



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Alice Wright

**Respondent:** The Boathouse

**Heard at:** Employment Tribunal | HMCTS | 13th Floor, Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU      **On:** Wednesday 19 January 2022

**Before:** Employment Judge Hena

## Representation

Claimant: Jennifer Wright, family member of the claimant

Respondent: Richard Taylor, owner of The Boathouse

# JUDGMENT

## The Tribunal makes the following findings:

1. Managers working for the respondent, with authority, advised her that she needed to give notice to her employer. This meant that there was an express agreement, orally, that 4 weeks' notice, needed to be given.
2. The claimant's leave date would have been the 16th May 2021 given that she had already agreed with the respondent she would not be available from 20<sup>th</sup> May 2021 as she was moving to Durham.
3. The respondent failed to pay notice pay to the claimant from 26 April 2021 to 24 May 2021, however with agreement, the claimant confirmed she was not available for 2 weeks of that notice, the weekend of 1<sup>st</sup> and 22<sup>nd</sup> May 2021. The respondent is ordered to pay the respondent £228.96 gross.
4. The respondent is ordered to pay the additional compensation of £228.96 pursuant to section 38 of the Employment Act 2002 for failure to provide the claimant with a written statement of employment particulars.

# REASONS

## Claims and Issues

5. The claims and issues were agreed by the parties at the beginning of the hearing, they were:

5.1 What type of contract did the claimant have with the respondent?

5.2 Did the claimant have to give notice to the respondent and if so, how much notice did she have to give?

5.3 When did the claimant's employment come to an end?

5.4 Was the claimant available and willing to work in May 2021 once her furlough potentially ended?

5.5 If the claimant was entitled to notice pay, how much notice pay should the claimant receive?

5.6 Any other financial loss to the claimant she may be entitled to.

## **Procedure, Documents and Evidence Heard**

### **Evidence**

6. There was no bundle before the Tribunal, the Tribunal went through the documents that it had before it, the respondent had not had sight of the response to his ET3 and attached WhatsApp evidence from the claimant. This was sent to the Tribunal and his workplace by email on 19 December 2020.

7. Given the evidence went towards the issue of whether the claimant had left his employment in May 2021 it was essential this was sent to him and he was given adequate time to consider it. The Tribunal afforded him 30 minutes to consider the evidence and then return to the hearing.

8. The Tribunal explained the procedure and how they would need to give evidence on the claim before being questioned as they had not submitted a witness statement to the Tribunal for them to adopt.

9. The claimant's evidence was as follows:

- That she had never been given a copy of her contract, although she remembers signing one, she cannot say if it was zero hours contract and what that would even mean.
- That as she did not have a contract, she sought the guidance of her manager Thomas, who advised that she must give 4 weeks' notice in writing.
- That her resignation was the last weekend in May 2021 as she was moving to Durham which would make it 4 weeks.
- That she was still on furlough in May 2021, she had offered to work but her line manager Emily said she would keep her on furlough and call her in if she needed her.
- That she was willing to be taken off furlough and kept two weekends in May free to work.
- That she suffered financial loss in owing her mother money, this caused problems, she needed to borrow money as she had to make car insurance

payments etc. But she did not know how much the debt was; but that it had not been paid back.

- She had calculated her claim for £366.66 by how much she was getting for the last 2 months on furlough.
- She had payslips from the respondent but they were not with her as she was at university.
- No one had ever discussed with her what type of contract she was on.
- That she had given the respondent advance notice that she would be away the bank holiday weekend visiting a university and this was to the general employer email address.
- Whilst the claimant submitted no evidence of conversation, she had had with the respondent regarding this she read out messages which the respondent agreed had happened, but, one of the responses was from his wife Kate but his signature automatically came up on the response.

10. It is of note that the claimant had not read her affirmation which was placed in the chat box of the remote hearing before giving evidence. She read this directly after she gave evidence and swore the evidence, she had given to the Tribunal was the truth and correct as set out in the affirmation.

11. The respondent's evidence was as follows:

- That he was sure she had a zero hours contract as that's the contract they have with all part time/casual staff, it can be problematic as at any time the employee can say they don't want to come to work.
- That the contract provides no notice period.
- That he was surprised that the claimant did not get a copy of her contract as he dealt with this and her employment goes back so long, he just can't remember.
- That it's all done electronically but he does not have a copy of the contract with him.
- Before the covid pandemic lockdown the claimant worked 6 hours each day on the weekend.
- That the sum she received during furlough was £366.66 per month, it was calculated as an average. The claimant did not pay any NI or tax as she did not earn enough.
- It was unfortunate that he had not seen the whatsapp messages before as it does change his view.
- That Emily was a part time floor manager and whilst he devised the rota and dealt with all the pay she was the claimant's line manager and would inform her of the rota.
- That Thomas was also a manager employed by him, but he was new and inexperienced and should not have been advising the claimant.
- That Emily no longer works for him, but she is now a full-time teacher.
- That his position had changed in that whilst he does not believe she is owed notice pay he made a mistake in assuming she had just left and can see she offered to work two weekends in May 2021. But that he cannot go back in time and claim the furlough for her.

- That things escalated quickly when the claimant raised this with him but he agreed she was a reliable worker prior to her leaving and never just missed a shift.
- He described her as an 'invaluable' employee.
- That the furlough period was a difficult one and not a normal time period for an employer.

## **Fact Findings**

12. The Tribunal found the following in relation to each issue;

(a) What type of contract did the claimant have with the respondent?

13. The claimant had been clear she was never been provided with a contract which is what led her to seek advice from managers about whether she needed to give notice and the process. The Tribunal found the claimant consistent with her position in evidence regarding this and she did not waiver on this point.

14. The Tribunal found that the respondent was very unsure about the possibility of the claimant not receiving her contract and despite knowing that this was of central importance to his defense did not produce her contract prior to the hearing or at the hearing.

15. The respondent was also in agreement that the claimant acted properly to seek advice on issues from her line manager, Emily and that he did not seek out the facts from any of his former managers about what they advised the claimant. Whilst one manager, Thomas, may not have been experienced it was the respondent who placed him in the position of manager. The Tribunal makes a finding that, therefore, Thomas advice to the claimant to give 4 weeks' notice forms part of her contract with the respondent.

(b) Did the claimant have to give notice to the respondent and if so, how much notice did she have to give?

16. The tribunal finds that an authorised employee of the respondent obligated the claimant to give 4 weeks' notice to the respondent. That the statutory requirement is to give no less than 1 weeks' notice if an employee works for an employer for under 2 years. But the manager, Thomas, had increased this to 4 weeks when he informed the claimant of this.

17. In reality the claimant only offered to work 2 weeks explaining for the other 2 weeks of her notice period she was not available, which was agreed by the respondent, who states his wife acknowledged that she was off the May bank holiday weekend.

(c) When did the claimant's employment come to an end?

18. The claimant's employment came to an end on the 16<sup>th</sup> May 2021 as she gave her notice on 26<sup>th</sup> April 2021 and it was agreed by the respondent, she had said she could not work that last weekend as she was moving to Durham.

19. Further to this the respondent was honest in changing his position that it appears that the claimant did indeed offer to work 2 weeks in May 2021 and that he wishes he had known this before.

(d) Was the claimant available and willing to work in May 2021 once her furlough potentially ended?

20. The Tribunal found that the evidence in the form of WhatsApp messages and the respondent's acceptance of them demonstrates that the claimant was willing to work in May 2021.

21. As previously stated, the Tribunal also finds that the claimant had given prior notice of the dates, she was unable to work.

(e) If the claimant was entitled to notice pay, how much notice pay should the claimant receive?

22. The Tribunal has considered the evidence of both parties and found that the claimant's monthly earning on her ET1 of £458 were accurate and that the respondent was correct in saying she worked both days at the weekend before lockdown, about 6 hours per day.

23. On this basis the Tribunal has made the following calculations based on the two weekend the claimant was available to work;

$$£458/4 = £114.50$$

$$£114.50 \times 12 \text{ hours} = £9.54 \text{ per hour}$$

$$£9.54 \times 24 \text{ hours} = £228.96$$

24. This sum(s) payable under paragraphs 3-4 above are the gross amount to be paid and the claimant is to be responsible for any income tax and National Insurance contributions thereon.

(f) Any other financial loss to the claimant she may be entitled to.

25. The Tribunal found there was no evidence to quantify any other loss to the claimant, whilst it accepts money may have been borrowed from the claimant's mother no details could be provided in evidence of how much was owed and any interest that may need to be paid back.

26. The Tribunal finds there can be no loss relating to debt, however, that 2 weeks of pay can be awarded as compensation by the respondent to the claimant for failure to provide her with a written contract.

## The Law

## **Breach of contract**

27. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 ERA. For someone who has been employed at least one month but less than two years, this is one week's notice.
28. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.
29. A claim of breach of contract must be presented within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonably practicable to do so, in which case it must be submitted within what the Tribunal considers to be a reasonable period thereafter.

## **Section 38 Employment Act 2002**

30. Where a Tribunal finds in favour of an employee in a complaint of unlawful deductions from wages and breach of contract, and the Tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars, the Tribunal must award the employee an additional two weeks' pay, unless there are exceptional circumstances which would make that unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

Employment Judge Hena

Date: \_19 January 2022

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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