



EMPLOYMENT TRIBUNALS

Claimant: Mr Guy Japhet

Respondent: iheat.me Limited

HELD by CVP in Leeds

ON: 20 December 2024

BEFORE: Employment Judge Lancaster (sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr David Bowen, Director, with Ms Charlotte Bowen

JUDGMENT having been sent to the parties on 3 January 2025 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 based on the oral decision given immediately upon the conclusion of the case:

REASONS

1. This is a claim for damages for breach of contract for wrongful dismissal. I have read the papers in the case and I am satisfied that I am able to resolve this by way of giving my Judgment on the proper construction of a letter sent by the respondent's managing director Mr David Bowen to all staff, which included the claimant and in fact only two others a Nick Birkinshaw and his daughter Ms Charlotte Bowen, who has also attended at this hearing.
2. That email I am quite satisfied is unequivocally an immediate termination of the contract of employment. It follows a meeting on 26 February and it states in the clearest terms, that
"I am writing today to reiterate what was said to ensure there is no confusion. We are having to dismiss all staff with immediate effect as a result of poor

performance and the business having no income to be able to pay its employees. “

It cannot therefore be correct as the respondent has sought to argue before me this morning, that that was in fact a termination on notice. It was not.

3. The terms of the letter made that further clear. It says:

“All staff will be paid for February as usual, but from that point on, the company will not be paying wages or paying expenses for anyone that is not an actively employed member of staff.”

That is to say that all staff would be paid for February as usual, payment being made on a monthly basis in arrears but from that point on, that is from the end of February, the company will not be paying wages or paying expenses for anyone that is not an actively employed member of staff. And of course there was no active employed member of staff at all at that point, because all of them had received notice of immediate termination.

4. But those, which included the claimant, who had been given shares, a core option, are told that they will be able to continue to work seeking to bring in work.

“People that have been given share options, will be able to continue bringing in/sourcing opportunities to help stabilise the business/help the business to generate income, at their own risk. Any work undertaken is not part of any employment contract and it is being completed as gesture of goodwill to the business as holders of share options, much in the same way that ordinary shareholders are expected to act in the best interests of the business. “

5. There is then a non-contractually binding assurance that if in the course of the next month, if anyone who is working expressly not under any employment contract, but as a gesture of goodwill to the business, is able to contribute to the generating of at least £30,000 then the business will be able to meet expenses to cover payments in line with each persons' usual wages at the end of March. That is an expression as I say non-contractually binding that a payment equivalent to wages it is not an offer to pay wages.

6. That is in the context of the earlier statement that it may be possible to re-hire in some 8 to 12 weeks if the business has stabilised.

“In 8-12 weeks, if the business has been able to stabilise itself, then there may be an opportunity for the business to rehire the members of staff who have been dismissed. This is not an offer of employment for in the future, this is me being honest and keeping you all informed as to the possibilities. Some of you may or may not be invited to take up a new position of employment at this time, I cannot make any promises at this time. “

Again this is expressly not any continuation of employment nor a binding offer of future work.

7. Looking at its express terms, there is no room for argument at all that this is an immediate termination of employment. The contract therefore ended and under the contract the claimant was entitled to one calendar months' notice. He did not receive that notice by way of that letter of termination on 1 March. That therefore is a wrongful dismissal in breach of contract.
8. Some confusion appears to have been generated in this case, by the fact that the claimant expresses his claim for damages in terms of final salary. What he wants is the one calendar months' pay to which he was entitled in lieu of the notice he should have received.
9. In the response, and in subsequent documentation the respondent claims that they would have been entitled to make deductions from the final salary payment that would have extinguished any entitlement. But it is clear that what they are talking about is for the month of March. Of course in fact at no stage during employment on what I am told, and certainly not for March, did the respondent ever provide a written statement of pay as they should have done by law and certainly did not notify of any deductions at any stage during employment. It is only subsequent to this claim that they have sought to calculate what they say they would have been entitled to deduct from any payment due in March, had the employment continued and salary for that month then become due.
10. But as I have already said, that is not applicable because the employment had already ended as of 1 March, the claimant was not an employee during March. He was not then still bound throughout that month by the contract that he signed on 25 September the previous year because it had been brought to an end unilaterally by the respondent company.
11. There is certainly no suggestion that the respondent had ever sought to make any deductions from the final salary, that is for the payment for February, which as I have already indicated by reference to the termination letter was accepted as falling to be paid in full.
12. Within the Tribunal proceedings that response has never been treated as an employer's contract claim under the relevant statutory instrument, so though the parties have referred to it as a "counter claim" by the respondent, the Tribunal has never officially dealt with it in that way. And, as I say, that is with good reason because on the face of it, it is not an employer's counter claim in relation to sums due arising at termination, but an attempt to justify non-payment of salary in lieu of notice for the month of March where the claimant was no longer an employee in any event.
13. If the respondent thinks they have any argument for recovery under contract of any sums due to them during the course of the actual employment, or indeed afterwards, when the claimant was working non-contractually, they may bring that claim in the county court. But so far as these proceedings are concerned the matter can be decided very clearly. There was instant dismissal on 1 March. It was in breach of contract because the months' notice was not given, the claimant is entitled to that payment. That payment will be awarded gross because under HMRC rules it is liable to tax. There is no claim in the original ET1 for any other sums. Although the claimant has mentioned subsequently holiday pay, he would need leave to amend to include such a claim and that would be considerably out

of time when I would not grant it. Nor do I have any jurisdiction to award any compensation for any distress or additional costs incurred.

14. So the decision of the Tribunal is on proper construction of this letter, which I consider to be unquestionable, the claimant was wrongfully dismissed without notice. Although he sought reasonably to mitigate his loss by seeking to continue working as an act of goodwill for the company, he did not generate any income during that period. He is entitled therefore to the full one calendar months' pay in lieu of notice £2,250.

Approved by Employment Judge Lancaster

Date 21st January 2025

Reasons sent to the parties on:

For the tribunal office

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