



EMPLOYMENT TRIBUNALS

Claimant: Ms Sameea Akhtar

Respondent: Syed Solicitors

Heard at: Birmingham ET (via CVP) **On:** 6 and 7 June 2022

Before: Employment Judge Boyle

Representation

Claimant: Danielle Worden (Legal Assistant – United Voices of the World)

Respondent: Anna Johns (Counsel)

JUDGMENT having been sent to the parties on 7 June 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The REASONS for this judgment are as follows

Claims and Issues

1. The claimant has brought claims for unfair dismissal (she relies on s152 of TULRCA as she has insufficient service to bring an ordinary unfair dismissal claim), breach of contract and wrongful dismissal, unauthorised deductions from wages in respect of pay and accrued annual leave and breach of s1 of the ERA.
2. The issues for the Tribunal to consider were discussed and agreed at the outset of the hearing.

Application by respondent for relief from sanction under r38 (2) Employment Tribunals (Constitution and Rules of Procedure) Regs 2013, Schedule 1

3. At the start of the hearing, it was noted that the respondent's response had been dismissed due to its breach of an Unless Order from the Tribunal dated 24 September 2021.

4. Following submissions from both parties, the Tribunal determined that the dismissal of the response would remain in place. Oral reasons were given at the hearing.
5. The respondent was not therefore permitted to take part in the proceedings and the effect was as if no response was received. I did not consider either the respondent's response or any witness statements from the respondent. The respondent was permitted to be part of and make submissions at the remedy hearing held on 7 June 2022.

Procedure Documents and Evidence

6. I heard evidence from the claimant. I found her to be a credible and reliable witness. I was supplied with two bundles of papers (one large, agreed bundle and a supplemental bundle received from the claimant on the first day of the hearing) which included key documents, letters and email. I was referred to these bundles by the claimant's representative during the course of the hearing.

Fact Findings

After a careful consideration of all the evidence before the Tribunal today, I make the following findings of fact.

7. The claimant was employed as a trainee solicitor by the respondent law firm for the period from 1 April 2019 to 15 September 2020. This was following a period of unpaid internship where the claimant had been volunteering with the respondent from 11 Feb 2019 for around 24 hours per week and following previous unpaid work experience with the respondent from December 2015 to May 2016.
8. The claimant is a member of the independent trade union - United Voices of the World.
9. It is not disputed that the claimant entered into a common law contract of apprenticeship with the respondent regarding her training contract.
10. Whilst the claimant did not receive any written documentation at the time her employment commenced, she received correspondence from the respondent on 1 July 2020 when the respondent provided the claimant with written particulars of her employment. These are dated 27 March 2019 and were sent to the claimant's home address. Whilst I find that the claimant did not receive these at the time, there is no reason to suggest that these were not sent to her.
11. The respondent's letter of 27 March 2019 contains terms relating to the employment of the claimant as a trainee solicitor. In the letter, Mr Shah Syed (principal lawyer of the respondent firm) sets out the main terms.
12. The key relevant ones here are:
 - a. 'term – part time training contract. Length of training you will receive a letter directly from the SRA to this effect'
 - b. 'Salary - statutory minimum pay based on hours spent in training which are on average 10 hours. All the time you may want to spend other than training shall not form part of your training or employment. You are not required to attend more than your agreed trainee hours.'
 - c. 'Notice – statutory notice of termination should apply to SRA trainee contract i.e.. one week notice in the first year.'

- d. Further it states, 'as per SRA guidelines you should be provided with the above statement of the terms and conditions of the apprenticeship.'
 - e. This letter was signed by Mr Syed.
13. Also attached to the letter is a document entitled 'Training trainee solicitors - training contract – part-time'. It is dated 25 March 2019. It also contains terms regarding the training contract of the claimant.
14. The key terms here are:
- a. 6. The contract begins on 1 April 2019 and continues to 1 July 2022.
 - b. 25 termination ...unless there are justifiable reasons to do so, the SRA will only terminate the training contract if The training establishment closes or changes so much that it is not possible to train the trainee solicitor properly.'
15. This document was described by Mr Syed in his letter to the claimant as an 'old one but should probably do'. I find that this document also formed part of the claimant's terms and conditions and specifically her common law contract of apprenticeship with the respondent.
16. The claimant confirmed that she received notification of the registration of training contract with the Solicitors Regulatory Authority (SRA) on 7 May 2019. The letter from the SRA confirmed that her training contract had been recorded for the period between 1 April 2019 and 28 December 2022.
17. As the 'term' in the claimant's contract had been expressly provided to be the length of training as per the SRA, I find that the term of the claimant's contract of apprenticeship to be 1 April 2019 to 28 December 2022.
18. I also find that the 'termination provisions' provided that only in exceptional circumstances could the claimant's contract of apprenticeship come to an early end. This contradicts the separate notice provision of statutory notice of one week. With this conflict, I find that the termination provisions over-ride any statutory notice. It cannot have been the party's intentions to override the purpose of the training contract by simply providing for basic statutory notice.
19. Looking at the terms that the claimant was aware of at the start of her employment now. The claimant on her own evidence confirms that she was aware as early as 7 May 2019 that her training contract had been recorded as for 10 hours per week and that her salary reflected this – albeit that she was not receiving the correct figure. The claimant accepted that the agreed rate of pay was the prevailing National Minimum Wage rate at that time of £8.21 per hour.
20. The claimant confirmed in evidence that whilst she believed she would be working and paid for 24 hours per week, she was too scared to raise it with Mr Syed for over a year because she was fearful of losing her training contract.
21. On the claimant's own case the respondent agreed to give her a training contract. The initial correspondence between the claimant and respondent was in friendly terms. On the claimant's own evidence and as set out in her grievance to the respondent dated 1 May 2020, she did not experience any issues with Mr Syed until 15 August 2019.

22. I find that that the claimant could have raised the issue of her working hours and pay much earlier than 1 May 2020, but did not do so, and that this was because she accepted she was employed to work for 10 hours per week at the rate of £8.21.
23. I find that the claimant did undertake a considerable amount of voluntary work with the respondent throughout the period from 1 April 2019 up to the start of the national lockdown due to the COVID 19 pandemic which began around 23 March 2020.
24. The claimant was required to self-isolate to protect her health from 23 March 2020. The claimant did not believe she was placed on furlough leave at this time, but it is clear from her evidence that she was given no work to do from 23 March 2020 save for one small task. I saw no evidence of any furlough arrangements but it would appear that the respondent treated her as though she were on furlough leave from this time.
25. The claimant raised a grievance through her trade union on 1 May 2020. This was a detailed grievance and complained of inadequate training, under-payment, lack of annual leave pay, lack of employment particulars and bullying and harassment by several members of the respondent firm.
26. Following a grievance hearing on 18 June 2020 the respondent wrote its response to the claimant dated 1 July 2020. It rejected all of the claimant's grievance.
27. The claimant, again with the assistance of her trade union, appealed against the decision on 3 July 2020. An appeal hearing took place on 24 July 2020 and the respondent's decision was sent to the claimant on 6 August 2020.
28. This time the respondent accepted that the claimant had been underpaid based on her 10 hours working per week and a payment of £1665.12 was paid to the claimant as back pay. It is the claimant's case, and this is accepted, that this however only applied up to April 2020. Despite the respondent saying it would do so, the claimant was not paid correct salary from May 2020 until her dismissal on 15 September 2020.
29. Based on the claimant's evidence I find that there was insufficient evidence to demonstrate that that she received inadequate training from the respondent throughout her entire contract to amount to a breach of contract. Particularly for the period from 23 March 2020, it is understandable that the COVID 9 pandemic had a significant impact here and as the claimant was required to self-isolate, it would appear that the firm treated her as if she were on furlough leave.
30. Looking now at the claimant's claim for accrued annual leave. As I can find no evidence of a different holiday year, I find that the holiday year that applied to the claimant was 1 April to 31 March (based on her start date). The claimant confirmed that from 1 April 2020 to the date of dismissal she did not take any holiday. I calculated that the claimant is entitled to 25.8 hours accrued holiday. This was not paid by the respondent on the termination of her employment. The claimant confirmed that there was no claim in respect of any carry over of annual leave.

31. The respondent wrote to the claimant on 1 September 2020 giving her notice of termination of employment due to redundancy. The letter confirmed that the claimant along with 7 other member of staff and two other trainees were being made redundant due to impact of COVID 19 and paucity of work. Whilst the claimant's evidence is that she did not believe this letter, I can see no evidence that the respondent was lying to the claimant at this time, and that others were affected by the redundancy situation, not just the claimant.
32. The claimant's employment terminated on 15 September 2022.
33. On the claimant's evidence, she had received no work from the respondent for that previous 6 months. It is common knowledge that the COVID 19 pandemic had significant impact on many businesses. I find that the reason for the claimant's dismissal was that there was insufficient work for her in the practice.
34. However, the claimant had a fixed term contract until 28 December 2022 which could only be brought to an end for a limited number of specified reasons as set out above. I find that the respondent firm did not close at this time (and in fact continues to trade). There is insufficient evidence that the firm changed so much that it was not possible to train the claimant. I accept the claimant's evidence here that whilst the firm might have changed and downsized, it was not the case that it remained impossible to train her. Therefore, her fixed term contract was brought to an end early and in breach of contract.
35. The claimant appealed against the decision to dismiss her on 7 September 2020. The appeal hearing was held on 10 November 2020. The respondent's letter in response to her appeal which was pre-dated as 21 September 2020 contained accusations of dishonesty against the claimant and negligence of her trade union advisor. The decision to uphold the dismissal was upheld.
36. The claimant gave evidence regarding her employment since 15 September 2020. She has worked in several position, including as a trainee solicitor between 1 April 2021 and 14 October 2021. She has now completed her training contract and is looking for a solicitor role. The claimant has made every effort to mitigate her losses.

Claimant's submissions

37. The claimant helpfully provided the Tribunal with written submissions in a document dated 5 June 2022. The claimant's representative confirmed that she wished to rely on these and I confirmed I would take them into account in coming to my decision.

I have applied the following LAW to these facts

Unfair dismissal

38. Under s 152(1)
39. The dismissal of an employee shall be regarded as unfair if the reason for it (or if more than one reason, the principal reason) was that the employee

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time

(ba) had made use or proposed to make use of trade union services at an appropriate time.

40. 'trade union services' means services made available to the employee by an independent trade union by virtue of their membership of the union and making use includes raising the matter on his behalf.

Unauthorised Deductions from Wages

41. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

Holiday pay

42. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the start date of the claimant's employment in the first year and, in subsequent years, on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employee and employer provides for a different leave year. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

43. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996,

Breach of contract

44. An employee is entitled to any expressly agreed period of contractual notice. 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.

45. A contract of apprenticeship is a common law contract where the primary purpose of the contract is to train the employee in a trade or profession. Common law contract of apprenticeships are usually for a fixed term and can only be brought to an earlier end in limited circumstances.

Statement of initial employment particulars

46. S1 provides that an employer shall give to the worker a written statement of particulars at the beginning of employment or within 2 months (this was the prevailing law at the time).

CONCLUSIONS

47. Having regard to all relevant circumstances and the findings of fact, I conclude the following

Unfair dismissal under s 152 of TULRCA

48. The Claimant was not dismissed for either taking part in trade union activities or for making use of trade union services. Therefore, her claim is not well-founded and is dismissed.
49. The Claimant was not involved in activities of a trade union during her employment. Whilst I find that the claimant made use of trade union services by engaging the assistance of the independent trade union - United Voices of the World, to assist her in the presentation of her grievance and appeal on 1 May 2020 and 3 July 2020 respectively, this was not the reason or the principal reason for her dismissal.
50. I have considered the tone and language used by Mr Ali in his letter dated 21 September 2020. This letter was written after the claimant's dismissal on 15 September 2020. I do agree that this letter is not written in a professional manner and demonstrates a contempt for the services of a trade union representative however I do not find that this means the claimant's dismissal was brought about because she had used the services of a trade union.
51. The burden is on the claimant to show a prima facie case here that the reason or principal reason for her dismissal was because she took part in trade union activities or for making use of trade union service. It is my judgment that she has not done so.
52. I find based on the evidence that the reason or primary reason for the claimant's dismissal was that there was a downturn in the work she could do as a trainee solicitor

Breach of contract

53. I find that the claimant was employed under a common law contract of apprenticeship. This was undisputed. The primary purpose of her employment with the respondent was for training. She was also an employee. With a common law contract of apprenticeship, it is well established that such contracts are usually for a fixed term of training and cannot be brought to an end except for very specific reason. I have found that a contract of apprenticeship was in place between 1 April 2019 and 28 December 2022.
54. I have found that the claimant's employment was brought to an end by reason of lack of work for the claimant. however, the respondent appears to have paid no heed to the status of the claimant when bringing her contract of employment to an end. I do not find that those special reasons existed namely that the firm had closed (which it had not) or had changed so much that it made it impossible to continue to train the claimant.
55. Therefore, this fixed term contract was terminated early and should have continued until 28 December 2022.

56. As this was a fixed term contract which would automatically expire on 28 December 2022, there was no further notice that the claimant was entitled to receive, therefore the claimant is entitled to receive damages to put her in the position as if the contract were complied with up to 28 December 2022.
57. Based on the findings of fact above, I do not find that the respondent breached the claimant's contract during its term with regard to the training it gave to the claimant.
58. Following evidence, her from the claimant regarding her mitigation, the claimant's representative conceded that she had completely mitigated any losses suffered as the result and therefore no damages were awarded in respect of breach of contract.

Unauthorised deductions from wages

59. I have found that the claimant was employed to work 10 hours per week at the statutory minimum wage of £8.21. The claimant was aware from early in the contract that the respondent had stated she was working for 10 hours per week, and this was reflected her salary. She did not raise this as she said she feared her contract would be brought to an end. I have considered this point. She had a good relations with Mr Syed who brought her into the practice and the first difficulty she faced with him was not until 15 August 2019. I therefore find that this was the agreement between the parties and that the additional hours that the claimant spent at the respondent's firm were voluntary and unpaid.
60. The claimant was therefore entitled to receive payment for 10 hours per week at the rate of £8.21 for the duration of her contract. I have accepted the claimant's evidence entirely here as to what she was actually paid during the course of her employment. At the remedies hearing, the parties' representatives agreed that the claimant had been underpaid during her employment with the respondent in the amount of £1118.19.

Holiday pay

61. I find that the Claimant had a statutory right to annual leave I accept the claimant's evidence that she had taken no holiday during the period 1 April 2020 to 15 September 2020.
62. The claimant was entitled to be paid, on termination of her employment, in lieu of leave which she had accrued but not taken for this period which I find is for a period of 25.8 hours.
63. I conclude that the respondent made an unauthorised deduction from wages by not paying the claimant in lieu of accrued leave.
64. The amount payable was found to be £211.82.
65. The respondent will be entitled to deduct any tax and employee's national insurance contributions due on this amount before payment to the claimant.

S1 statement of particulars

66. The claimant did not receive a statement of written particulars within two months of the start of her employment which was the prevailing law at that time. This was remedied by the respondent following the presentation of her grievance in May 2020.
67. At the respondent failed to provide written statement of employment particulars in good time, and the employee has brought and succeeded in her claims above, the Tribunal must make an award of 2 weeks' pay.
68. I have considered whether to make an award of 4 weeks' pay. In the circumstances where the respondent has remedied this breach during the course of employment, my judgment is to award 2 weeks' pay in the sum of £164.20 (a week's pay being £81.20).

Employment Judge Boyle

8 June 2022