



# THE EMPLOYMENT TRIBUNAL

---

**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE FOWELL (sitting alone)

**BETWEEN:**

**Claimant**

**Mrs M Squibb**

**AND**

**Respondents**

**Ms Suzanne Gill and Mr David Walker**

**ON:** 15 February 2017

**APPEARANCES:**

**For the Claimant:** Unrepresented

**For the Respondent:** Unrepresented

## **JUDGMENT**

1. The claimant was wrongly dismissed and entitled to compensation of five weeks' pay in the sum of £2,215.25
2. The counterclaim for five days' holiday taken in excess of the claimant's statutory entitlement succeeds and the compensation awarded is reduced by £443.05.
3. The net compensation due to the claimant is £1,772.20

## **REASONS**

1. By a claim form presented on 1 November 2016 the claimant brought

complaints against the respondents of failure to pay notice pay and holiday pay.

**The complaints and issues**

2. The claimant worked for the respondent couple as a nanny from 1 July 2008 until the termination of her employment on 26 August 2016. According to her claim form she was given an undated letter in June 2016 informing her that the respondents wished to reduce her term-time hours and wages with effect from September 2016. She responded by email on 16 June 2016 refusing these changes. She was then prompted by email from Ms Gill on 22 July 2016 for a reply. On 5 August 2016 she says that she was given notice that her employment would end on Friday, 26 August 2016, about three weeks away, instead of the eight weeks' notice to which she said she was entitled.
3. She also raised the failure to make the deductions from her workplace pension scheme and the absence of a number of pay slips for 2016 or a P60.
4. In response to this claim the respondents stated that notice of redundancy was given on 1 July 2016 and that she knew from this date that her services would not be required from the end of the first week of September. They claim that she ought to have made reasonable efforts to find another job to mitigate her loss. As to the pension contributions, these were being investigated and the payslips had now been provided with the P60.
5. A counterclaim was raised on the basis that the claimant had taken more holiday and she was entitled to, having had 10 days' paid holiday from the start of the holiday year on 1 June other than the five days to which she would ordinarily have been entitled.

**Evidence**

6. The Tribunal Rules require that so far as possible proceedings are conducted without undue formality. I therefore discussed these issues with the parties at the outset and took stock of the documents available to me. They confirmed that the issue regarding the pension contributions have now been resolved. There was also agreement that some pay records were still outstanding; those from February to June 2016 and the P60.
7. The main documents relating to these issues comprised:
  - a. The claimant's contract of employment.
  - b. The undated letter referred to in the claim form regarding reduction in wages and hours.

- c. An email from the claimant to the respondent dated 16 June 2016 which made reference to a letter dated 10 June 2016 from the respondents and declining to accept the proposed changes to her salary and hours.
  - d. An email from Ms. Gill to the claimant dated 22 July 2016 stating that they had not been able to develop any alternative proposals; and
  - e. An email from Ms. Gill to the claimant dated 5 August 2016 terminating her employment.
8. The last of these is the most significant. The full text provides:

“Dear Miriam

I am writing to confirm our conversation today.

The full-time role of nanny will cease on Friday 26 August. As you have confirmed that you do not wish to accept the part-time role at the wages offered, and neither you nor we have been able to come up with any alternatives, your employment will come to an end on that day.

Kind regards

Suzanne”

9. Having identified the relevant documents both parties agreed that there were no oral discussions affecting the matter, which therefore depended on the proper interpretation of these exchanges.

### **Conclusions**

10. The contract of employment provides for written notice. Ms Gill accepted that the undated letter must be the letter of 10 June 2016 referred to in the email from the claimant of 16 June 2016. The subject matter is identical since it concerns a proposed reduction in pay and hours. The response form, which stated that notice was given on 1 July was therefore incorrect and was referring to this somewhat earlier letter.
11. The main issue therefore is whether this undated letter amounted to notice of termination of employment. Both parties agree that the claimant was entitled to eight weeks' notice. Having considered it with care, it is not in fact an effective notice of termination. It explained that they had been reviewing their requirements for child care from September, proposed reductions in the number of hours and the rate of pay, adding that they “would no longer include a contractual obligation for evening babysitting, but would pay additionally for that as required.”
12. It ends, “We appreciate that this will be a significant change and that you have worked for us for a long time now and so we wanted to give you

plenty of notice of this change.”

13. The essential nature of the letter is a proposal. It does not contain a statement that the employment would come to an end on a given date or after a particular period. This is in contrast to the email of 5 August 2016, which does just that.
14. The need for clarity is well established in such cases. Tribunals have frequently ruled that a statement of intent does not amount to a valid notice, let alone a proposal.
15. Accordingly, the claimant was entitled to eight weeks’ notice from 5 August 2016, which ought therefore to have expired on 23 September 2016. The relevant salary figures are as follows, with the details taken from the claimant’s final pay statement:

Net monthly pay	£1,919.80
Net weekly pay	£443.05
Net daily pay	£88.61

16. The additional five weeks’ net notice pay there amounts to **£2,215.25**
17. If this is also well established that an employee is entitled to be paid in full during their notice period, in the absence of very long notice periods, in the interests of what is regarded as good industrial practice. No particular duty to mitigate this loss therefore arises, although in any event, I cannot regard it as unreasonable to take more than eight weeks to find such an alternative.
18. Turning to the counterclaim for excess holiday taken, the contract of employment provided that the holiday year began on 1 January. Both parties agreed that this was not the way the contract was operated in practice, and so essentially there was an agreed variation of contract. The respondents however stated that the calculations began on 1 June each year, whereas the claimant said that it began on 1 July, the anniversary of her work beginning. She was not, however, confident of the date, and on the basis that Ms Gill kept the relevant records, I preferred her account on this point.
19. The date provided by Ms. Gill for holiday taken comprised five days in July and 10 days in August. This was the excess of the 10 days referred to in the counterclaim. She explained this on the basis that the contract provided the employer would specify 10 days and the employee would specify another 10, and so it would be unfair to claim any additional amount. No actual records of holiday taken were produced by either side, but Ms Squibb accepted that she had had 10 days holiday in August, and so I proceed on that basis.

20. On those figures, the period of the holiday year in question runs from 1 June to 26 August, a total of just under three months. Rounding up to the nearest half day, the claimant would be entitled to one quarter of her annual entitlement, or 5 days. She has therefore had an additional five days holiday, and so the Respondents succeed in their counterclaim in the sum of £443.05.
21. The net sum due to the Claimant is therefore **£1,772.20**

---

Employment Judge Fowell  
Date: 10 March 2017