



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Miss Lorraine Cruickshank

v

Team Recruitment Limited

**Heard at:** Cambridge

**On:** 5 March 2024

**Before:** Employment Judge M Ord

## Appearances:

**For the Claimant:** In person

**For the Respondent:** Mr P Clarke, Director

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

## REASONS

### Background

1. The Claimant was employed by Recruitment Finder Limited from 30 October 2006 as Payroll and Finance Administrator. The business was at the material time owned 49% by the Claimant and 51% by Mr Paul Clarke.
2. Both those individuals were Directors of the business and in a relationship. The time came when the parties' relationship ended and they separated. The Claimant and Mr Clarke entered into a Deed of Separation, I have seen a copy of that document signed by Mr Clarke but undated.
3. Under that agreement, the Claimant was to pay Mr Clarke £50,000. She would become the sole owner of the domestic property known as "Red Roofs" and Mr Clarke would become the sole owner of Recruitment Finder Limited.
4. Under Clause G(iv) of the Agreement, the Deed of Separation stated,  

"... not deal with any matters concerning the dispute of the parties arising out of the business of Recruitment Finder Limited..."
5. Mr Clarke transferred the business of Recruitment Finder Limited to a new business, Team Recruitment Limited. The Claimant's employment ended

on 13 March 2023. The work previously done by the Claimant was thereafter carried out by Mr Clarke.

6. The Claimant began a period of Early Conciliation on 25 April 2023, her Certificate is dated 28 April 2023 and she presented her Claim Form to the Tribunal on 4 May 2023 claiming that she had been unfairly dismissed, dismissed in breach of contract and was entitled to a payment for accrued but untaken holiday pay.
7. Before me, both the Claimant and Mr Clarke gave evidence by reference to Witness Statements and there were a number of documents presented to me, in particular the Claimant's Contract of Employment, the parties' Deed of Separation, the Claimant's wage slips and the Claimant's P60.
8. The Respondent's position was that Mr Clarke believed that the Agreement between the parties extinguished by the Deed of Separation all claims between them. That is clearly not what Clause G(iv) of the Agreement states.
9. Further, under s.203 of the Employment Rights Act 1996 restrictions are established on contracting out of employment rights under that Act and the conditions required by s.203 were not on the face of the Agreement met.
10. Additionally, whilst Mr Clarke referred to an extract from an email suggesting that the intention of the parties was that the Claimant's claims in relation to her employment should be extinguished by the Deed of Separation and the payment made by the Claimant under it, that proposal was on the Claimant's unchallenged evidence, rejected by her and the Deed of Separation confirms the Claimant's evidence.

### **Findings of Fact**

11. Based on the evidence I have heard and the documents presented I have made the following findings:-
  - 11.1. The Claimant's complaints against Recruitment Finder Limited were not compromised by the Deed of Separation.
  - 11.2. The transfer of business from Recruitment Finder Limited to Team Recruitment was a relevant transfer governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006.
  - 11.3. The transfer entailed an economic and organizational change of the staff of the business so that there was no longer a requirement for Payroll and Finance Administrator, the Claimant was therefore redundant and her employment ended by way of dismissal on the ground of redundancy. That dismissal was not unfair.
  - 11.4. At the time of the Claimant's dismissal her unchallenged evidence was that she was entitled to accrued holiday for 11 days.
  - 11.5. The Claimant's dismissal was in breach of contract, the Claimant had been employed for 16 years and was entitled to 12 weeks' payment in lieu of notice.

- 11.6. The Claimant's weekly rate of pay at the time was £384.61 gross, £307.00 net.
- 11.7. The Claimant was born on 13 July 1965 and she was aged 41 years and above throughout her employment.
- 11.8. Accordingly, the Claimant is entitled to:
- 11.8.1. Compensation for breach of contract (12 weeks at £307 per week) = £3,684.00;
  - 11.8.2. A statutory redundancy payment (16 weeks x 1.5 x £384.61) = £9,230.64;
  - 11.8.3. Unpaid holiday pay (2.2 weeks), the net some payable is £675.40.
- 11.9. The total due to the Claimant is therefore: **£13,590.14**
12. The claim against Recruitment Finder Limited is dismissed.

7 March 2024

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Employment Judge M Ord

Judgment sent to the parties on  
14 March 2024

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For the Tribunal office

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