



EMPLOYMENT TRIBUNALS

BETWEEN

MRS MELISSA GRIFFITHS

Claimant

AND

PHOENIX SW LIMITED

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT SOUTHAMPTON BY VHS ON

12 August 2022

EMPLOYMENT JUDGE H Lumby

Representation

For the Claimant: Did not attend

For the Respondent: Thomas Greenwood and Charlotte Aldridge of the respondent

JUDGMENT

The judgment of the tribunal is that the claimant does not succeed in her claim for breach of contract and the claim is dismissed

REASONS

1. In this case the claimant Mrs Griffiths brings monetary claims for breach of contract against her ex-employer Phoenix SW limited. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Video Hearing Service. The order made is described at the end of these reasons.
3. I have not heard from the claimant who did not attend. I have heard from Mr Greenwood and Ms Aldridge for the respondent.

4. There was a degree of conflict on the evidence presented. I have heard Mr Greenwood and Ms Aldridge give their evidence and observed their demeanour in the witness box. 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 and on behalf of the respective parties.
5. The claimant's claims arise from her resignation or dismissal from the respondent.
6. She began work with the respondent on 28th February 2021, moving to a new role on 6th July 2021. Whilst in her probationary period in the new role, she gave four week's notice on 29th July 2021, to expire on 27th August 2021.
7. During her notice period, her contract was in turn terminated by the respondent on 3rd August 2021, giving her two week's notice to expire on 16th August 2021. She was paid in lieu of notice and so her employment ended immediately.
8. The claimant claimed her notice for the period from 16th August 2021 until 27th August 2021.
9. Her contract provided for four weeks' notice, except in the probationary period, when it was only two weeks' notice. The two weeks' notice she was given was therefore in accordance with her contract.
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 ("the Order") and the claim was outstanding on the termination of employment.
12. Normal contractual principles apply to claims under the Order, which includes the right of set-off, even in circumstances where the employer has not entered an employer's counterclaim under paragraph 4 of the Order, see for instance Ridge v HM Land Registry [2014] UKEAT 0485/12.
13. Although the claimant gave notice before the respondent, this did not prevent the respondent giving notice subsequently.
14. The claimant's contract allowed for notice of two weeks and so the respondent's notice was not in breach of contract.
15. Payment in lieu of notice is permitted and by paying two weeks the contract was ended in accordance with its terms. There was therefore no requirement to pay the claimant from 16th August and there is therefore no breach of contract. The claim is therefore dismissed.

Employment Judge H Lumby
Date: 12 August 2022

Judgment sent to Parties on
25 August 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE