



EMPLOYMENT TRIBUNALS

Claimant: DR FERENC SÜLI

Respondent: CAPTEC PLC

Heard at: Exeter (by CVP) **On:** 21 April 2023

Before: Employment Judge Oldroyd (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: In person

WRITTEN REASONS

Summary

1. By way of ET1 presented on 13 December 2022, the Claimant is seeking to recover damages for breach of contract. In short, the Claimant says that following the termination of his employment, he ought to have been paid 4 weeks' pay in lieu of notice, but was not.
2. The Respondent accepts that the Claimant was not paid in lieu of notice. The Respondent instead maintains that the Claimant properly worked throughout his notice period and was paid during that time.

Evidence

3. The parties produced an agreed bundle of documents.
4. The Claimant produced a witness statement as did Mr Kalavath, a director of the Respondent. Both the Claimant and Mr Kalavath gave oral evidence.

Background

5. The Respondent is involved in the design and manufacture of computer systems.
6. The Claimant commenced his employment with the Respondent on the 4th of April 2022 as its interim engineering director.
7. The parties entered into a written the contract (the **Contract**) which was expressed to be for a fixed term of six months ending on 30 September 2022.
8. The Contract provided that either party was able to terminate the Contract prior to 30 September 2022 by providing four weeks' written notice. The Contract allowed the Respondent, at its election, to pay salary in lieu of the notice period.
9. The Claimant says that at the end of the fixed term contractual period, he expected to be offered a new role with the Respondent with a view to exploiting opportunities with the Respondent in the United States of America. The Claimant accepted in his evidence, however, that the Respondent did not commit to offering him such a role, either in the Contract or otherwise.
10. A key part of the Claimant's interim role involved recruiting a permanent engineering director to succeed him. This task was achieved and a permanent director was appointed on 12 July 2022. The permanent director was scheduled to commence his employment on 22 August 2022.
11. On the very day that the Claimant's successor was appointed, there was an electronic message exchange between the Claimant and the Respondent's managing director, Mr Kalavath. During the course of this exchange, the Claimant and Mr Kalavath discussed the period during which the Claimant would work alongside the newly appointed director with a view to handing over his responsibilities in an orderly way. The salient parts of the exchange read as follows:

Claimant: How much time do you plan for handover?

Arun Kalavath: Let's aim for two weeks please

Claimant: Looking at the calendar we can do one week plus three days ... How does that sound?

Arun Kalavath: That should work

12. It can be seen, from this exchange, that the Respondent suggested a handover period of two weeks, but the Claimant then curtailed the handover period and agreed to a handover of one week and three days, which would come to an end on 31 August 2022.

13. The Respondent says that it regarded this message exchange on 22 July as being either the provision of written notice by the Claimant to terminate the Contract on 31 August 2022 or else evidence of a mutual agreement that the Claimant's employment would end on that date.
14. The Claimant says that he neither intended to serve notice at this time, nor agreed that his employment would end on 31 August 2022. The Claimant instead says that his intention was that 31 August 2022 would mark the beginning of his 4 week notice period, during which time he would remain on the Respondent's payroll (and also discuss further opportunities with the Respondent in the United States of America).
15. On 25th August 2022, the Claimant sent an e-mail to the Respondent in these terms:

"This e mail is to confirm that I'm exiting your business at the end of this month"
16. The Respondent says that this e-mail reaffirmed its understanding of the position that had been reached on 12 July 2022, namely that the Claimant's employment was to end with finality of 31 August 2022.
17. In the event the Claimant's employment duly ended on 31 August 2022 and the Claimant was paid up until that date. The Claimant carried out no further work for the Respondent.

The Claim

18. The Claimant now says that although carried out no further work for the Respondent after 31 August 2022, he remained entitled to a four week notice period pursuant to the Contract and that he ought to have been paid in lieu of working during that period. On this basis, the Claimant seeks to recover 4 weeks pay by way of damages for breach of contract in the sum of £7,167.
19. The Respondent denies that it acted in breach of contract. It says the Claimant provided written notice on 12 July 2022 or else on 25 August 2022 that the Claimant's employment would end on 31 August 2022.
20. Alternatively, the Respondent says that a mutual agreement was reached that the Claimant's employment would end on 31 August 2022, that agreement having been reached on either 12 July 2022 or 25 August 2022.

Was notice given on 12 July 2022 or else was there an agreement at that time that the Claimant's employment would end on 31 August 2022.

21. In my judgment, the Claimant and the Respondent reached an agreement, on 12 July 2022 that the Claimant's employment would end on 31 August 2022. Three points lead me to that conclusion:

- a. It is firstly necessary to have in mind the context in which the electronic message exchange of 12 July 2022 took place. As at that date, it was known to both the Claimant and the Respondent that the Claimant's services would be no longer required after 31 August 2022. To this end, by that time, the Claimant's successor would have been in situ since 22 August 2022 and that successor and the Claimant would have completed the handover process, the length of which had been proposed by the Claimant (and agreed to by the Respondent).
- b. The message itself exchange, viewed in the above context, is very suggestive of an agreement that the Claimant's employment would end on 31 August 2022. That is consistent with the fact that the discussion references a handover with his permanent successor, following which the Claimant's role as an interim director would inevitably be at end.
- c. Further, the fact that the Claimant and Respondent reached an agreement at this time is consistent with the Claimant's own e mail of 25 August 2022 when he "*confirmed*" that his final day of employment would be 31 August 2022.

Was notice given on 25 August 2022 or else was there an agreement at that time that the Claimant's employment would end on 31 August 2022.

22. Even if an agreement that the Claimant's employment would end of 31 August 2022 had not been reached on 12 July 2022, I am satisfied that the Claimant's e-mail of 25 August 2022, viewed objectively, amounts to written notice that the Claimant's employment would end on the 31st of August.
23. The e-mail of 25 August 2022 is clear in its terms. The Claimant says, bluntly, that he was ending his employment on 31 August 2022. The Claimant does not, in that e mail, suggest any way that he giving 4 weeks' notice of the termination of his employment. The Claimant does not ask to be paid in lieu of notice either.
24. I also note that the Claimant's suggestion that he ought to be paid 4 weeks' notice as from 31 August 2022 is implausible for a further reason. Notably, there is no evidence at all that the Respondent was ever asked (let alone agreed) that the Claimant should be entitled to be paid in lieu of notice (and yet the Contract makes it clear that for the Claimant to be paid in lieu of notice would require the agreement of the Respondent).
25. For these reasons the claim is dismissed.

Employment Judge Oldroyd
Dated: 10 July 2023

Sent to the parties on: 27 July 2023

For the Tribunal: