



EMPLOYMENT TRIBUNALS

BETWEEN

MR KEVIN NICHOLAS

AND

CAPITA PLC

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD remotely by VHS

ON

6 May 2022

EMPLOYMENT JUDGE H Lumby

Representation

For the Claimant: In person

For the Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that the claimant succeeds in his claim for breach of contract and the respondent is ordered to pay the claimant the net sum of **£30,222.74**

REASONS

1. In this case the claimant Mr Nicholas brings monetary claims for breach of contract against his ex-employer Capita plc. The respondent has not responded to these claims.
2. This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was online by Video Hearing Service. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are Claimant's original claim and a subsequent statement which reiterated the claim, the contents of which I have recorded. The order made is described at the end of these reasons.

3. I have heard from the claimant. I have not heard from the respondent who has not responded to this claim in any manner. Accordingly the only evidence I have heard is the documentary evidence referred to above. I have also heard from the claimant in the hearing today. None of the assertions or claims made by the claimant have been challenged by the respondent.
4. Based solely on this, I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by the claimant.
5. The claimant started work for the respondent on 21st September 2019 as a consulting partner.
6. At some point in his employment, the claimant emailed a disgruntled colleague asking if he wanted to be introduced to someone working at another firm who may be interested in hiring; the colleague declined. The colleague reported this to HR.
7. Following a hearing and appeal process, he was summarily dismissed for purported gross misconduct on 4th October 2021.
8. The claimant states that he is entitled to three months' notice. His monthly pay before tax was £18416, with a normal post tax take home pay of £10,300.
9. He commenced a new job at a higher monthly salary on 3 January 2022, just under three months after the effective date of termination.
10. Having established the above facts, I now apply the law.
11. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
12. The claimant is entitled to three months' notice on termination of employment but has not received that notice. The respondent is therefore in breach of contract and the claimant is therefore entitled to be placed in the position he would have been in had he been given the required notice. His claim for breach of contract accordingly succeeds.
13. The starting point for assessing the remedy is therefore the three months' notice which he has not been given. Compensation for breach of contract is paid net, so taxes and other deductions which would have been made should be deducted. The claimant is also required to mitigate his losses, which he has done here by finding new employment.
14. Applying these principles in order to calculate the compensation, the claimant received a net sum of £10,300 per calendar month, which was £18,416 gross. Three months' notice would therefore amount to a net figure of £30,900.
15. Two days' pay need to be deducted to reflect the new job, which was at a higher salary, meaning there was no shortfall for those days. £10,300 per calendar month gives an annual net figure of £123,600 and so a daily rate of £338.63. Two days at that rate amounts to £677.26, which needs to be deducted from the £30,900. The net sum payable by the respondent to the claimant is therefore £30,222.74

Employment Judge H Lumby
Dated 6 May 2022

Judgment sent to Parties on
20 May 2022 By Mr J McCormick

For the Tribunal Office