

Neutral Citation Number: [2025] EAT 72

Case No: EA-2021-001478-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15 April 2025

Before:

DEPUTY JUDGE OF THE HIGH COURT, JUDGE BOWERS KC

Between:

ISLANDERS VETS

Appellant

- and -

MS GEMMA MORTLAND

Respondent

Dr Christine Quernel (Managing Director) for the Appellant
The Respondent not attending or being represented

Hearing date: 15 April 2025

JUDGMENT

SUMMARY

CONTRACT OF EMPLOYMENT

The tribunal erred by not appreciating that the length of notice to the employee was under the contract of only one week. In any event the employee was not dismissed; rather the employer accepted the resignation of the employee.

DEPUTY JUDGE OF THE HIGH COURT, JUDGE BOWERS KC:

1. This matter comes before the Employment Appeal Tribunal following a sift on 13 June 2024 by His Honour Judge Auerbach, where he identified three arguable points.

2. The judgment of the tribunal, which is in the bundle at page 2, made three awards. The first was for unauthorised deduction, which has been paid. The third one was for holiday pay, which is not in issue. The second, which is the subject of this appeal, is as follows:

“The claimant’s claim for notice pay if successful she would have been entitled to £2,276.91 for two months, but she mitigated her loss and obtained alternative employment from 28 October 2019. The tribunal therefore considers she is entitled to notice pay for one month.”

Then it sets out the amount.

3. The reasoning for this by the Judge can be found in paragraph 27(b) and (c). It is fairly concise, so I will read it all:

“The tribunal considers that the claimant provided notice to terminate the employment contract on 7 October 2019 and was entitled to notice pay. The tribunal accepts her evidence, notwithstanding the suggestion that she wanted to be released sooner, that she was willing to work the two months and had told her new employer. She told the tribunal she expected to work until December 2019 and the tribunal accepts this evidence.

“The tribunal finds that the communications of both 7 and 9 October 2019 from the respondent amounted to a wrongful dismissal. There is no evidence this was accepted by the claimant, who did not respond to the terms dictated to her.

“The tribunal finds she is entitled to notice pay. She mitigated her loss and obtained new employment in October 2019. Therefore her entitlement should be adjusted to reflect this.”

4. Ms Quernel, managing director of Islanders Vets, made very helpful submissions to me. The respondent, Ms Mortland, did not attend.

5. I will briefly go through the relevant documents, because they are in short compass. On 7 October 2019, Ms Mortland says:

“Please accept this letter as my notice of resignation from the position of student veterinary nurse/groomer [...]. I would continue to work for you for the next two months, completing my employment on 7 December 2019, but if you could release me any sooner, I would appreciate it.”

On 7 October, ie the same day, Ms Quernel said:

“This is to inform you that I am prepared to release you sooner from your employment with the business. Your last day will be on 11 October.” Then there are various logistical matters connected with the resignation.

On 9 October, Ms Quernel says:

“I have decided your last day at my practice is today”.

6. Although that last letter could be considered as being a summary dismissal, I think it has to be read in the context of the previous correspondence, where Ms Mortland wanted to go as soon as possible, so I do not treat this as a dismissal but really an agreement to a resignation on terms.

7. But there is a wider point, and that is that the tribunal appeared to have ignored the actual contract, which is to be found at page 69 of the bundle, which says at paragraph 15(c):

“During the probationary period, or within one year of commencement of the employment, the apprentice’s employment can be terminated by the director giving one week’s notice in writing. The receptionists/nurses however are required to give the director two calendar months’ notice during this said period.”

8. The authority of *Janciuk v Winerite Ltd* [1998] IRLR 63 shows that the maximum award is defined by the timescale of the period of notice that the employer had to give. Here, that was just one week.

9. I think that, in these circumstances, the tribunal did err. I do not see that there was a wrongful dismissal. I do not therefore find that the employee was entitled to notice pay. If I am wrong in that, the award should be no more than one week’s money, rather than the longer period that was given.

10. I do not think that any further money is to be awarded under this order, other than the £573

for unauthorised deductions and the £229.88 for holiday pay.