



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000452/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 25 June 2024

Employment Judge McCluskey

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Mr B Haughey

Claimant
In Person

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Northwind 5s Limited t/a Goals

Respondent
Represented by:
Ms J Ganson -
Head of People

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

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1. The name of the respondent is amended to Northwind 5s Limited trading as Goals.
2. The complaint of breach of contract (notice period) is not well-founded and is dismissed.
3. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) of the Working Time Regulations 1998. The respondent shall pay the claimant **SIX HUNDRED AND TWENTY-NINE POUNDS AND SIXTY-ONE PENCE (£629.61)**. The claimant is responsible for paying any tax or National Insurance.

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REASONS

Introduction & Complaints

1. The claimant is making the following complaints: breach of contract (notice pay) and failure to make a payment for accrued but untaken holidays on termination of employment.
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2. The issues to be determined are:
 - a. What was the claimant's notice period?
 - b. Was the claimant paid for that notice period?
 - 10 c. If not, was the claimant in repudiatory breach of contract?
 - d. If not, how much should the claimant be awarded as damages?
 - e. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when his employment ended?
- 15 3. The parties agreed that the correct designation of the respondent is Northwind 5s Limited trading as Goals.
4. The claimant produced a file of productions extending to 188 pages (C1-C188) and supplemental productions extending 2 pages (C189 - C190). The respondent produced a file of productions extending to 74 pages (R1 – R74) and supplemental productions extending to 1 page (R75). I told parties that if they wished a production to be considered by me, they must refer to the document by page number during evidence.
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5. The claimant gave evidence on his own behalf. Jordan Longmuir – Finance Director and Ian McDermott - Managing Director gave evidence on behalf of the respondent.
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6. During the course of Mr Longmuir's evidence in chief it became apparent that he had notes available to him in addition to the files of productions. Ms Ganson and Mr Longmuir said that they were unaware that this was not permitted. Mr Longmuir removed his notes. I said to Mr Longmuir that using notes could affect the credibility and reliability of his evidence. Having
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considered this matter carefully I am satisfied that the use of notes, before they were removed, did not affect the credibility or reliability of Mr Longmuir's evidence. There was an opportunity for Mr Longmuir's evidence to be tested by way of further evidence in chief and cross examination after he had removed his notes. In addition, his oral evidence accorded with the documentary evidence to which I was taken.

Findings in fact

7. This judgment does not seek to address every point upon which the parties gave evidence. If I have not mentioned a particular point, it does not mean that I have overlooked it. It is not included simply because it is not relevant to the question of whether the claim succeeds or fails. Any references to page numbers are to the paginated files of productions provided to me.
8. The standard of proof is on a balance of probabilities. This means that if I consider that, on the evidence, the occurrence of an event was more likely than not, then I am satisfied that the event in fact occurred.
9. The claimant commenced employment with the respondent on 13 February 2023. His employment ended on 21 February 2024. He was employed in the role of Finance Business Partner.
10. Karen Langmuir, People Partner of the respondent wrote to the claimant by letter dated 1 February 2023 with an offer of employment in the role of Finance Business Partner. The letter was two pages long (C10-C11) (offer letter). The offer letter set out a summary of terms relating to salary, bonus, working hours, holiday entitlement, start date and notice. In the notice clause it said *"You will be required to give three months' notice"*. In the section headed *"Acceptance"* it said *"Please confirm your acceptance of the above offer as soon as possible by signing and returning a copy of the contract and new start forms directly to me"*.
11. The offer letter enclosed a contract of employment dated 1 February 2023 (R27 – R34). The claimant signed the contract of employment on 2 February 2023 (contract of employment) (R33-R34).

12. In relation to notice, the contract of employment said, *“After the successful completion of your probationary period you are required to give the company 1 months’ notice to terminate your employment”* (R30). The claimant was no longer in his probationary period at the time his employment ended.
- 5 13. The notice period contained in the contract of employment signed by the claimant on 2 February 2023 was shorter than the notice period in the offer letter dated 1 February 2023.
- 10 14. On 20 February 2024 Jordan Longmuir – Finance Director was made aware of an allegation that the claimant had been using the respondent’s pre-paid debit card for personal transactions. Mr Longmuir asked the claimant to carry out a review.
- 15 15. The claimant carried out a review on 20 February 2024 and told Mr Longmuir that there were 28 instances where he had used the respondent’s debit card rather than his own personal bank card in error. The value of these transactions was £463.51. The claimant sent this information to Mr Longmuir by email dated 20 February 2024. The email said “Please see attached. No excuse other than carelessness” (R40).
- 20 16. On 20 February 2024 Mr Longmuir also carried out his own review. He identified concerns about a much larger volume and value of transactions than the claimant had identified in his review.
- 25 17. On 21 February 2024, when the claimant arrived at work, Mr Longmuir told the claimant that he had conducted his own review. He asked the claimant to explain some of the transactions which Mr Longmuir had identified from his own review. Mr Longmuir alleged that these transactions were also personal expenditure by the claimant rather than business use. The claimant admitted that he had been using the respondent’s pre-paid debit card for personal transactions for several months.
- 30 18. The claimant became upset. He asked Mr Longmuir to move to a more private space as Mr Longmuir’s office had a glass front and other staff were arriving

at work. The claimant and Mr Longmuir moved to the stockroom downstairs. In the stockroom Mr Longmuir told the claimant he was to be suspended pending a disciplinary investigation. The claimant told Mr Longmuir that he was “going to walk”.

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19. Mr Longmuir left the stockroom and returned with Ian McDermott. Mr McDermott said that the allegations were serious. The claimant said he was resigning with immediate effect. Mr McDermott said that if the claimant was resigning with immediate effect there would be no investigation and the respondent would not pursue him for repayment of the money which it alleged that the claimant had taken from the business. Mr McDermott told the claimant he would be paid until the end of February 2024. There was no discussion about notice or notice periods. There was no discussion about holidays or holiday pay.

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20. On 21 February 2024 at 9.07am, immediately after the meeting in the stockroom, the claimant emailed Mr Longmuir and said *“Hi Jordan. It is with the deepest regret that I offer you my resignation on today 21 February. Following discussion with yourself and Ian, this is the option best for the business. I have loved my time and Goals and leave with heavy heart. Kind regards. Brian”* (R60). The claimant then left the workplace immediately and did not return.

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21. On 21 February 2024, shortly after receipt of the email from the claimant, Mr Longmuir responded by email as follows: *“Brian, notice received and accepted. You will be paid in full for February with no recovery of money taken from the business sought”* (R60).

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22. Mr Longmuir approved the claimant’s salary payment for February 2024 on 21 February 2024, before his meeting with the claimant. The approval was for salary due for all of February 2024, in the usual monthly sum.

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23. The claimant was paid his full salary for February 2024. The claimant’s payslip for February 2024 showed no payment for accrued but untaken holidays on termination of employment.

24. The respondent's digital holiday platform showed that the claimant had accrued but untaken holiday entitlement of 26.1 hours on termination of employment (C97). The claimant took a screen shot of the digital platform around two weeks before this hearing. The 26.1 hours of accrued but untaken holiday entitlement was still showing at that time.

25. The parties agreed that on termination of employment the claimant had 26.1 hours of accrued but untaken holiday. The parties also agreed that the value of this accrued holiday entitlement was £629.61.

Relevant law

Breach of contract (notice pay)

26. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 when the claimant's employment has come to an end. That is the case here.

27. The general rule is that if one party to a contract purports to terminate it without giving proper notice, that amounts to a repudiation of the contract which once accepted by the other party brings the contract to an end — **Geys v Société Générale, London Branch 2013 ICR 117, SC.**

Holiday pay

28. Regulations 13 and 13A of the Working Time Regulations 1998 (WTR) make provision for workers to receive 5.6 weeks' paid holidays each year.

29. Where a worker leaves employment part way through the leave year then Regulation 14 WTR provides for compensation to be paid to the worker in respect of accrued but untaken holidays using a formula set out in Regulation 14 WTR.

30. Regulation 35 WTR provides: "*Restrictions on contracting out 35.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—(a) to exclude or limit the operation of any provision of*

these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal. (2) Paragraph (1) does not apply to—(a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under any of sections 18A to 18C of the Employment Tribunals Act 1996 (conciliation); or (b) any agreement to refrain from instituting or continuing proceedings within section 18(1)(j) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating agreements under these Regulations are satisfied in relation to the agreement (3).... (4)(5)(6)(7)”

Submissions

31. Both parties made oral submissions. These are not repeated here, but the relevant points are dealt with in my discussion and decision below.

Discussion and decision

Breach of contract (notice pay)

32. This is a claim for notice pay as damages for breach of contract. The claimant has the burden of proof. The claimant asserts that he has a contractual entitlement to three months' notice. He asserts that when he resigned on 21 February 2024, he was entitled to be paid in lieu of three months' notice. I did not agree with this assertion.

33. Considering the contractual documentation between the parties, I find that the claimant required to give one month's notice of termination of employment not three months as he asserts. The claimant relies on the notice period contained in his offer letter dated 1 February 2023. This was superseded by the contract of employment which he signed on 2 February 2023. The notice period in the contract of employment which he signed on 2 February 2023 contains a requirement for the claimant to give one month's notice of termination of employment. There was no evidence led that the claimant had challenged his notice period of one month at the time of signing his contract of employment,

given that this said something different to the offer letter. I am satisfied that the contract of employment signed by the claimant on 2 February 2023 contained his contractual terms of employment., including the notice period of one month which he required to give the respondent.

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34. Next, I considered whether the claimant gave his contractual period of notice to the respondent. The claimant's evidence was that in the meeting with Mr Longmuir and Mr McDermott on 21 February 2023 the claimant said he was resigning and Mr McDermott said he would consider whether the claimant was to work his notice. The evidence of Mr Longmuir and Mr McDermott was that Mr McDermott had not said this. Their evidence, which I accepted, was that Mr Longmuir told the claimant he was to be suspended pending a disciplinary investigation. In response the claimant said to them both that he was resigning with immediate effect and there was no mention by the claimant of him giving any notice to the respondent. There was no discussion about notice or notice periods. Mr McDermott did not say that he would consider whether the claimant was to work his notice.

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35. The respondent's evidence is supported by the email which the claimant sent to the respondent shortly after the meeting on 21 February 2024. In that email the claimant did not say that he was terminating his contract of employment with notice. Yet he was contractually required to give notice. In that email he made no mention of notice or any discussion with Mr McDermott about notice. If there had been a discussion about notice and the position was undecided, it is more likely than not that the claimant would have referred to this in his resignation letter. The respondent's evidence is also supported by the fact that the claimant left the workplace immediately after sending the email and did not return to work.

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36. The claimant submitted that the matter of his notice and whether he was to work his notice was undecided on and for a period after 21 February 2024. For the reasons already given, I did not accept this evidence. Furthermore, the general rule is that if one party to a contract purports to terminate the

contract without giving proper notice that amounts to a repudiation of the contract and, once accepted by the other party, this brings the contract to an end — **Geys v Société Générale, London Branch 2013 ICR 117, SC.** Having regard to the evidence, I am satisfied that the claimant purported to terminate his contract without giving proper notice (ie by not giving any notice at all) both in the meeting on 21 February 2024 and when he emailed the respondent shortly thereafter. The claimant was thus in repudiatory breach of contract. The claimant's contract was brought to an end when Mr Longmuir emailed his acceptance shortly thereafter.

37. The claimant was in repudiatory breach of contract by not giving his contractual notice (or any notice) to the respondent. Accordingly, the claimant is not entitled to an award of damages.

Holiday pay

38. The evidence of the claimant and Mr McDermott was that there had been no mention of holidays or holiday pay by anyone at the meeting on 21 February 2024.

39. Both parties agreed that the claimant's accrued but untaken holidays on termination was 26.1 hours and that the value of this accrued holiday entitlement was £629.61. The respondent asserted that when it paid the claimant his salary for all of February 2024, the intention was that this included the holiday pay of £629.61 which the claimant was due. This was because according to Mr McDermott's evidence, which the claimant disputed, Mr Dermott said you will be paid until the end of February "and nothing else".

40. I am not satisfied that Mr McDermott did say "and nothing else" That was not what was said in Mr Longmuir's email which referred to being paid in full for February and did not say "and nothing else" or words to that effect. Given its ordinary meaning and the evidence led I conclude that the email from Mr Longmuir dealt with salary only and not payment for accrued but untaken holidays. There was no mention of holiday pay in the email. The February 2024 payslip did not show a payment of holiday pay. The respondent's digital

holiday platform continued to show the claimant's accrued but untaken holiday entitlement due, shortly before this hearing.

5 41. Furthermore, regulation 35 WTR provides that parties cannot contract out of the operation of any provision of the WTR (including holiday pay due on termination of employment) except in limited circumstances such as where parties have reached agreement through ACAS conciliation or by way of a settlement agreement. That was not the case here.

10 42. In the absence of any reference to holiday pay being paid in the email correspondence on 21 February 2024 or shown on the February pay slip, I am satisfied that the obligation on the respondent to comply with the statutory requirement to make a payment for accrued but untaken holidays on termination of employment has not been fulfilled.

15 43. I have accepted the value of the accrued but untaken holidays in the sum of £629.61 which was agreed by the parties.

Conclusion

44. The complaint of breach of contract (notice period) is not well-founded. No monies are due to the claimant.

20 45. The complaint in respect of holiday pay is well-founded and the sum of £629.61 is due to the claimant.

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Employment Judge: J McCluskey
Date of Judgment: 16 July 2024
Entered in register: 17 July 2024
and copied to parties

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5 claimant(s) and respondent(s) in a case.

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10 transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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