# EMPLOYMENT TRIBUNAL

**Claimant:** Ms. Malgorzata Anna Pawlus

**Respondents:** (1) Mrs. Agnieszka Anna Rennick
(2) Mr. Darren Rennick

**Heard at:** London Central ET (via CVP) **On:** 5 April 2022

**Before:** Employment Judge Tinnion

**Appearances:** For Claimant: In person
For 1st Respondent: In person
For 2nd Respondent: No attendance

## RESERVED JUDGMENT

1. The Claimant's complaint of breach of contract (wrongful dismissal/notice pay) against the Respondents is well founded.

2. The Respondents shall pay the Claimant the sum of £2,592.

3. The Respondents' breach of contract counterclaim against the Claimant is not well founded and is dismissed.

## REASONS

Pleadings

1. By her ET1, the Claimant presented two complaints against Respondents Mr. and Mrs. Rennick, her former employers:

2. First, a claim for unpaid annual leave pay under the Working Time Regulations 1998. The Claimant confirmed judgment for the Claimant on this claim was entered in January 2022, and she has now been paid all outstanding holiday pay owed.

3. Second, a breach of contract claim for wrongful dismissal seeking 4 weeks notice pay.

4. In their ET3 presented on 24 October 2021, the Respondents did not dispute that 2nd Respondent Mr. Rennick had dismissed the Claimant without giving 4 weeks notice on 6 June 2021 while on a family trip in France, but sought to justify dismissing

her with immediate effect on the following summary grounds:

a. when the Claimant (a nanny) was with their 20-month old son she largely ignored him, provided little to no meaningful stimulation, and mistreated him
b. the Claimant made "false allegations" (she said the Respondents' son was "*malicious*")
c. the Claimant breached the contract by not doing nursery duties;
d. the Claimant stole family jewellery and belongings from the Respondents

5. In addition to defending the Claimant's notice pay claim, the Respondents asserted a breach of contract counterclaim seeking damages for (a) stolen belongings (b) the return cost the Respondents' incurred to fly the Claimant from the UK to France to look after their son (c) the cost of Covid tests for the Claimant.

Relevant law

6. Subject to the exception noted below, the general rule is that if an employment contract provides that an employee will be given a minimum period of notice by their employer before their employment contract is terminated, the employee has a contractual right to be given that minimum period of notice, and any failure by the employer to do so when terminating the contract will constitute a breach of contract. The ordinary remedy for this breach is an award of pay for the notice period.

7. There is an exception if the employee is actually guilty (not just suspected of being guilty) of an act (or omission) constituting 'gross misconduct'. In this situation, the employer may lawfully terminate the employment contract without giving notice even if the terms of the contract require notice to be given. Recognised examples of gross misconduct include theft of an employer's property. The misconduct must be gross or grave, seen in light of all the circumstances of the case.

8. To satisfy the employee's burden of proof on a wrongful dismissal/notice pay claim, it is sufficient for the employee to establish (on the balance of probabilities) (i) the existence of the employment contract (ii) the existence of a term in that contract requiring the employer to give the employee a minimum period of notice of termination of the contract (iii) the fact that the employer terminated the employment contract without giving the employee that minimum period of notice.

9. If the employee establishes the above, the burden shifts to the employer to prove, on the balance of probability, that the employee committed gross misconduct entitling the employer to summarily dismiss the employee without notice. Absent such proof, the employee will be entitled to damages for breach of contract.

Evidence

10. The Claimant's evidence in this case consisted of a witness statement dated 3 March 2022 which the Claimant served on the Respondents on 4 March 2022 and certain documents attached to it via email. The 1st Respondent objected to its admission on the basis that it had been served on the Respondents via email after close of business that day (the date an earlier Case Management Order set for the exchange of witness evidence). The Tribunal allowed the statement. Even if the Claimant's

witness statement was technically served out of time, it was served on the correct date (4 March 2022) only a few hours late; there was no prejudice whatsoever to the Respondents by its service on them after any 4pm deadline; the interests of justice overwhelmingly favoured its admission as evidence at trial, as a fair trial of the Claimant's wrongful dismissal/notice pay claim at the Final Hearing on 5 April 2022 was manifestly possible (the 1st Respondent did not suggest otherwise).

11. In contrast, the Respondents did not serve a witness statement on the Claimant prior to 5 April 2022. The 1st Respondent had prepared a statement which purported to be on behalf of both Respondents, but she confirmed she drafted it and all the 2nd Respondent did was read it (and agreed its contents). The 2nd Respondent made no effort to serve a copy of this witness statement on the Claimant on or before 4 March 2022 as required. The Claimant objected to its late service on her (a copy was emailed to her for the first time at 10.25am on 5 April 2022). The Tribunal admitted the 1st Respondent's statement as evidence primarily because it was in the interests of justice to do so – it is a brief statement, and says little other than to dispute the Claimant's own statement.

12. The 1st Respondent also sought to rely on 40 documents she attached to an email she sent the Tribunal on 4 April 2022. In breach of the Case Management Order dated 29 October 2021, those 40 documents were not in an organised bundle, were not indexed, and were not paginated. Notwithstanding their lack of organisation, the Tribunal permitted the 1st Respondent to rely on those documents, but reserved judgment so the Tribunal could take time to review them before deciding the claim (which it has done).

13. Only the Claimant and 1st Respondent gave evidence. It is clear neither now likes or respects the other, and it was necessary for the Tribunal to intervene several times to stop the parties – in particular, Mrs. Rennick – from causally referring to the Claimant as a liar. The Tribunal reminded both witnesses they were under a duty to put their case to the other side during cross-examination. In the event neither put all the key points of their case to the other, but that was less of a problem for the Claimant's case than Mrs. Rennick's because the key facts on which she relies – the existence of an employment contract, a term requiring the Respondents to give her 4 weeks notice of termination, and Mr. Rennick's omission to give the Claimant 4 weeks notice of termination when he terminated the Claimant's employment contract on 6 June 2021 – are not in dispute.

14. The Tribunal found the Claimant to be a generally credible witness: she gave her evidence in a calm, focused manner, and did not exaggerate. The Tribunal found the 1st Respondent to be a less credible witness – she often did not answer the questions asked of her the first time around, often gave answers which went far beyond the confines of the question asked, repeatedly took the opportunity to call the Claimant a liar (regardless of the question asked), was highly argumentative throughout, and on occasion made categorical statements which did not bear critical scrutiny (at one point, she claimed the Claimant had performed no nanny services for her son in France at all, only to 'walk back' that claim when the Tribunal asked her about it). On disputed questions of fact, the Tribunal preferred the Claimant's evidence.

Findings of fact

15. The Tribunal makes the following findings of fact – including any findings contained in the other sections of these Reasons - on the balance of probabilities.

16. The Claimant is a professional nanny, and had 10 years experience of this type of work before she was hired by the Respondents in 2021 to act as a nanny for their young son. The Claimant has no formal qualifications in child development or child nutrition. There is no suggestion that the Claimant ever misrepresented her experience or qualifications to the Respondents before being hired. The Claimant and Mrs. Rennick are both native Polish speakers. Because her job puts her in close daily proximity to children, the Claimant is required to, and does, undergo annual DSB checks. She has no criminal record and has no criminal convictions.

17. On 10 May 2021, the Claimant and the 1st Respondent for and on behalf of herself and her husband the 2nd Respondent entered into and signed a 3 page employment contract under which the Respondents agreed to employ the Claimant as a nanny and personal assistant on the terms and conditions set out in that contract (the "**Contract**"). The Claimant's duties included caring for their son and ensuring his safety and security while in her care. All of the other nanny duties set out in the Contract concern their son – the Claimant had no general cleaning or cooking duties for the Respondents. The Claimant's normal shifts were Monday to Saturday, 7am to 4pm (a 9 hour workday). The Claimant's wages were £12/hour. The Claimant's benefits included accommodation, meals and travel expenses. The Contract noted the Claimant was required to work at the Respondent's home (the contract provides an address in London) or at such other places as the Respondents reasonably required from time to time, including long-term stays in countries inside/outside Europe. Para. 5.1 of the Contract states it is governed by the laws of England, Wales, Scotland and Northern Ireland.

18. Paragraph 4 of the Contract provided:

> "*If either party wishes to terminate this contract, the notice to be given shall be as follows: not less than 4 weeks' notice in writing. The [Claimant's] employment under this contract may be terminated by the Employer at any time immediately and without any notice or payment in lieu of notice if the [Claimant] (a) is guilty of gross misconduct or serious and persistent breaches of the terms of this contract, or (b) is convicted of any criminal offence involving dishonesty, violence, causing death or personal injury, or damaging property. Misconduct which may be deemed gross misconduct includes but is not limited to theft, drunkenness, illegal drug taking, child abuse and violent or threatening behaviour (be it verbal or physical*).

19. Following execution of the Contract, the Claimant moved into the London apartment the Respondents had rented and began performing nannying duties for their son. In addition to the Claimant, the Respondents also had a cleaner who had access to their London apartment and did cleaning work there.

20. Mrs. Rennick had jewellery at the London apartment. At no point in time prior to their trip to France did either Respondent accuse the Claimant of having stolen or moved

any of Mrs. Rennick's jewellery at the London apartment. Cameras were installed at the London apartment, and the Claimant knew about some of those cameras. The Tribunal makes no finding that those cameras were not working at the time, nor does the Tribunal make any finding that the Claimant knew those cameras were not working at the time.

21. On 30 May 2021, the Claimant flew to France with Mrs. Rennick and her son for planned family trip. The Respondents paid for the Claimant's flight, as required under para. 2.3 of the Contract Mr. Rennick drove to France and met them there.

22. The Respondents rented a home in the vicinity of Nice, France, and all four stayed there. While there, the Claimant continued to act as nanny for the Respondent's son.

23. The French rental property also had cameras installed, and the Claimant knew this. Again, the Tribunal makes no finding that those cameras were not working at the time, nor does the Tribunal make any finding that the Claimant knew those cameras were not working at the time.

24. While in France, the Claimant, Mrs. Rennick and her son occasionally visited the local beaches by car (the beaches were too far to reach on foot with a child). While in France, the Respondents searched the local area for nursery care for their son.

25. Mrs. Rennick's own evidence – which the Tribunal accepts - was that on 2 days, the Claimant was left alone in the French property while Mr. and Mrs. Rennick went out for the day with their son. The Tribunal infers that they would not have done so if either had any concerns at the time that the Claimant was not trustworthy or might be stealing from them. The Tribunal rejects Mrs. Rennick's explanation that she left the Claimant at home by herself because she was afraid of her – that might explain why Mrs. Rennick chose not to be at home alone with the Claimant, it does not explain why Mr. Rennick allowed the Claimant to be left at home alone.

26. On Sunday 6 June 2021, Mr. Rennick verbally dismissed the Claimant. He gave her no reason for the dismissal. The Tribunal finds as a fact that the reason for her dismissal was the fact the Respondents had arranged day nursery care for their son, and had a considerably reduced need for the Claimant's nanny services and the attendant cost of those services.

27. On Monday 7 June 2021, Mr. Rennick took the Claimant to a local Covid testing facility She took a Covid test, which was negative, and was safe to fly home.

28. On Tuesday 8 June 2021, Mr. Rennick took the Claimant to the local airport, and helped with her suitcases. The Claimant flew home to London. Her departure from France, and indeed from the Respondents' continued employment, was amicable.

29. On 9 June 2021, Mrs. Rennick sent the Claimant a WhatsApp message asking if she had arrived safely.

30. By email on 15 June 2021 at 10:56, the Claimant asked the Respondents to pay her 4 weeks notice pay: "*On May 10, 2021, a written agreement was reached between us. The agreement was concluded for an indefinite period, with 4 weeks' mitten*

*notice. So I was surprised that after 5 weeks of work, exactly on 06.06 in 2021, I only received 1 days verbal notice of termination. After consulting with experts on the matter, I am writing today to inform you that the terms of the contract entered in on 10 May 2021 have been breached by you. According to my contract as a full time employee I should have received 4 weeks written notice. Unfortunately this dd not happen and instead I was given 1 days verbal notice of termination of my employment, with no reason given for the termination*."

31. The Respondents received this message but did not reply to it. They made no allegation at this stage that the Claimant had herself breached the Contract or had stolen anything from the Respondents in London or France.

32. By email to the Respondents on 24 June 2021 at 10:55, the Claimant chased a response to her 15 June email, and repeated her request for 4 weeks notice pay.

33. By email on 24 June 2021 at, Mrs. Rennick replied to the Claimant in the following terms: "*As Darren discussed with you, the fact that you told me that you would not be coming to France with us 4 days before the planned trip constituted a termination of any agreement we had. At that point you clearly indicated to us that you had no intention of adhering to any arrangement whatsoever. That fact that you changed your mind and came to France is irrelevant. You had already turned your time with us into an at-will understanding mutually subject to no notice period. While in France you seldom worked a full day, when you were with Max you largely ignored him and provided him with little to no meaningful stimulation. He did not like being around you – something we have never seen before or since. His aversion to you became so strong that he started to make himself physically sick by sticking his fingers in his throat. He stopped doing this after you left. You failed to meet the minimum acceptable standards in every one of your nanny duties. You were mentioning several times that our son is malicious (its 20 months old baby!). The agreement was breached on your site several times: -termination 4 days before the trip -no mental stimulation (any stimulation) and lack of knowledge of the child development - nursery duties not up to standards ( got the attitude asking for cleaning nursery floor. I was doing all nursery duties cleaning, cooking, washing etc, you were not of help at all). When we rented the flat for you in London so you dont have to commute every day you havent change the bedsheets for all the stay and hoovered just at the last day only as Ive asked. Nanny in general has to be very clean herself... I've had before full time nanny live in and had my son at the nursery 3 times a week as wanted him to hang out with other babies so don't get your point of me looking for the nursery so don't understand where is your point. We have incurred significant out of pocket expense to get you to and from France. Money wasted because of your incompetence. It is our intention to seek recovery for these amounts. After this blackmailing emails I wander whats happened to my chanel bag and two more design didnt disappeared from my wardrobe. We are not going to get involve anymore in exchanging this kind of emails, if you want to take a legal action let us know so we will provide you with the address as we are not residents in UK*."

34. By email to the Claimant on 28 June 2021, Mrs. Rennick stated: "*Just realised that one more of my stuff is missing. We have decided to claim the loss from the insurance company as its ar £3 k plus of stuff stolen so have to give your full details and my cleaner to the police and insurance company as you were only two people*

*in the flat for this time. Insurance company is doing them own investigation. Police just taking the report. Had this before as someone stole my fur coat and they find out and the insurance paid for all. Just better not to have a record in papers for future jobs. If you have any info regarding this incideent let me know pls*."

35. The Claimant reasonably understood the reference in Mrs. Rennick's email to "better not to have a record in papers for future jobs" to be a clear threat arising out of her efforts to chase the Respondents for her notice pay.

36. By email to Mrs. Rennick on 4 July 2021, the Claimant stated: "*First of all, this is the second message I received from you, in which you suggest that I stole your clothes, so I do not wish to write false slanders against me. Both your flat in London and the rented house in France where you are currently staying have cameras, so if you are convinced that I have something that belongs to you then provide evidence*." She continued to request her notice pay.

37. The Claimant's notice pay having not been paid, on 18 July 2021 the Claimant presented an ET1 bringing a claim for that pay.

Discussion / Conclusions

38. First, the Claimant has satisfied her burden of proof and established a prima facie breach of her contractual right to be given four weeks notice of termination of her employment contract. It is not in dispute – and if it is in dispute, it is clear - that the Claimant and Respondents entered into an employment contract on about 10 May 2021. Para. 4 of that contract stipulated that if either party wished to terminate it, not less than 4 weeks written notice was required. On 6 June 2021, Mr. Rennick verbally terminated that contract and gave the Claimant less than 4 weeks notice of termination. The Claimant has not been paid for any part of a 4 week notice period.

39. Second, the Respondents have not satisfied their burden of proof that the Claimant committed an act of gross misconduct on or before 6 June 2021 entitling Mr. Rennick to summarily dismiss the Claimant without notice on 6 June 2021.

40. The Respondents have not established on either the civil balance of probability standard or indeed, at all, that the Claimant stole any items of jewellery or other items from either the Respondent's London apartment or the French rental property. It is telling that the Respondents only raised this allegation after the Claimant had begun to consistently press them for her notice pay (having simply ignored her first request for her notice pay on 15 June 2021). In cross-examination of the Claimant, Mrs. Rennick did not identify or put to the Claimant the specific item(s) of jewellery allegedly stolen from the London apartment, did not identify the date on which she claimed to have noticed jewellery had gone missing from the London apartment, did not identify any specific date or period in which the Claimant stole anything from the London apartment, and made no attempt to explain or suggest that if anything was stolen from the London apartment that it was more likely to have been taken by the Claimant rather than the cleaner who also had access to the apartment. It is unlikely the Claimant would have attempted to steal from the London apartment or the French rental property given the fact she knew cameras were installed at both properties. Mrs. Rennick accepted that when she left for France she had not reported any theft

from the London apartment to the British police. There is no evidence the Claimant stole anything from the French rental property, nor is there a proper evidential basis from which to infer that the Claimant did so. Mrs. Rennick did not put to the Claimant that she had stolen a Van Cleef bracelet from her. Mrs. Rennick did not put to the Claimant that she had stolen a Balmain skirt from her. Mrs. Rennick did not put to the Claimant that she had stolen a Chanel bag from her. Mrs. Rennick did not put to the Claimant that she had stolen a top from her. The Claimant denies having stolen anything from the Respondents, and the Tribunal accepts her evidence that she did not.

41. The Respondents have not established a breach of the Claimant's contractual duty to care for their son and perform nannying or other contractual duties either at all or on one or more occasion so serious that it constituted gross misconduct and/or a repudiatory breach of contract on the Claimant's part. The fact the Respondents invited the Claimant to care for their son in France shows they both believed the Claimant had taken adequate care of their son when she was working for them in London – if they did not believe that, they would not have extended that invitation (or instructed the Claimant to come to France with them). The Claimant did not mistreat the Respondents' child, nor did the Claimant describe their child as 'malicious'.

42. If the Respondents had concerns about the Claimant's performance of her nannying or other contractual duties, those concerns would likely have been raised with the Claimant – none were. Those concerns would likely have been expressed (and documented) in contemporaneous text, email or WhatsApp correspondence, either between (a) the Claimant and Mrs. Rennick, or (b) directly between Mr. Rennick and Mrs. Rennick – none were. The Claimant's departure from France would likely not have been the amicable event that it was had either Respondent been materially dissatisfied with the Claimant's performance of her duties. And once back in the UK, it is unlikely that Mrs. Rennick would have checked on the Claimant's welfare – yet that is what she did on 9 June 2021.

43. Reading Mrs. Rennick's 24 June 2021 email, the Tribunal formed the impression that Mrs. Rennick (not Mr. Rennick) was determined not to pay the Claimant's 4 week notice pay, first hoped that by ignoring the issue the Claimant would simply go away, and when the Claimant continued to firmly press for payment, came up with as many reasons as possible to justify a refusal to pay. In the Tribunal's judgment, none of the Respondents' reasons have merit, and certainly none establish to the required standard that the Claimant was guilty of gross misconduct entitling the Respondents not to give the Claimant the 4 weeks notice of termination contractually required.

44. Para. 42 of the Claimant's witness statement calculated the value of 4 weeks notice pay at £2,592. In cross-examination that evidence went unchallenged by Mrs. Rennick, and the Tribunal accepts it. That is the sum which the Respondents are required to pay the Claimant as damages for wrongful dismissal.

45. The Respondents' breach of contract counterclaim is not well founded. Although her position was not entirely clear, Mrs. Rennick appeared be indicating that because her insurance claim had been settled, she was no longer seeking to recover from the Claimant the replacement costs of the items she alleged had been stolen. That position would be consistent with the Tribunal's understanding that once her insurers

had settled her insurance claim that her right to bring a claim against the Claimant for theft/misappropriation would be automatically subrogated to the insurers (hence Mrs. Rennick would have no standing to bring a claim without the insurers' consent). In any event, Mrs. Rennick did not identify any term in the Contract giving either Respondent a contractual right to pursue the Claimant for the replacement cost of stolen items (under English law they would have a remedy for any property the Claimant stole in tort for conversion, but the Tribunal has no jurisdiction over a civil tort/conversion claim). At no point did Mrs. Rennick put her breach of contract claim on the basis that the Contract contained an implied term to that effect.

46. No term in the Contract required the Claimant to pay for the cost of flights to attend upon the Respondents' son in France (para. 2.3(b) of the Contract is to the opposite effect) nor is there a term in the Contract which required the Claimant to pay for Covid tests. The counterclaim shall therefore be dismissed.

Signed (electronically): Employment Judge Antoine Tinnion

Date of signature: 7 April 2022

Date sent to parties: 07/04/2022

Note

1. Employment Tribunal decisions, judgments and reasons are published online after a copy has been sent to the Claimant(s) and Respondent(s).