



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Price

**Respondent:** Canada Pension Plan Investment Board

**Heard via CVP (London Central)**

**On: 16 July 2024**

**Before:** Employment Judge Davidson

## **Representation**

**Claimant:** in person

**Respondent:** Mr G Anderson, Counsel

# RESERVED JUDGMENT

**The claimant did not fundamentally breach his employment contract and he is therefore entitled to be paid damages for breach of contract in respect of his contractual notice period of three months.**

# REASONS

## Issues

1. The issue for the hearing was whether the claimant had committed a repudiatory breach of contract. He is claiming notice pay. The respondent's case is that he fundamentally breached the contract, thus disentitling him to the contractual benefit of notice pay.

## Evidence

2. The tribunal heard from the claimant and Stephanie Antonian (his partner) on behalf of the claimant and from Samantha Dachis (Director, Employee Relations and Talent Risk Management) and Frank Ieraci (Senior Managing Director, Global Head of Active Equities and Investment Science) on behalf of the respondent.

## Facts

3. The facts were generally not in dispute and can be summarised as follows.

4. The respondent is a global investment organisation, responsible for investing the assets of the Canada Pension Plan. It is based in Canada and has worldwide offices.
5. The claimant was employed from 10 October 2022 in the role of Managing Director AE Europe. He was in a senior position and was highly paid. There were no issues between him and the respondent.
6. As part of his role, he was issued with a Corporate American Express credit card in his name. The use of the card was subject to the respondent's travel and expense policy as follows:

*The corporate credit card must not be used for any personal expenses, except in very limited circumstances. For example:*

- *Personal expenses that are incidental with a business expense and is combined into one payment i.e. when a separate receipt/invoice is not feasible such as a personal charge within a meal, airfare, hotel expense;*
- *When on a business trip and your personal credit card is not accepted by the merchant for personal expenses. Contact CAP if this is the case; and*
- *corporate card reward program fees payable by you.*

*In the event of a personal expense, you must identify it as a personal expense when submitting an expense report within the 2 weeks of the regional billing date. You are responsible for reimbursing CPP Investments for any personal expenses as soon as possible. Any personal expenses will be either deducted from your payroll the following month or, in certain instances if the amount is significant, you will be required to pay CPP Investments as soon as possible.*

7. In August 2023, the claimant was in the United States with his daughter on a trip which then continued with a three-night stay in Venice, after transiting through Heathrow Airport. Two days after his return to London, the claimant had arranged to go to Albania for six days.
8. While the claimant was in New York, his credit card wallet was stolen. His daughter was in Pennsylvania and her flight back to New York was cancelled. He had to arrange and pay for a replacement flight. His corporate credit card had been kept separately from his other cards in his work bag and had not been stolen. He was aware of a mechanism to file 'reverse expenses' and therefore used the corporate credit card with the intention to pay back any sums charged to that card for personal expenses.
9. He cancelled his personal debit/credit cards after the theft and his bank automatically sent a replacement to his home address. Although he was in the United Kingdom between his US trip and his flight to Venice, he did not leave the airport and could not collect his new card, even if it had been received by then at his home address. He therefore continued to use the corporate Amex for payments which had not been pre-paid or for which he

could not use the cash he had with him. This included paying for an expensive hotel in Venice (which he had pre-booked).

10. He returned to London and a couple of days later left for Albania, having pre-booked flights on Wizz Air from Luton. He still did not have his personal credit card at this time. It was not at his home and he was not in the UK long enough to arrange another card with his bank. He travelled with his partner. At one time he thought his daughter would be coming with him as her mother was not able to stay with her in London but, in the event, she made other arrangements and did not go to Albania with the claimant and his partner.
11. When they arrived at Luton, they learned that the Wizz Air flight was delayed by at least 12 hours and there was no guarantee it would leave. The claimant decided to book alternative flights on British Airways for that day while his partner attempted to sort out a refund from Wizz Air. He paid for the British Airways flights on his corporate Amex.
12. The claimant returned to the United Kingdom on Friday 18 August 2023. He could not recall exactly when he returned to the office but he did recall that his PA was still on holiday when he got back. On her return from holiday, he asked her to organise the reverse expense claim so that he could pay the respondent back for his personal expenditure. This was done by 5 September 2023 and the amount of the payments was £11,672.91.
13. The respondent has an automated mechanism for claiming expenses which also allows for reverse expense claims. (The usual purpose of the expense system is for employees to claim from the company expenses that they have incurred personally on behalf of the company, rather than the reverse, as in this case.) The paperwork in respect of the claimant's expense report showed the amount of "(£11,692.91)", the brackets signifying a negative value.
14. The claim was submitted on 19 August 2023 and the claimant's manager signed off on the form on 26 September 2023 and it was sent to the relevant department within the respondent. There is no evidence that the claimant's manager did not know that these were personal expenses.
15. It is not clear why but the deduction was not made from the claimant's pay until the December payroll but he had expected this to happen in September. His understanding was that the respondent would not have to pay Amex until the end of September at the earliest, by which time the respondent would be in funds as a result of his reverse expense submission and deduction from his pay.
16. When final authorisation had been given to deduct the amount from the claimant's salary on 5 December 2023, the claimant was told that all paperwork relating to the expenses could be disposed of. He was told that everything was resolved and the deduction would be made from the December payroll.

17. Later in December, a query was raised internally within the respondent's expenses department about the personal expenses charged to the corporate credit card, in particular the high value of the expenses.
18. He was contacted by HR in Canada who were querying the amount of the deduction and the reasons for it. In his initial email response to the query, the claimant said he had been in New York without another means of payment and needed to get him and his daughter back to London. The claimant's explanation appears to have been accepted by Donna Yang, Manager Expense Operations on 11 December 2023.
19. It is apparent from the internal emails within the respondent's corporate services department that they did not approve of the amounts the claimant was spending, for example at the Hotel Cipriani in Venice.
20. The respondent made further enquiries and found that the person travelling with the claimant to Albania was his partner, not his daughter. The credit card transaction document before the tribunal stated that the merchant was 'Air Canada'. The claimant says he has never travelled on Air Canada. The respondent was unable to explain this line on the document but this unexplained detail is not relevant to my decision.
21. On 22 January 2024, Samantha Dachis contacted the claimant to discuss a concern regarding personal expenses on his corporate credit card. He explained all the entries on the expense form and the reason he used the corporate credit card. At first, he said that he went with his daughter to Albania but later accepted that it was in fact his girlfriend when he was shown the name on the ticket. According to the respondent's notes of that meeting, the claimant's explanation for buying British Airways flights to Albania was that the flights they had pre-booked fell through at the last minute. In her follow up email, she referred to the London Albania flight being 'cancelled' and asked for paperwork to back up the personal expenses he had incurred. He provided all the paperwork he could but did not have anything from Wizz Air regarding the cancelled flight although he did have a note of the compensation paid by Wizz Air in connection with the flight, although it is not apparent whether the flight was significantly delayed or cancelled. Either way, he decided to make alternative flight arrangements.
22. There was a follow up discussion the next day, 23 January 2024. When asked why he had said he travelled with his daughter rather than his girlfriend, the claimant said he did not like to talk about his divorce. He told the tribunal that his family life was a sensitive topic and not something he wanted to share with someone he had never met.
23. Following the meeting Samantha Dachis discussed the matter with Frank Ieraci and they took the decision to terminate the claimant's employment for gross misconduct with immediate effect.
24. Samantha Dachis' witness statement explained that the breach of the expenses policy would not, of itself, have been regarded as sufficient to dismiss but it was the way the claimant conducted himself during the investigation meetings that made the claimant's conduct unacceptable.

25. The matters relied on by the respondent in dismissing the claimant included the following:
- a. the amount of the expenditure
  - b. the breach of the policy
  - c. failure to seek approval
  - d. failure to use alternate steps to avoid using the card
  - e. lying about the use of the card by saying his daughter was travelling with him when it was actually his girlfriend.

### Law

26. The relevant law on wrongful dismissal is that the employer is entitled to terminate the employee's contract of employment without notice or payment in lieu if the employee has repudiated the contract. The question of what level of misconduct is required for an employee's behaviour to amount to a repudiatory breach is a question of fact for the tribunal. The test is whether, objectively, the employee has conducted himself in such a way as to show that he disregarded the essential conditions of the employment contract (*Laws v London Chronicle (Indicator Newspapers Ltd) [1959] 2 All ER 285*).
27. Following the decision in *British Bakeries Ltd v O'Brien UKEAT/1479/00*, the tribunal must consider whether conduct which may contravene something listed as 'gross misconduct' in a contract or disciplinary procedure is sufficiently serious to be repudiatory.
28. I remind myself that this is not an unfair dismissal claim and I am not looking at the way the respondent dealt with the issue, only whether the claimant's actions were a repudiatory breach of contract. However, it is relevant to consider the reasons the respondent considered there to be a repudiatory breach but to form my own conclusions on the issue.

### Determination of the Issues

29. I find that the respondent was entitled to investigate the fact that the claimant had used his corporate credit card in order to understand the reasons he did so since the policy's default position is that the card should not be used for personal expenditure other than in very limited circumstances.
30. In using the corporate credit card in the circumstances of being abroad without other means of payment other than limited cash in dollars and euros, the claimant felt that these were the type of circumstances which would fall within the exceptions to the general rule about personal expenses. The claimant intended to repay the money as soon as he was back in the office, with the intention that the money should be deducted from his pay before the respondent had to settle with Amex. I find that there was no dishonesty on the part of the claimant in using the card for personal expenses, and this has not been suggested by the respondent. I also find that the claimant's interpretation of the policy was arguable, albeit not expressly covered in the policy. At most, it amounted to a misunderstanding of the scope of the policy. I find that the claimant relied on his experience with other similar

employers and his knowledge that he was going to be footing the bill himself ultimately to rationalise his use of the corporate credit card in circumstances where he had no other method of payment.

31. The claimant found he was in a position in which the only way he could pay for certain items was to use the corporate credit card and he fully intended to pay for all his expenditure when he returned the office. The claimant therefore carried on with his normal life, using the corporate card where he would have used his own card. On his return to the office, he attempted to repay these amounts promptly,
32. It is not for the respondent to suggest that he should stay at a more modest hotel in Venice or that he should wait for hours in Luton airport to see if his plane would depart. The claimant is a high earner and is entitled to spend what was, ultimately, his money as he saw fit. There is no suggestion that he attempted to gain an advantage by using the corporate card, he simply wanted to avoid cancelling his arrangements, which would have meant disappointing his daughter and his girlfriend. I can see why he saw no reason to cancel his trips, given that he was going to pay back all the sums he charged to the corporate card immediately.
33. I understand why the respondent has a policy restricting personal use of the credit card but there is no blanket prohibition on doing so and the respondent's own systems allow for the 'reverse expense' claim to be processed. Although the respondent criticised the claimant for not seeking approval, the policy does not require this and, in any event, the claimant's manager was on holiday at the time. The claimant's manager seems not to have had any concerns when he signed off on the reverse expense claim and it has not been suggested that his manager would have refused the request.
34. The claimant is not at fault for the delay in the sums being deducted from his pay. He submitted his paperwork by the end of September 2023 and was expecting to have the sums deducted from his September pay.
35. The respondent appears to take issue with, and disapprove of, the claimant's lifestyle choices. In my view, these do not go to the issue of whether he breached the contract. The respondent itself accepts that the breach of the expenses policy was not sufficient to justify summary dismissal. If that is the case, the items charged to the card are not themselves the relevant issue, it is only the circumstances in which the claimant found he had to use the card which should be relevant.
36. I accept the claimant's evidence that he used the card where he had no alternative means of payment and that, where he could, he used cash or asked his girlfriend paid for things. To the extent that the policy does not allow the use of the card in these emergency circumstances, any breach was not, in my view, fundamental or repudiatory. I accept the claimant's evidence that the alternative ways of funding the expenditure were not practicable in these circumstances.
37. The other reason relied on by the respondent for dismissing the claimant is that the claimant was not truthful in his interview with Samantha Dachis. I

have considered this point at some length and I have concluded that the information given by the claimant was inaccurate but it was also irrelevant to the respondent's investigation. Samantha Dachis should not have needed to ask who was travelling as it was the claimant's personal business. I accept his evidence that he did not want to share information which he regarded as sensitive and personal with a person he had never met where the information itself had no significance. By this time, he had repaid all the money in full and did not feel he wanted to go into the details of what he did and who he did it with. He had been told that the reverse expense claim and gone through and he could discard any supporting evidence. He was then put in a position of having to explain himself. Instead of refusing to answer, he chose to be non-confrontational and gave an incorrect answer. I do not consider this to be an act of dishonesty and not something which undermines the relationship of employee and employer. It had no relevance to his working relationships with colleagues as he did not know Samantha Dachis and did not work with her. Further, it had no impact on his work role as the issue did not relate to his professional activities. It cannot be the case that an employee is in fundamental breach of his employment contract by choosing not to disclose sensitive personal information where that information is of no consequence.

38. In conclusion, I find that the claimant was not in repudiatory breach of his contract and that he is entitled to be paid for his notice period.

Remedy

- 39. A remedy hearing will be listed. If the parties are able to resolve remedy between themselves, they should notify the tribunal and the hearing will be vacated.
- 40. The claimant must, by 16 August 2023, provide the respondent with a Schedule of Loss setting out how much he claims by way of remedy.
- 41. The respondent has leave to file a counter schedule of loss by 6 September 2024.
- 42. The respondent must prepare a bundle of documents relevant to the Remedy Hearing and provide a copy to the claimant 14 days before the date listed for the hearing.

Employment Judge Davidson  
Date 19 July 2024

JUDGMENT SENT TO THE PARTIES ON

25 July 2024

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FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.