



EMPLOYMENT TRIBUNALS

Claimant

Mr Caleb Ellis

Respondent

v Chancellors Group of Estate agents
Limited

Heard at: Reading

On: 9 September 2022

Before: Employment Judge Gumbiti-Zimuto

Appearances:

For the Claimant: In person

For the Respondent: Mr Shawn Brown, HR and Organisational Development
Manager

JUDGMENT having been sent to the parties on 29 September 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is an unfortunate case. The claimant was employed by the respondent in a position in which he appeared to be performing in a way that was satisfactory to the respondent. It would appear that it was a role that he wanted to continue to be employed in.
2. Unfortunately, in November 2019 he was involved in a car accident which resulted in him having an extended period of time off work. The respondent came to the conclusion that the claimant's employment ought to be terminated in about March 2020.
3. Soon afterwards the government introduced the furlough scheme, and the respondent took the decision to re-engage the claimant with his continuity of employment continuing on the basis that he was placed on furlough. The claimant entered into an agreement with the respondent to be placed on furlough and, in accordance with the furlough scheme, he was to be paid 80% of his usual pay.
4. The claimant was originally employed on a contract of employment which made provision for a probationary period. The contract does not specify what the probation period is, but the claimant was told that his probation period was to be for six months. The respondent's employee handbook also makes clear that the probation period was to be for a period of six months.

5. The employee probation period is dealt with on page 3 of the employee handbook, and it provides:

“Your employment is subject to a probationary review period. Once you have passed your probationary review period, this will be confirmed to you in writing by the HR Department.”

6. It also provides towards the end of that section:

“You can expect your probationary sign-off review meeting to take place approximately 6 months into your employment, but this will be flexible to take into account annual leave, public holidays, reviewers diary availability and individual job roles.”

7. There are a couple of things that need to be said about that provision: The first is that it was not set in stone that the probation period would last for six months. The probation period could be extended. Secondly, the employee handbook makes clear that there is to be a probationary review period whose completion is confirmed in writing so there is to be a completion of probation period and, thirdly, there should be a probationary sign off period.

8. It is important to note that the employee handbook contains a letter to employees from the Managing Director and what it provides is that:

“I am delighted to welcome you to company and express my sincere hope that you will thoroughly enjoy working here in our team. We are very pleased that you have chosen to join us and I hope that your career with us will prove to be highly successful and very rewarding.

I would ask that you study the contents of this employee handbook carefully. It is designed to both introduce you to our organisation and be of continuing use during your employment. It contains a great deal of helpful information and describes many of our benefits, policies, procedures and regulations that relate to your employment. Where a policy/procedure is not fully detailed within the Employee Handbook, a web link will be provided which will direct you to the relevant document. The contents of this Employee Handbook are entirely non-contractual and do not form part of your Contract of Employment.

General amendments to the Employee Handbook will be made from time to time. An up-to-date version can be found on SelectHR in the HR Policies section.

The success of our organisation depends largely on the employees and everyone in the management team looks forward to assisting you in playing your part in our future success.

If you have any questions regarding any aspect of your employment with us then please do not hesitate to discuss them with your line manager or HR Department or me directly.”

9. The claimant says that his employment became permanent, and he was no longer subject to a probation period. If his probation period had been satisfactorily completed, then he is entitled to four weeks' notice. He was only paid one weeks' notice on the basis that he had not satisfactorily completed his probation period and so he makes a claim for unpaid wages in respect of three weeks' notice pay.

10. The offer of employment letter made it clear that the claimant's offer of

employment was subject to satisfactory completion of probation period. The contract provides:

“Probationary Period

Your employment is subject to the satisfactory completion of a probation period. The length of your probation period may be extended where this is deemed appropriate by the company. Further information relating to the above are contained in the employee handbook”.

11. The contract specifically refers the claimant to the employee handbook in relation to the probationary period.
12. From the evidence which has been given by the parties and was uncontested, it is clear that the claimant never had a probationary review meeting and he in fact never worked a period of time equivalent to a probation period in a role where he was actually performing work that could be assessed as satisfactory or unsatisfactory. There is no suggestion that the work that he did perform was unsatisfactory.
13. Following the claimant’s accident there was a concern by him about his ability to work in a customer facing role and there were some attempts to find him alternative employment. The claimant was trying to get an alternative role so that he could be sufficiently recovered to go back to the type of work that he had been doing before.
14. Unfortunately, none of that happened and further unfortunately, covid happened. The claimant was in fact never again at work until his employment was terminated at the end of the furlough period.
15. The claimant never completed his probationary period and therefore under the contract of employment he was only entitled to one weeks’ notice.
16. There are circumstances where silence could indicate a satisfactory completion of a probationary period, but this is not one of them. The reason that this is not one of them is because firstly, the specific contents of the contract handbook make clear that there are positive steps that need to be taken in order for the probation period to be brought to an end, there has to be a probationary review, and then it is confirmed in writing that probation has been satisfactorily completed.
17. The second reason why there cannot be said to have been a satisfactory completion of the probation period in this case is that the claimant never actually worked the minimum period of time that it is anticipated would be the probation period. He had worked less than six months when he had an accident which meant that he was not able to work.
18. Everything that happened thereafter is consistent with the claimant still being on probation, there is nothing in what happened afterwards which is inconsistent with the claimant being on probation. I am satisfied that the claimant was only entitled to one weeks’ notice pay under the terms of his contract of employment.
19. The respondent agreed to pay to the claimant his furlough pay at the 80% of the basic pay up to the statutory limit of £2,500 and did so.

20. Regrettably, the respondent overpaid the claimant resulting in an overpayment of £633.44. There was a problem with the claimant's ability to obtain his payslips during the period of his employment when on Furlough and so he was not aware he was overpaid at the time. He has spent the money. The respondent is entitled to make a claim for the overpaid wages and to set that off against anything that the claimant might have recovered.
21. The claimant brought a claim for breach of contract against the respondent which means that the respondent can counterclaim against the claimant. There is a valid counter claim in this case, the respondent is entitled to succeed in its counterclaim because the factual basis on which it is made is not disputed.
22. The claimant made a claim for notice pay, a claim of breach of contract. Where there is a claim for breach of contract a respondent is entitled to counterclaim in respect of contractual claims against its employee. I would hope however that bearing in mind the circumstances of this case which are very unfortunate that the claimant's debt of £633.44 would be written off by the respondent. The situation has arisen through no fault of the claimant.

Employment Judge Gumbiti-Zimuto

Date: 6 December 2022

Judgment sent to the parties on

21 December 2022

For the Tribunal office