



EMPLOYMENT TRIBUNALS

Claimant: Mr C Barratt

Respondent: Network Plus Services Ltd

Heard: via Cloud Video Platform in the North East Region

On: 14 February 2024

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: Mr A Macaulay, solicitor

Respondent: Mr T Cross, consultant

JUDGMENT

The claim for wrongful dismissal is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant was employed by the respondent from 6 March 2023 until 14 July 2023 as a Quantity Surveyor. Early Conciliation started on 2 September 2023 and ended on 19 September 2023. The claim form was presented on 26 October 2023 and includes a complaint of wrongful dismissal. The respondent defends the claim.

The hearing

2. There was an agreed bundle of documents running to 117 pages. I heard evidence from the claimant and, on behalf of the respondent, from Eve Leary and Ben Leonard. Mr Mcaulay submitted and referred to dictionary definition of 'successful' and the

decision of the EAT in *The Partners of Haxby Practice v Mrs S Colleen UKEAT/0120/12/DM*, for which I am grateful.

The issues

3. The issue that fell to be determined at the final hearing was whether the respondent breached the claimant's contract of employment by paying him two weeks' notice rather than 3 months' notice. The claimant's case, in summary, is that due to a letter dated 30 June 2023 which contained the words "successful probation" he believed he had passed his probationary period early and was entitled to the full three months' notice. The respondent's position is that the letter of 30 June related to a salary increase and did not indicate that the probationary period had been completed or passed.

Findings of fact

4. The claimant was employed by the respondent from 6 March 2023 until the 14 July 2023. His terms and conditions of employment were set out in an offer letter dated 6 December 2022 and a contract of employment dated 8 March 2023. The offer letter stated that:

"Your salary will be £52,500 per annum, increasing to £55,000 per annum after 3 months based on performance...."

5. The contract contained the following relevant provisions:

"7 Changes in Conditions

The Company reserves the right to alter or amend the terms of this contract as the needs of the business dictate.

The Company will normally, where possible, notify you in writing of any change in these conditions by giving one month's notice before that change will take effect....

15 Termination of Employment

The first 26 weeks of your employment will be a probationary period during which either party may terminate the employment by serving one week's written notice. The probationary period may be extended by the Company if, in the Company's view, it is appropriate.

After the satisfactory completion of your probationary period, except in the case of gross misconduct...you are entitled to receive and are required to give written notice in accordance with your length of service as shown below. Written notice may be given at any time....The Company shall be entitled at its absolute discretion to terminate your employment on no notice or less than full notice and pay your basic salary in lieu of any period of notice.

The notice required by you to terminate this Contract is three months' written notice to the Company. Your Line Manager must also be given such notice in writing...."

6. In early June 2023 the claimant approached Curtis Hesketh, Framework Manager, and asked about the salary increase. A meeting was arranged for 27 June. The purpose of the meeting was to discuss the salary increase. As a condition of the salary increase was satisfactory performance, there was a discussion during the meeting about the claimant's performance and the claimant was told he was performing well and would get the salary increase.
7. There was no discussion about the probationary period during that meeting. The claimant was not told that he had passed his probation – it quite simply was not mentioned.
8. On 30 June 2023 Curtis Hesketh, Framework Manager, sent a letter to the claimant that was drafted by HR. The letter was entitled "Changes to Terms & Conditions – Salary Increase" and included the following wording:

"Following recent discussions and a successful probation, I am pleased to write and confirm that your salary has been increased...."

9. The letter did not refer to the end of the probationary period, nor did it state that the probationary period had been completed.
10. After the sending of the letter on 30 June issues came to light with the claimant's performance. These issues resulted in a meeting on 14 July 2023 at which the claimant's employment was terminated. Ben Leonard wrote to the claimant after the meeting. His letter was headed "Probationary Review" and contained the following:

"As you are aware, your employment with the organisation was subject to a probationary period.

Unfortunately, whilst your performance was great at the start lately there have been some issues. There have been three important tasks that were pivotal to the contract, and they weren't delivered which ultimately has left us in a difficult position with the client.

Therefore, it has been decided to terminate your employment at this point.

As discussed, you will be paid up until 31st July 2023 which will be inclusive of any holidays owed...."

11. The claimant wrote to Eve Leary in HR after his dismissal. In his email he referred to the letter of 30 June and suggested, for the first time, that the letter had confirmed that he had passed probation. Ms Leary replied saying that the letter was incorrect in terms of stating probation specifically as it should have said probation review, and that the claimant's probationary period was six months.

The Law

12. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 gives Tribunals the power to hear claims for breach of a

contract of employment or other contract connected with employment where the claim arises or is outstanding on the termination of the claimant's employment.

13. Ordinary principles of contractual interpretation apply in Employment Tribunals as in other courts. When deciding claims for wrongful dismissal questions of reasonableness do not arise.
14. The burden of proving that there has been a breach of contract lies with the claimant who alleges that there has been a breach.

Conclusions

15. The following conclusions are reached having considered carefully the evidence before me, the relevant legal principles, and the submissions of the parties.
16. The terms of the claimant's contract of employment are clear. The probationary period lasts for 26 weeks unless it is extended by the respondent. Those terms were agreed to by the claimant at the start of the employment and were not varied. There is no mention in the contract of the probationary period ending early, nor any evidence before me that the probationary period had ever been curtailed. In contrast, the contract does provide for an extension of the probationary period.
17. The claimant was not informed at any time that he had completed his probationary period or that the probationary period had come to an end. He accepted that there had been no discussion whatsoever about the completion of the probationary period or passing probation during the meeting on 27 June. The comments about his performance were made in the context of whether he qualified for a salary increase or not. The claimant was never told that his probationary period had come to an end.
18. This case has arisen because the claimant has, with hindsight and after receiving notification of the termination of his employment, interpreted the letter of 30 June 2023 as meaning something that, on an ordinary interpretation, it does not mean. The wording of the letter is unfortunate in that it mentions probation but given that the right to a salary increase was linked to successful performance, and that the claimant was still within his probationary period, it is understandable that there was a reference to successful probation. That does not mean however that the probationary period has come to an end, merely that at time letter was written the claimant was considered to be performing successfully during his probation period.
19. It is clear from the wording of the letter, which was headed 'Salary Increase' – that the letter was about the salary increase. Satisfactory performance was a condition of that increase, as set out in the claimant's offer letter, hence the reference to it.
20. The claimant's suggestion that because the letter referred to changes to terms and conditions that meant also a change to the claimant's probationary period is not accepted. There is quite simply no mention of the length of probationary period in the letter. At no point did the parties agree, or the respondent impose, a change in the agreed length of the probationary period. That remained at 26 weeks in line with

the original terms agreed between the parties.

21. The ***Partners of Haxby Practice*** decision referred to by Mr Macaulay in his submissions is one on the law of mistake, where a claimant began working for an employer on a salary that she did not appreciate was a mistake. She therefore accepted the job and began work on the basis of a particular salary. That is very different on the facts to this case.
22. In a claim for breach of contract the claimant has the burden of proving that the respondent breached his contract of employment, he has not discharged that burden. I am satisfied on the evidence before me that by making a payment in lieu of two weeks' notice of termination (more than the one week to which the claimant was contractually entitled) the respondent has discharged its contractual obligations towards the claimant.
23. The claim for breach of contract / wrongful dismissal therefore fails and is dismissed.

Employment Judge Ayre

Date: 14 February 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>