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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Page

**Respondent:** K & T McCormack Ltd

**Heard at:** East London Hearing Centre

**On:** 23 June 2017

**Before:** Employment Judge Brown (sitting alone)

## Representation

**Claimant:** Mrs M Page (Lay Representative)

**Respondent:** Ms T McCormack (Director)

**JUDGMENT** having been sent to the parties on 11 July 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1 The Respondent employed the Claimant from 11 July 2016 to 21 March 2017. The Respondent gave the Claimant an offer letter on 14 June 2017, which set out the Claimant's basic terms and conditions of employment.

2 The Claimant told me that she was not given a detailed contract of employment and the Respondent did not produce a contract of employment today. I was, therefore, not shown any contract which stated that the Claimant had the right to be paid when she was off work, sick, or was taking leave for other reasons. The Claimant was off work on 17 March and 23 March 2017. She told me that she was very anxious and stressed on those days and felt unable to attend work. I accepted her evidence and decided that she was sick and unable to attend on those days. However, I decided that the Claimant was not entitled to be paid when she did not attend work because I have not seen any contract which stated that the Claimant was entitled to be paid on particular days when she was sick.

3 The Claimant was dismissed at a meeting on 21 March 2017. This was clearly a disciplinary meeting. The Claimant was not told by the Respondent of her right to be

accompanied at it. However the Claimant did not ask to be accompanied. *Section 10 of the Employment Relations Act 1999* provides:

**“10 Right to be accompanied.**

(1) This section applies where a worker –

- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
- (b) reasonably requests to be accompanied at the hearing.”

Section (2)(a) says that:

Where this section applies the employer must permit the worker to be accompanied at the hearing by a relevant companion”.

4 It is clear, under the provisions of the section, that the employee must reasonably request to be accompanied at the hearing, in order for the *section 10* right to apply. In this case, the Claimant accepted during her evidence to the Tribunal, that she did not make a request to be accompanied at the hearing. I have not seen any case law which establishes that, even the Claimant did not know there was a disciplinary hearing, so that she was not aware that she needed to ask to be accompanied, the *s10* right applies. Accordingly, I do not find that the Respondent breached the provisions of *s10 ERA 1999*.

5 The Claimant was dismissed without notice. The Respondent's witness, Tracy McCormack, told me that there were two reasons for the Claimant being dismissed without notice. First, that she had breached the confidentiality of a member of staff by discussing that member of staff's depression with another member of staff and, second, that a customer had complained about the Claimant lying to the customer about when carers would arrive to help the customer.

6 I was shown witness statements from members of staff made on 30 March 2017, after the Claimant's dismissal. I was also shown the written complaints of a customer. I heard evidence from the Claimant, herself, who attended today and was cross-examined. I found the Claimant to be a truthful witness. She explained clearly about what happened on the day the customer made the complaint; what information the Claimant was given and what information she relayed to the customer. I preferred the Claimant's evidence to the written complaint of the customer, who did not know what information the carers had given to the Claimant before she spoke to the customer.

7 In addition, I accepted the Claimant's evidence that her colleague, Ellis, had discussed Ellis' ill-health with another employee, openly. If the Claimant did mention Ellis' ill-health to another employee, I find it was in the circumstances where Ellis had not kept her health confidential, in any event.

8 I was not shown any policy or contract from the Respondent which said that breaches of confidentiality were a matter of gross misconduct. If a breach of confidentiality happened as described in this case, I consider that it was a minor matter of misconduct; it happened once and did not justify the Claimant being dismissed without notice.

9 I find that the Claimant did not commit a repudiatory breach of contract. I find that the customer complaint about the Claimant was not correct and I find that, if the Claimant discussed her colleague's health, it was in the circumstances that the colleague had, herself, done so and the Claimant's discussion was on one occasion. I find that it was a minor, single matter of misconduct, if it happened, which did not so undermine the trust and confidence between employer and employee as to justify instant dismissal, as required in the case of *Briscoe v Lubrizol Limited* [2002] IRLR 607, CA. I considered that a warning would have been appropriate for that matter of misconduct, if it happened.

10 The Respondent did not pay the Claimant notice pay. The parties agreed that the Claimant's contract provided for the Claimant to be paid one month's notice pay on dismissal. I find that the Respondent was not entitled to dismiss the Claimant for gross misconduct and therefore the Respondent breached the contract. I find therefore that the Respondent shall pay the Claimant damages for one month's notice.

11 Because the Claimant has succeeded in her claim and had to pay fees to the Tribunal in order to attend today, I find that the Respondent should pay those fees and not the Claimant because the Claimant has succeeded.

12 I order that the Respondent pay £1,708.33 gross to the Claimant for notice pay and £390 costs.

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Employment Judge Brown

20 July 2017