



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs C Steenkamp

Boiler Pointer Limited

Heard at: Reading
Before: Employment Judge Forde

On: 3 May 2022

Appearances

For the Claimant: In person

For the respondent: Did not appear

JUDGMENT

The judgment of the tribunal is that:

1. The respondent was in breach of contract by dismissing the claimant without notice and the respondent is ordered to pay the claimant damages of £1,394 for that breach.

REASONS

Claims and issues

1. The claimant claims breach of contract in relation to not being paid notice of termination of employment to which she was entitled.
2. In its response, the respondent asserted the claimant was not entitled to be paid notice pay but did not set out any reason or justification for saying this. The response contained a bare denial of the claim and nothing more.
3. At the outset of the hearing, I had to determine whether or not it would be appropriate to proceed with the hearing in the respondent's absence. My review of the tribunal file showed that respondent had been represented by Croner Group Limited at the time the notice of this hearing dated 6 November 2021 had been sent.
4. On 27 April 2022 Mr Jacob Tidy of Croner Consulting Limited emailed the tribunal to inform it that Croner group Limited no longer acted for the respondent. The respondent's contact details were confirmed to be those that were entered onto the ET3 and ET1.
5. I instructed the tribunal clerk to attempt to reach the respondent by way of the telephone number provided and confirmed to be that of the respondent.

The clerk was unable to speak to anyone connected with the respondent by the number provided. The claimant provided an alternative telephone number for Mr Arshad of the respondent. The clerk attempted to contact Mr Arshad by that number but the call went unanswered.

6. Accordingly, I proceeded to consider whether or not it would be appropriate to proceed in the respondent's absence. I noted that the tribunal had not received any notification from the respondent that it would not attend the hearing. In the course of the morning, attempts had been made to reach the respondent but those attempts had been unsuccessful. Given that the respondent had been represented at the time that the hearing notice had been circulated to the parties, I found, on the balance of probabilities that the respondent would have been made aware of the hearing by its former representative and that it had not informed the tribunal of an inability to attend the hearing. In accordance with Rule 47 of the Employment Tribunals (Constitution and rules of procedure) Regulations 2013, I exercised my discretion to allow the hearing to proceed in the respondent's absence having first considered the information held on the tribunal file and the attempts made to contact the respondent which had proved unsuccessful.

The issues

7. I then went on to determine the issues in the claim. These were determined as follows:
 - 7.1 When did the claimant's employment end?
 - 7.2 Was the claim presented in time?
 - 7.3 Was the claimant entitled to notice pay?

Procedure and evidence heard

- 8 I heard evidence from the claimant only. The claimant had not prepared a witness statement, nor had she provided a copy of her contract of employment or any communication in relation to the non-payment of her notice pay. The only document I was able to see was an email from the claimant to the respondent which was said have attached to it the claimant's letter of resignation which was not in fact attached to the email, and a response received from Mr Arshad of the respondent. That dialogue is set out below as follows:

Claimant to respondent:

“Hi there, please find attached my letter of resignation as required.

Do you still require me to come into the office from Monday 11th January, 2021 to work off my notice period.

I would like to ask if you could provide your name and company contact details should it be needed for reference purposes.

Many thanks

Caroline”

9 In response, the respondent to the claimant:

“Hi Caroline,

By all means you can use us as a reference and you also don't have to come into the office anymore.

We wish you the best of luck in the future.

Kind regards,

Qas”

10 I asked the claimant what her last day of working for the respondent was and she confirmed it to be 6 January 2021. The claimant confirmed that she had a written contract of employment with the respondent but had overlooked the necessity of providing it to the tribunal as part of the evidence that it had to consider. I proceeded to ask the claimant a series of questions about the contractual obligation that related to notice pay within her contract of employment. The claimant confirmed that it was the case that both parties had to provide one month's notice to each other in the event that the claimant's employment came to an end.

11 I asked the claimant about the circumstances of the termination of her employment. She explained that she had been working from home and that she found the experience of working from home difficult. During the course of this period which immediately preceded the termination of her employment, she explained that she had had a frank conversation with Mr Arshad of the respondent during the course of which he confirmed that he would like the claimant to tender her resignation. As a direct consequence of that conversation, the claimant tendered her resignation to the respondent by email on 6 January.

12 I accept the claimant's evidence that she tendered her resignation on 6 January 2021. I also accept the claimant's evidence that the notice period contained within her contract required the respondent to provide her with one months-notice of her termination meaning that the respondent was under a contractual duty to pay the claimant one month's pay. The claimant informed me that she had not received any payment for January 2021, and I accept her evidence in this regard.

13 Further, I find that the claimant was paid £1,550 monthly before tax and that her normal take home pay was £1,394.

The law

Breach of contract.

14 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 s.86

Employment Rights Act 1996. For someone who has been employed for at least one month but less than two years, this is one week's notice.

- 15 An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. His will be the case if the employee commits an act of gross misconduct. 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.
- 16 A claim of breach of contract must be presented within three 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.

Conclusions

- 17 The claimant was entitled to month's notice of termination unless she was guilty of gross misconduct. As I have said, the respondent has not provided any reason why it asserts that the claimant was not entitled to notice bar the bare denial that I have already referred to. In absence of any valid reason to justify non-payment of notice to the claimant I find on the balance of probabilities that the respondent has acted in breach of contract in failing to pay the claimant notice pay as claimed and that the effective date of termination of the claimant's contract of employment was 6 January 2021.
- 18 I conclude that the claimant should be paid damages equivalent to one-month's net pay. However, tax would be payable on an award of notice pay, so I conclude that the amount of damages should be the gross amount of pay for one month, which after deduction of tax, should leave the claimant with the correct amount of compensation.
- 19 The claimant will be responsible for any income tax or employee National Insurance contributions which may become due on these damages.

Employment Judge Forde

Date: 11 May 2022.....

Sent to the parties on.....

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For the Tribunal Office