EMPLOYMENT TRIBUNALS

Claimant: Ms L Chimin Song
Respondent: Betternations Limited

Heard at: London Central (by video) in public **On:** 4 December 2023

Before: EJ Isaacson

Representation
Claimant: In person
Respondent: Mr A Alemoru, solicitor

JUDGMENT having been sent to the parties on 4 December 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Evidence before the Tribunal

1. The Tribunal was presented with a joint bundle, a written witness statement from the claimant and a written witness statement from Ms L Budaeva, the CEO and founder of the respondent company. Both witnesses were questioned, and both parties had an opportunity to give oral submissions.

2. At the beginning of the hearing the claimant asked to add to the bundle a letter headed without prejudice. I glanced at the letter but decided it was without prejudice and therefore disregarded its contents.

Claim and issues

3. At the beginning of the hearing I clarified with the parties what were the claim and issues. The parties agreed the following:

4. The claimant's claim is for breach of contract relating to an alleged share allocation.

5. Was the claimant's contract of employment varied so that the claimant was entitled to the equivalent of four months shares? Had there been a breach of this agreement?

6. If so, how much should the claimant be awarded as damages for the breach of contract?

Law

7. Neither party presented any written submission nor referred to any case law. I set out, at the beginning of the hearing, the following general principles that I would be considering when making my decision:

7.1 To be a binding agreement there must be an offer, acceptance and consideration.

7.2 The individual terms of the contract must be sufficiently clear and certain for the court to be able to give them meaning.

7.3 Just because a term does not lend itself to precise figures does not mean it cannot be binding.

7.4 The existence of choice in a contractual term will not render it too uncertain to be enforceable if the options set out are clear.

7.5 In searching the true meaning of a contractual term, the Tribunal will often look at the circumstances surrounding the making of the contract as an aid to construction and to clarify any ambiguities and look at the intention of the parties.

Submissions

8. It was agreed between the parties that since the claimant had not been employed for 6 months no shares had vested under her employment agreement.

9. The claimant's primary submission was that in a zoom call on 19 July 2020 the claimant's employment agreement was varied when she was offered by Ms Budaeva the value of four months' worth of company shares out of the 612 shares allotted to her which she valued as the equivalent of 68 shares (4/36 x 612). She was adamant that in that conversation there was no discussion of 0.5%. She argued that she accepted the offer and so it was binding.

10. Her secondary argument was that if she was not entitled to 68 shares then she did agree to accept a 0.5% allocation in her message exchange set out at p41 when she said she would sign the document.

11. The respondent argued that on 19 July 2020 the respondent offered the claimant, as a gesture of goodwill, 0.5% shares which was around 4months shares. The claimant never accepted the offer, and it was then withdrawn. There was no binding agreement and no breach of contract.

Findings of fact

12. The claimant was employed by the respondent on 16 April 2020, as set out in her employment agreement, p25. The claimant worked part time usually staring at 6.00 pm as she was working elsewhere during the day.

13. Part of her employment agreement was that she was offered shares, p27, as set out in schedule One, p36.

14. Schedule one stated:

"You are allotted 5.5% of the Company equity as of the date of this agreement in the form of Ordinary Shares at a purchase price of £0.01 per share.

The shares will be subject to a reverse vesting schedule from 16 April 2020 under a vesting schedule as follows:
. the shares will vest in equal tranches every month over a period of 3 years (the vesting period),
. with a 6 months cliff before the first tranche vests,
. such that at the end of the 3 year vesting period all shares have vested.

If your service to the Company terminates, the treatment of your shares will be as follows:
…..
(c) A "Forced Leaver" is a person who is made redundant or dismissed without being a Bad Leaver. A Forced Leaver can keep their vested shares and will have an obligation to sell their unvested shares at nominal value."

15. The claimant did receive a share certificate, dated 16 April 2020 for 612 fully paid ordinary shares of £0.01 nominal value for each share p77.

16. Ms Budaeva notified the claimant that her employment was being terminated in a zoom call on 19 July 2020 because of funding issues and because the claimant could not work full time. This is not disputed.

17. The claimant asked about her share options. It was agreed that under her employment agreement her shares had not vested as she had not met the 6 months cliff.

18. The claimant discussed her 4 months contribution to the company. This is where the two witnesses recall of the conversation differs. Both witnesses came across as honest and reliable witnesses. It is often the case that two people can come away from a meeting believing different things have been agreed at the same meeting.

19. Ms Budaeva was clear that she offered, as a gesture of goodwill, to explore allocating 0.5% of her share allocation, having quickly, while on the call, calculated roughly what 4 months contribution would amount to 0.5%. She was consistent in her evidence that the offer was for 0.5% of the share allocation and that 4 months had been used as an estimate to make the offer.

20. After her zoom call with the claimant Ms Budaeva took advice from her investors and advisors, who recommended her to use Seedlegals digital service to facilitate the buyback of unvested shares, excluding 0.5% of the Company's share to the claimant. They also advised that 0.5% must be calculated based on the number of shares that were in circulation and issued to the 7 investors in place at the date the claimant joined the Company on 16 April 2020.

21. The claimant recalls the conversation differently. In her witness statement she stated: "*She had told me that this was not the case and was willing to value 4 months worth of company shares I own despite the 6 months cliff and the formalities would be exchanged via email".* She did not recall any mention of 0.5%. Her recall was that Ms Budaeva would ignore the 6 months cliff and honor 4 months shares.

22. In an email dated 19 July 2020, in which the termination of employment was confirmed, Ms Budaeva stated: "*You haven't reached the 6 month cliff period for your shares to vest as per the Employment Agreement, however as recognition for your effort, I have decided to give to you company's shares for 4 months – 0.5%. More details about share certificate and further steps will be shared later".p37*

23. The claimant confirmed in an email on 31 July 2020: "*Thank you for honouring the company shares for the 4 months at 0.5%".*

24. Two documents were sent to the claimant on 23 August 2020 for her to sign for the transfer of unvested shares. The 2 documents sent to the claimant were forwarded to the claimant using a Seedlegals service. The 2 documents showed that 0.5% equated to 53 shares based on the original share issued table, p40.

25. On 26 August Ms Budaeva chased the claimant for the signed forms.

26. The claimant replied on 26 August stating that she believed the share calculation was wrong stating the shares for 4 months should be 68 and therefore selling 544 and not 559 shares. Ms Budaeva replied shortly after stating: *"The amount is correct 0.5% at the point of the grant when you originally was granted shares, not after the investment round".*

27. There is further messages exchanged including the claimant asking for clarification when 0.5% was agreed. Ms Budaeva message in reply on p 41 confirms there was no agreement in writing, it was a gesture of goodwill, and the calculation was based on a % and not the number of shares.

28. The claimant responded that evening by saying: "*If you say that this calculation is what you want to give in the end I will sign it, don't really want to discuss in length about it".*

29. However, the claimant did not sign the papers and on 1 September emailed the respondent stating:*" I considered the discrepancies in the share transfer form and I am not happy with the fact that I was constantly being texted and pressured to accept amount of shares which is not 4 months worth of vested shares of which was previously agreed in writing."*

30. Based on this correspondence I find that the claimant never in fact accepted the respondent's offer to give her 0.5% of the shares at the point of the grant on 16 April 2020. She appeared to have reluctantly agreed to the offer in her message on p41 but this was not actioned and was clearly withdrawn by the claimant's email dated 1 September 2020.

31. The respondent wrote an email to the claimant on 4 September 2020 stating that as she had rejected the offer to keep 53 shares, the offer was now withdrawn, and she must sell her unvested shares back to the company at a nominal value. If she failed to sign the agreement within 14 days the company would cancel the shares and process a transfer of the nominal amount of £6.12. This email clearly withdraws the offer previously given to the claimant.

32. It is clear to me from the correspondence from Ms Budaeva, and from her evidence before the Tribunal that she never intended to offer the claimant 4 months shares valued according to how the claimant calculated her shares. Ms Budaeva was clear that what she had offered to the claimant was 0.5% of the shares "*at the point of the grant when you originally was granted shares, not after the investment round".*

33. 0.5% is consistently mentioned in all the future correspondence. I accept her evidence that in the zoom call she mentioned the figure of 0.5% and after her zoom call with the claimant she took advice and was advised that 0.5% must be calculated based on the number of shares that were in circulation and issued on 16 April 2020. The 2 documents sent to the claimant were consistent with that advice and were forwarded to the claimant using a Seedlegals service.

34. The shares were being offered as a gesture of goodwill. The claimant continued to challenge the calculation and never accepted the offer of 0.5%. Consequently, the offer of 0.5% shares was withdrawn by the respondent, before it became a binding agreement.

Applying the law to the facts

35. I find, as agreed between the parties, that under the claimant's Employment Agreement no shares vested in the claimant because the claimant had not been employed for 6 months.

36. The respondent offered to the claimant, first in in a zoom call on 19 October 2020, and later in correspondence, as a gesture of goodwill, 0.5% of the Company's shares based on the number of shares that were in circulation and issued to investors in place on 16 April 2020. This was calculated as 53 shares. The claimant never accepted this offer.

37. When questioned by myself the claimant was adamant that the offer to her in the zoom call was for 4 months shares and not 0.5%. Based on her evidence it was clear that there were no clear and certain terms agreed between the parties. There was no meeting of minds. The claimant was stating the agreed offer was 4 months shares based on 612 shares and the respondent was clear that the offer had been for 0.5% of the shares as of

16 April 2020. There is no clear and certain contract reached based on these different views of what was agreed or intended.

38. I do find that the respondent did offer the claimant 0.5% of the Company's shares based on the number of shares that were in circulation and issued to investors in place on 16 April 2020. However, the claimant never accepted this offer. The respondent then withdrew the offer on 4 September 2020. Therefore, there was no offer, acceptance and consideration.

39. Therefore, I find that the claimant's contract of employment was not varied so that the claimant was entitled to the equivalent of four months shares. The claimant was offered 0.5% of the Company's shares based on the number of shares that were in circulation and issued to investors in place on 16 April 2020. The claimant never accepted this offer. The respondent then withdrew the offer on 4 September 2020. Therefore, was no binding agreement which had been breached.

40. Therefore, the claimant's claim for breach of contract fails and is dismissed.

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Employment Judge Isaacson
21 December 2023

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REASONS SENT TO THE PARTIES ON

21/12/2023

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FOR THE TRIBUNAL OFFICE