



EMPLOYMENT TRIBUNALS

Claimant: Mr P Robinson
Respondent: Octavian Facilities Management Limited
Heard at: Midlands East Tribunal via Cloud Video Platform
On: 26 April 2024
Before: Employment Judge Brewer

Representation

Claimant: In person
Respondent: Mr K Ghuman, Consultant

JUDGMENT

The judgment of the tribunal is as follows:

1. The claimant's claim for breach of contract succeeds.
2. The claimant is entitled to receive damages for breach of contract from the respondent in the sum of £6,146.25.

REASONS

Introduction

1. This case was listed for a hearing to consider the claimant's claim for breach of contract. I heard evidence from the claimant and on behalf of the respondent, from a Director, Mr B Ahmed. I heard and have taken into account the submissions of Mr Ghuman (the claimant not having made any submissions).
2. During a discussion at the end of the evidence Mr Ghuman expressed his concern that I was making the claimant's case for him because I asked Mr Ahmed a number of questions. I explained that I needed to ask him some questions so that I could give a properly reasoned decision. At this point Mr Ghuman said if the decision

went in favour of the claimant the respondent would appeal and so I agreed that I would consider the case and provide a full written decision which I set out below.

Issues

3. The issue is whether, when the respondent dismissed the claimant with one weeks' notice that notice ought to have been three months.

Law

4. The jurisdiction to hear claims for breach of contract in the employment tribunals was granted by the **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994**. The principal and relevant requirements of that Order are that the claim should be for the recovery of damages or any other sum which arises or is outstanding on the termination of employment, and which is not an excluded claim.
5. The most common claim we deal with is for failure to give any or proper notice on termination of employment and that is what this claim is about.
6. In this case the claimant's notice period was governed by his contract and I deal with that below in the findings of fact.
7. There is one other the point to note which arose from something said by the respondent during submissions to the effect of if I was to find in favour of the claimant they would sue him for breach of contract in another court. It was of course open to the respondent to bring a counterclaim for breach of contract in this tribunal and they did not do so.

Findings of fact

8. I make the following brief findings of fact.
9. The claimant was employed by the respondent from 20 March 2023 as assistant operations manager.
10. The claimant had a contract of employment the material parts of which are as follows:

"5 probationary period

5.1 Your employment is subject to the successful completion of a six month probationary period from the date at 2.1 above.

5.2 If your performance or conduct is poor during the first three months of your employment, your employment may be terminated without notice.

5.3 After completion of one month service, during or at the end of your probationary period, if the company is dissatisfied with your performance or conduct, your employment may be terminated with one weeks' notice, all the probationary period may be extended."

11. The claimant received the appropriate training to do his job. There is no evidence of any problems arising during his probation.
12. On 26 May 2023 the claimant resigned giving one weeks' notice. However, he had a change of heart and asked the operations director, Emily James, to accept his retraction of that notice which she did on 31 May 2023.
13. Given the claimant's start date, his six month probation period ended on 19 September 2023. The claimant says he was told expressly that he had passed his probation.
14. In evidence the respondent said that in fact the claimant was told that he had passed his probation but that he was then required to upload some documents onto the respondent's SharePoint which he failed to do. The respondent says that as a result The claimant was dismissed with payment in lieu of one weeks' notice on 10 October 2023.

Discussion and conclusions

15. I should start this discussion by stating that the only evidence I had from the respondent was from Mr Ahmed who was not the person who dismissed the claimant. Nor was he the person who spoke to the claimant about his probation. That person was Emily James who was not a witness before me and from whom I have therefore had no evidence upon which I can rely in reaching my judgement.
16. I should also add that when Mr Ghuman cross examined the claimant his questions were in terms of the claimant passing his probation but, perhaps somewhat counter-intuitively, subsequently failing it. It was only when asked to explain this apparent contradiction that the respondent argued that the claimant had only conditionally passed his probation and that the passing of his probation was conditional upon him uploading documents to the respondent's SharePoint.
17. The claimant's case is straightforward, he says that having been told he passed his probation, and he says he was not told that this was in any way conditional, he then became entitled to three months' notice and therefore the respondent has failed to pay him in respect of his proper notice.
18. Given that I did not hear from Emily James I have had to consider what the witnesses told me and whatever inferences I may draw from the surrounding circumstances.
19. The respondent's evidenced was that in the meeting between the claimant and Emily James, at which she told him he had passed his probation, he promised to upload the relevant documents within the following two weeks. The respondent considered that the claimant had lied when he said he had the relevant documents on his laptop ready to upload. The respondent says he failed to do that and therefore he was dismissed effectively for lying about having the documents on his laptop. As they put it to me, they had no other reason to dismiss it. But that really misses the point. The question is not why the claimant was dismissed but what was the appropriate notice period at the point he was dismissed. That question turns up on whether the claimant passed his probation or not.

20. I turn then to the relevant clause in the claimant's contract of employment.
21. As I have set out above the options open to the respondent in the contract of employment were that once the claimant had completed one month's service, if the respondent was dissatisfied with the claimant's performance or conduct either during or at the end of the probation period, they could:
- 21.1. terminate the employment with one week's notice or
 - 21.2. extend the probationary period.
22. On the respondent's case as originally put, they did neither. There is no dispute that at the end of the first six months of his employment, that is at the end of the probationary period the claimant was not dismissed.
23. The real question therefore is whether the claimant's probationary period was expressly or impliedly extended by two weeks.
24. During the claimant's cross examination, the questions were put to him in terms of him having passed his probation and then two weeks later being told that he had not passed it.
25. The implication, essentially confirmed by Mr Ghuman during his submissions, was that because the claimant failed to upload documents at the end of a period of two weeks after he passed his probation, he did not have the documents on his laptop as he said he had, he had thus lied to Emily James and the respondent could in effect treat the claimant as though this was something they were aware of at the end of the original probation period.
26. In short the respondent's case altered during the hearing and they ended up arguing that when the claimant failed to upload documents within two weeks after he had been told that he had passed his probation, the respondent did not believe that he had the documents when he had assured Emily James that he did have them on his laptop, and that he could therefore upload them to the SharePoint, and that had they known this at the end of the original probation period he would have been dismissed. The inference being that given the claimant's assurance that he did have the documents ready to upload, Emily James was in effect extending the probation period by two weeks. Of course, it would have been preferable had the respondent stated expressly to the claimant that he had not passed his probation and that it was being extended but that does not appear to have been done.
27. I note that it was not suggested by the respondent that express words of extension of the probation period were used, but that when the claimant was told that he had passed his probation but had to promise, or in an event promised, to upload documents to the SharePoint within the following two weeks, this should be taken as tantamount to an extension of the probation period. The difficulty is that all of this, if it was done at all, was done by Emily James and I did not have evidence from her so she could not be asked about this. The claimant's evidence was clear that he had completed his paperwork, it was on his laptop and that he did not do anything to give the respondent cause to terminate his employment.

28. As I have set out above the contract would appear to me to say that either the claimant would pass his probation, or he would not, and in if not, either he would be dismissed with one week's notice or the probation period would be extended, and in my judgment for the respondent to show that the probation period was in fact extended there would have to have been evidence of clear words to that effect so that the claimant was clear that this is what was happening, so that he may for example take appropriate steps to pass the probation, and I do not have any evidence that that was the case.
29. In the circumstances I find that the claimant was told that he had passed his probation after six months and that at that point he became entitled to receive three months' notice of termination of employment unless of course there were circumstances in which the respondent could dismiss without notice, something which they have not pleaded or seek to rely upon.
30. Given therefore that the claimant was only given one weeks' payment in lieu of notice, I find that the respondent has dismissed the claimant in breach of contract and that he is entitled to receive the balance of his three month notice period.
31. The claimant is therefore entitled to 11 weeks' pay by way of damages and on the basis of net pay of £558.75 per week the total damages payable to the claimant are £6,146.25.

Employment Judge Brewer

Date: 24 January 2025

JUDGMENT SENT TO THE PARTIES ON

.....28 January 2025.....

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