 whether she could join the Respondent's health care insurance scheme but that Mr Ruber did not give her a clear answer and suggested instead that she should refer herself to a privately paid on-line consultation. She then did so at her own cost (£50).
10. Is clear that in January and again in April 2021 the Respondent had obtained a quotation from AXA insurance company for a health insurance policy for the Claimant. The premium quoted was £569.12 for 12 months. The quotation was never accepted. Mr Salter suggested that this must have been offered to and declined by the Claimant. However, despite my asking for this several times during the hearing the Respondent did not produce any email or other evidence to show this. Nor did Mr Salter put any specific questions about this to the Claimant by way of cross examination, despite my explaining to him that he should do so if he wished to advance a positive case that the Claimant had been offered the insurance. The Claimant was adamant and had stated twice in her evidence that she was never told about or offered the AXA insurance during her employment. I accept the Claimant's evidence on this point.
11. Hence, I find that the Respondent failed to provide private health care insurance to the Claimant as she had asked. This was a breach of contract.
12. The Claimant had the onus of proof to show what if any damages she had suffered and the quantum of those damages. Prior to the trial the Respondent had made several requests to the Claimant that she quantify and explain what she was claiming and how it was calculated, but she had failed to do so. In her oral evidence during the trial she stated that she had searched on-line and found UK health insurance quotes from between £30 and £400 per month, and she referred to her USA health insurance costing her USA\$600 per month, but she was very vague about the latter figure and no documentation at all was available from her to make good any of these estimates.
13. The only proper evidence before me of the cost of UK health insurance for the Claimant in 2021 is the AXA quotation produced by the Respondent. On a pro-rata basis, the cost of this insurance for the four month period 1/3/2021 to 1/7/2021 would have been £569.12 divided by 12 = £47.42 per month x 4 = £189.70. The Respondent made this calculation and paid the rounded-up sum of £190 into the Claimant's bank account in September 2021.
14. Hence the Claimant has already been fully compensated for the value of the health care insurance which she was not granted by the Respondent during her employment. No further damages are due to her.

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Note: after the hearing had ended I received an email sent at 12.02 on 9/2/22 from the Respondent purporting to attach further evidence. I had told Mr Salter specifically during the hearing that I

would not admit further evidence after the trial ended so this email was both unauthorised and improper. There is no good reason for the Respondent not adducing this evidence before or during the hearing and I have ignored it.

J S Burns Employment Judge
London Central
9/2/22
For Secretary of the Tribunals
Date sent to parties
10 Feb. 22
