



EMPLOYMENT TRIBUNALS

Claimant

Mr Paul Bloom

v

Respondent

Capita Customer Management
Limited

Heard at: Norwich (by CVP)

On: 23 May 2023

Before: Employment Judge Postle

Appearances

For the Claimants: In person

For the Respondent: Mr Allen, KC

JUDGMENT

The Claimant's claim that the Respondents were in breach of contract is not well founded and is dismissed.

REASONS

1. This is a claim brought for breach of contract / wrongful dismissal. The Claimant having been employed as a Portfolio Director for the period 6 June 2022 until he was dismissed on 9 August 2022, with a payment in lieu of notice.
2. In this Tribunal we have had the benefit of a Bundle of documents consisting of 149 pages. We have had the Respondent's Position Statement prepared by Mr Allen KC, Counsel for the Respondents. The Tribunal also heard evidence through prepared witness statements on behalf of the Claimant Mr Bloom and on behalf of the Respondent Mr Ellis.
3. The Tribunal have also been referred to two Authorities Focsa Services (UK) Limited v Birkett [1996] IRLR325 and Johnson v Unisys Limited [2001] KHL13.
4. The Claimant's claim is for breach of contract / wrongful dismissal, but what Mr Bloom is really trying to run is an unfair dismissal claim. Under the Employment Rights Act 1996, particularly s.108, an employee can only bring an ordinary unfair dismissal claim if he or she has two years'

continuous service. The notice period under the Employment Rights Act 1996, particularly s.86, for an employee employed for one month or more is one week's notice if the period of employment is less than two years.

5. It is common ground in this case that the Claimant was employed from 6 June 2022 to 9 August 2022 as a Portfolio Director. It is true that the Respondents have not produced evidence to counter the Claimant's arguments that he believes he was unfairly dismissed and that is not because the Respondents accept that he was, but quite simply they do not need to do so or justify dismissal in circumstances where an individual employee has less than two years' continuous employment.

6. The reason for that is that the Claimant's Terms and Conditions of Employment which are found in the Summary Terms and Conditions at 1992 and the Contract at 92 – 155, attached to his offer letter at 89, which the Claimant accepts. The offer letter clearly states,

“The terms and conditions and contract constitute your terms and conditions of employment.”

7. The Summary expressly states,

“The summary statement forms part of your employment terms and conditions alongside the enclosed contract of employment, both of which are to be treated as a single document.”

8. The Contract goes on to expressly state that,

“The contract of employment forms part of your employment terms and conditions alongside the enclosed Summary statement. Both of which should be treated as one single document and shall be the entire agreement between us and replace all other arrangements. By accepting this agreement you confirm that you accept the terms of this agreement and have not relied on any representations or agreement which are not contained in this document.”

9. The notice provisions are clearly set out in the Summary,

“The notice period during the six months probationary period, or unextended probationary period, both parties are required to give at least one week's notice of termination.” Page 90.

10. No other caveats to that, or elsewhere are to be found. The probationary period is expressly dealt with in the contract,

“Your employment will be subject to a six month probationary period during which both parties are required to give one week's notice as stated in your summary statement.”

11. Again it is clear, precise and there are no caveats or exclusions or other documents referred to.

12. Indeed, it goes on further,

“The company may at any time during the probationary period, including any extended period of probation, terminate your employment and this does not prejudice the company’s right to dismiss in accordance with the notice provisions during the probationary period, should this prove necessary.”

13. Again, clear, precise, no caveats, no exclusions.

14. The Respondent’s terms and conditions clearly expressly exclude any reference to disciplinary or Grievance procedures as being non-contractual.

15. The contract finally provides for the contractual right for a pay in lieu of notice (page 94) and makes it clear that if verbal notice is given it is effective on the date that it is given.

16. To conclude as said in the Johnson v Unisys Limited [2001] KHL13 case,

“Common Law right embracing the manner in which an employee is dismissed cannot satisfactorily co-exist with the statutory right not to be unfairly dismissed. A newly developed common Law right of this nature covering the same ground as the statutory right would fly in the face of the intention of Parliament and the limit that has been prescribed.”

17. In those circumstances the Claimant’s claim for breach of contract is not well founded.

Employment Judge Postle

Date: 7 July 2023

Sent to the parties on: 12 July 2023

For the Tribunal Office.