



EMPLOYMENT TRIBUNALS

Claimant: Mr G Corbett

Respondent: Grifen Sprinkler Solutions Limited

Heard at: Manchester **On:** 11 & 12 August 2022

Before: Employment Judge Ord

Representation:

Claimant: Mr Henry (Counsel)

Respondent: Mr Robinson (Counsel)

JUDGMENT

- 1- The respondent is in breach of contract by not paying the claimant one month's notice pay and employer's pension contribution for the notice period.
- 2- Accordingly, the respondent is ordered to pay the claimant damages equivalent to 1) one month's gross wages in the sum of £4,583.33 subject to such deductions as are required for tax and national insurance; and 2) employer's monthly pension contribution of £109.41.
- 3- The respondent's counterclaim is not well-founded and is dismissed.

REASONS

The Complaints and Issues

1. The claimant complains of breach of contract for non-payment of notice pay.
2. The respondent counterclaims for breach of contract and reimbursement of part of the claimant's earnings.

3. The issues for the tribunal are:

Claim

- a. Was there a contractual term entitling the claimant to one month's notice pay?
- b. Did the claimant give notice in accordance with the contract?
- c. Did the respondent agree that the claimant could take annual leave of half a day on 4 and a whole day on 5 February 2021 or did the claimant breach his contract by not turning up for work?
- d. Did the respondent summarily dismiss the claimant after he had given notice?
- e. Was the claimant in fundamental breach of the contract, entitling the respondent to withhold his notice pay?

Counterclaim

- f. Did the claimant:
 - i. Wilfully neglect his duties between November 2020 and 4 February 2021?
 - ii. Engage in work for his own business during his employment with the respondent?
 - iii. Cause significant financial losses to the respondent between September 2020 and February 2021?
- g. If so, is the respondent entitled to a reimbursement of 50% of the claimant's salary and 100% of the claimant's bonus for this period?
- h. Did the claimant remove critical business information belonging to the respondent?
- i. If so, did this require two of the respondent's employees to spend four days rectifying two customer orders?

Evidence

4. The tribunal had before it the following:

- a. A hearing bundle of 314 pages consisting of Part1, Part 2 Section 1, Part 2 Section 2 and Part 2 Section 3. There were also additional inserts numbered 03C, 27A-G, 31A, 32A, 32B, 32C, 33B, 33C and 315.
- b. Witness Statements

- i. On behalf of the claimant: Gary Corbett; Matt Briers.
 - ii. On behalf of the respondent: Gary Noble
5. Written closing submissions on behalf of both the claimant and the respondent.
6. It heard evidence on oath from:
 - a. Gary Corbett;
 - b. Matt Briers; and
 - c. Gary Noble.

The Law

Contract

7. Under general contractual principles a breach of contract entitles the innocent party to sue for damages. Damages following a breach have the purpose of putting the claimant into the position he or she would have been in had both parties to the contract performed their obligations according to that contract.
8. The *contra proferentum* rule of contractual construction means that terms will be construed strictly against the party who draws them up.
9. In ***Laws v London Chronicle (Indicator Newspapers) Ltd*** 1959 1 WLR 698, CA, the Court of Appeal took the view that general contractual principles should also apply to contracts of employment.

Counterclaim

10. Rule 23 of the Employment Tribunals Rules of Procedure 2013 provides for an employer's counterclaim, and relevantly states:

“Any employer's contract claim shall be made as part of the response, presented in accordance with rule 16, to a claim which includes an employee's contract claim.”
11. The jurisdiction for making an employer's contract claim is derived from article 4 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Article 8(b) provides that it must arise out of a contract with the employee. Article 3 excludes claims of the description set out within article 5, which includes intellectual property.

Findings of Fact

12. The respondent is a small business founded by Gary Noble, and manufactures fire sprinkler systems. After being promoted, the claimant was second in command, after Mr Noble. Under the instruction of Mr Noble, he managed the staff in the production process and tested the products.

13. The claimant's contract of employment was brief. It set out a number of "Basic duties", the most relevant of which are:

- a. *Responsible for the management and organisation of the production process;*
- b. *Ongoing improvement of production processes;*
- c. *The role is within a small company, and it must be expected that any requested task must be undertaken;*
- d. *Create a weekly plan for yourself/the team and provide a weekly report which will be reviewed.*

14. Other relevant extracts are:

Under the section headed "IT":

"It is essential when using work computers to limit them entirely for work use."

Under the section headed "Notice period":

"the role will be permanent and subject to 1 months notice of termination."

Under the section "Holiday":

"All holidays must be put on the holiday calendar. If another member of staff has booked time off, permission must be sought, and holiday time may have to be delayed."

15. Mr Noble's partner Judith worked in the company and was responsible for sales orders and invoices and liaising with external accountants. Their relationship ended in September 2020 and she left the company. She was not replaced and the claimant took on board at least some of her work. He became responsible for sales orders and invoicing.

16. Mr Noble took the breakdown badly and went on two holidays to Dubai in September/October 2020 and November/December 2020 for several weeks, returning in mid December. During that time, the claimant undertook the day to day management of the business, whilst still reporting to Mr Noble on a daily basis whilst he was abroad. The claimant carried out some of Mr Noble's work whilst he was away, such as telephone calls to clients.

17. Overall, the claimant had a substantial amount of extra work to deal with, after picking up Judith's and Mr Noble's work, as well as his own. This was over and above what he was contracted to do. Consequently, the claimant worked long hours to try and keep up with the workload.

18. The respondent's case is that the claimant failed to properly manage the factory and caused the respondent financial loss. However, the documentation within the bundle suggests that Mr Noble was generally pleased with the claimant's work and efforts up to the end of December

2020. There are several communications thanking him and praising him. Mr Noble gave him a £5,000 pay rise, offered him shares in the company, and a Christmas bonus of £3,500.
19. Mr Noble said in evidence that if he had known of the claimant's failures, he would not have given him the rise or the bonus. However, apart from his time in Dubai, Mr Noble came into the office at least periodically to check on things, and even from Dubai he was in daily contact and had access to the work systems. He knew what was going on in the factory and consequently, if there had been a problem, he would have known about it.
 20. There is no evidence that Mr Noble was unhappy with the claimant at this time. Mr Noble and the claimant were on good terms and there is documentation within the bundle showing that the claimant was caring towards Mr Noble and was worried about his well-being after his breakup.
 21. However, the claimant was uncomfortable about Mr Noble's treatment and criticism of other staff. For a small company, there was a high staff turnover. The crux came on 31 December 2020 when Mr Noble sent a WhatsApp message to the claimant complaining about other staff and saying he was going to have a meeting about it the following Monday.
 22. The claimant met with Mr Noble beforehand to discuss his concerns, but Mr Noble took no notice. In fact he said that three of the staff would have to compete against each other to impress him if they wanted to keep their jobs, and one of them was going to be sacked. The claimant protested at this suggestion and the meeting became heated.
 23. Thereafter, on 2 January 2021, Mr Noble sent an e-mail to the claimant, thanking him for his efforts at work and as a friend, but saying the claimant needed his help to get better at the job. He set out some ideas for improvements and said the place was not being managed, it was being instructed. It concluded by saying "I have every faith in you, but you simply need to take on board what I say..."
 24. There was no acknowledgement of the additional work the claimant had taken on board and the impact this may have had. Neither was the claimant subjected to any performance management review or disciplined for poor performance.
 25. The claimant responded by challenging the points raised by Mr Noble. This included setting out the work and hours the claimant had done, his concerns about Mr Noble's contradictory actions and instructions, his treatment of staff, and his general attitude. Because of all these issues, the claimant offered to resign.
 26. The following day, being 3 January, Mr Noble e-mailed the claimant giving him two options, which in essence were:

- 1) to resign or
- 2) to stay and start listening and taking his advice.

27. The two of them met and the claimant agreed to carry on working for him.

28. On 3 February Mr Noble came into the factory and called a meeting to speak to all the staff in which he criticised their work, including that of the claimant. He then left the building. With respect to the claimant, he was unhappy because the claimant had not completed a factory plan for re-organisation. The staff were upset.

Resignation

29. After this incident the claimant decided to resign. There is a conflict of evidence as to what happened next.

30. The claimant said he went into work the following morning, being Thursday 4 February, carried out some tasks, and gave staff their work instructions for the rest of the week. He said he told staff he was resigning and would give Mr Noble his resignation letter and ask for the rest of the week off. He told them he would either be back later that day or the following Monday, depending on what the response was.

31. The evidence of Matt Briers, which was not challenged, supports the claimant's version of events that he went in, explained his position to staff at around lunch time and gave them instructions on what work to do.

32. Mr Noble said the claimant he did no such thing and the staff were left wondering what to do, not knowing where he was. He found the claimant's work planner on his desk with no entries in it for the Thursday afternoon or Friday.

33. However, the absence of planner entries simply reflects the claimant's hope of being able to take leave and does not indicate that the claimant would not have come back into work that day if Mr Noble had refused his request. Both Matt Briers and the claimant came across as credible witnesses and were consistent in what they said. I prefer their evidence and accept their version of events.

34. The staff had instructions for the week and could get on with their work whether or not the claimant returned on Thursday 4 February, or Monday 8 February.

35. The claimant then went to Mr Noble's house to speak with him. He knocked on the door, Mr Noble answered, and the claimant handed him his resignation letter.

36. The resignation letter said:

“Please accept this letter as my formal resignation from employment at Grifen sprinkler solutions.

Your actions and attitude towards myself have made my position here untenable.

As per my contract of employment I am willing to work one months’ notice, however if you wish to terminate my employment immediately, I will leave the factory now.”

37. It is clear that the claimant’s contract required him to give one month’s notice of resignation.
38. With respect to the one and half days’ annual leave, there is a dispute. The evidence is conflicting over whether it was discussed on Mr Noble’s door step and if so, what was said.
39. Mr Noble’s evidence was that the claimant came to the door without a mask on and Mr Noble was concerned about catching Covid, which was why he was not in the factory office. Therefore, he simply took the letter and said nothing to the claimant. He did not authorize any annual leave.
40. He said that the claimant did not follow holiday procedure and that, in itself, was evidence that holidays were not granted. The procedure was simply to put the holidays on the calendar in the office and no permission for holidays was required from him.
41. The claimant’s evidence was that he requested the rest of the day (Thursday) and all of the following day (Friday) as annual leave, and Mr Noble agreed to this to let the dust settle. Mr Noble was not confined to home and was in work on both the 2 and 3 February, and also on most days after returning from Dubai.
42. He said the holiday process was to ask Mr Noble for holidays and, if he agreed to the request, it would be written on the calendar. However, Judith had dealt with the calendar, and after her departure there was not yet a calendar in place for 2021. Consequently, he could not put his holidays on the calendar.
43. Mr Noble did not deny that there was no calendar in place, but said the claimant should have organised one. The contract stated that holidays must be put on the calendar.
44. From this evidence, I find that there was no calendar in place and it was not the claimant’s responsibility to organise one, as this had been Judith’s job. Consequently, the claimant could not have recorded his annual leave in this way.

45. I accept from the documentary evidence before me and the claimant's account, that Mr Noble was in the factory that week and on many occasions after returning from Dubai. I find it implausible that he was so concerned about Covid that he shut the door quickly without saying anything, whilst the claimant was standing at his door step. Therefore, I find that a conversation did take place between the claimant and Mr Noble about annual leave.

46. I turn now to the events and correspondence that followed, to consider further what was said about holidays and whether the claimant resigned without notice.

47. Mr Briers in his statement said that Mr Noble phoned him and told him that Gary Corbett had just resigned. He then came into work and said to staff that the company was doomed without Gary Corbett and he was unsure what to do. He then got angry and told them that Gary Corbett had said he would work a notice period, but he wouldn't let him. He said "that man won't be stepping foot in my factory ever again."

48. Mr Noble sent a WhatsApp message on the evening of the 4 February which said:

"I understand you want to resign and I accept it.

What is not acceptable is just leaving work of your own volition. I am taking it that you are not working your notice. Please post your key back to us as soon as possible.

You will be paid until yesterday including holiday pay accrued.

Thanks for your efforts."

49. The fact that he talks of just leaving work of his own volition suggests that the claimant at least raised the issue of holidays and I find that holidays were indeed discussed.

50. The claimant responded:

"I came to your house and handed you my resignation.

I said I was happy to work my notice but wanted to take the rest of today and tomorrow off. You agreed and asked me to work my notice. Which I said I would from Monday.

Let's try to stick to what has actually happened rather than fantasy events. Your whole life centres around arguments and disagreements with everyone. You don't need to add this to your list."

51. Mr Noble responded:

“You’ve walked out of work with no notice. I’m not arguing about it; you’ve left your post while I’m confined to being here. The fantasy is the shit tip you have left work in, its an abomination. I want my key back; you’ve left and that’s it. You gave me no choice, it was a statement. I am not being presented with a resignation letter and being told I’m having today and tomorrow off. Best of luck and post the key.”

52. The claimant texted back to say he was seeking advice from his union representative.
53. On 5 February, the claimant wrote again to Mr Noble, re-iterating that Mr Noble had agreed to his request to take the afternoon of Thursday 4th and Friday 5th off work to let the dust settle and that he would be in work on Monday 8th. He referred to Mr Noble’s WhatsApp message and asked him to confirm that he did not want the claimant to complete his notice period which he was willing to work. He confirmed he was available to work his notice.
54. Two further e-mails were sent by Mr Noble on 5 February in response, saying the claimant could not simply leave work for two days without prior consent. He simply could not work there. He had left of his own free will and withdrawn his labour. As far as Mr Noble was concerned that was the end of the matter.
55. In resolving this conflict of evidence, I again note that Mr Briers evidence was not challenged and that the claimant came across as a credible and consistent witness. I prefer the claimant’s evidence to that of Mr Noble. Consequently, I find that the claimant did request and was granted annual leave by Mr Noble as stated, and that he was willing to work his notice period but was prevented from doing so by Mr Noble.

Other matters relating to the counter-claim

Note books

56. Mr Noble claims that the claimant stole vital information when he resigned, that was contained in note books.
57. There were two note books, which the claimant had bought himself and in which he kept notes. The claimant’s evidence was that they were only notes to help him understand things, and make sketches and as aids memoir. He also used them for domestic purposes. All vital information was held in the office and in computer folders.
58. Mr Noble’s evidence was that they contained vital information about processes that were held nowhere else. He said this caused the business financial loss in that the information had to be re-worked and recorded.

59. Mr Noble asked for the return of these notebooks on 25 February and the claimant gave them to Matt Briers on 26 February to pass on to Mr Noble.

60. The respondent has not put them in evidence.

61. From the lack of information before me, there is nothing to suggest that the notebooks contained crucial or confidential information. I accept the claimant's evidence that they simply contained personal notes to help the claimant.

Claimant's own business

62. During the course of the claimant's employment with the respondent, he also had a small property business with his wife, which was mainly run by his wife. Towards the end of 2020, they were thinking about buying another property for the business and the claimant was quite open about this. Mr Noble knew about the business and raised no objections about it until the claimant resigned.

63. Thereafter, Mr Noble alleged that the claimant was working on his own business in the respondent's time in breach of contract. There is no term of the contract precluding the claimant from running his own business, and there is no evidence that it interfered with the claimant's work with the respondent.

Other alleged breaches

64. With respect to personal IT use, there was a non-work folder on the respondent's computer system. However, it had not been accessed since November 2020. There were also a few of the claimant's bank statement on the system but nothing of great significance.

65. Also, Mr Noble alleged that the claimant had fraudulently completed an invoice and he contacted the police about it. It was investigated, and the police found that the invoice was genuine and there was no further action to be taken. There was no evidence to suggest the claimant was guilty of fraud or of causing financial loss, or any other wrongdoing.

Other Matters of relevance

66. At the start of the hearing, the respondent clarified that it was only relying on express terms of the contract of employment for its counterclaim. These appear in the section headed "Basic duties" (as set out above under "Findings of Fact").

Discussion and Conclusions

Counterclaim

Wilful neglect of duties

67. The contractual terms relied upon by the respondent under “Basic duties” read more like a job description than a set of contractual terms. Even if they are contractual terms, they must be construed strictly. There is no term covering the adequacy of work done.
68. Mr Noble only complained about the claimant’s work once the claimant challenged him about his treatment of other staff and threatened to resign. He was generally happy with the claimant’s work and never subjected him to any performance management review, nor disciplined him for poor performance.
69. It is clear that the claimant adequately carried out his duties and went beyond this by taking on additional tasks to help the respondent. He did not wilfully neglect his duties and he was not in breach of contract in this respect.
70. With regards to the annual leave taken on the Thursday afternoon and the Friday, the claimant properly requested it from Mr Noble and it was granted. Consequently, the claimant did not breach his contract by not turning up for work on these days.

Notebooks

71. As for the notebooks, there is nothing to suggest that they contained crucial or confidential information. They belonged to the claimant and he did not breach any terms of the contract by taking them. In any event, he gave them to Mr Noble, when asked for them. Consequently, the respondent’s claim for reimbursement for additional work done due to not having the notebooks must fail.

Claimant’s own business

72. With respect to the small property business run by the claimant and his wife, it did not interfere with the claimant’s role at the respondent company. Mr Noble knew about the business and did not object to it. There was no contractual term precluding the claimant from running his own business whilst working for the respondent and the respondent suffered no harm from it. Consequently, there was no breach of contract and the respondent’s claim flowing from this must fail.

Personal use of IT

73. Whilst the claimant made some minimal personal use of the work computer, this caused no undue harm to the respondent. It is not a fundamental breach of contract and does not entitle the respondent to any damages.

74. With regards to the matter of the invoice, the police cleared the claimant of any wrongdoing. The claimant was not in breach of contract in this respect and there can be no damages flowing from it.

Overall conclusion on counterclaim

75. There was no breach of contract, such as to justify the monetary claim made, or at all. Therefore, the respondent's counterclaim is not well-founded and is dismissed.

Claim

76. It is clear that the resignation letter is in compliance with the contract in that it gives one month's notice of the claimant's termination of employment and confirms his availability for work during that notice period.

77. The claimant therefore gave proper notice and was available to work. The reason he did not work was because Mr Noble chose to prevent him from doing so.

78. The claimant did not commit any fundamental breaches of contract. Consequently, the respondent cannot rely on any summary dismissal to avoid paying him notice pay. There is no legal basis entitling the respondent to withhold his notice pay.

79. The claimant is entitled to his notice pay from the respondent, who is in breach of contract for not paying it. The claimant's claim is therefore well founded.

Employment Judge Liz Ord

Date 29 September 2022

JUDGMENT SENT TO THE PARTIES ON

29 September 2022

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.