



# EMPLOYMENT TRIBUNALS

## Claimant

Mr J C Betancourt

## Respondent

United Kingdom Research and Innovation

**Heard at:** Reading by CVP

**On:** 5 January 2024

**Before** Employment Judge Manley

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr P Livingston, Counsel

## RESERVED JUDGMENT

- 1 The claimant was not dismissed in breach of the respondent's probationary policy as the respondent was entitled to dismiss the claimant under the policy before the procedure had been carried out and before the end of the six-month period. The claimant was not wrongfully dismissed.
- 2 The respondent was not entitled to make a payment in lieu of notice under the claimant's contract but no damages flow from that breach.
- 3 The claim is dismissed.

## REASONS

### Introduction and Issues

1. By a claim form presented on 21 April 2023, with accompanying particulars of claim, the claimant brought a claim of wrongful dismissal (breach of contract). The particulars of claim were detailed and related to his dismissal with 5 weeks' notice pay in lieu of notice on 15 March 2023.
2. Following the response to the employment tribunal claim from the respondent, which denied that there had been a wrongful dismissal, the matter was listed for a one-day hearing by CVP.

3. After some discussion at the commencement of the hearing, it was agreed that, although there was some repetition, the issues for determination were as set out in paragraph 5 of the claimant's witness statement with an additional issue about alleged failure to comply with the ACAS Code of Practice on disciplinary and grievance procedures. The issues are as follows:
  - 1) *whether the claimant was dismissed in breach of the MRC Probationary Policy and Procedure (ie in breach of contract);*
  - 2) *whether the respondent was entitled to dismiss me before the procedure prescribed by the MRC Probationary Policy and Procedure had been carried out;*
  - 3) *whether the respondent was entitled to dismiss the claimant before the end of the six month probationary period by giving him a five weeks'notice payment;*
  - 4) *whether the respondent was entitled to make a payment in lieu of notice;*
4. Although we did not formally add it to the issues, it is also clear that damages would have to be assessed if the claimant succeeded and, in that case, consideration would need to be given to the question of whether there should be a reduction or uplift to any damages if there had been an unreasonable failure to follow the ACAS Code.

### **Hearing**

5. At the beginning of the hearing, we had to spend some time working out what documents the tribunal judge and the parties had and arrangements were made for some to be forwarded to the judge. The respondent had prepared a bundle of documents of over 200 pages. The claimant had prepared a separate bundle but it transpired that I did not need to have sight of that bundle as all relevant documents were either in the respondent's bundle or extracts could be read aloud. There was a lengthy witness statement from the claimant and one for the respondent's witness, Ms Gillard, who is Head of Human Resources at the respondent. The parties had both prepared skeleton arguments, which were also relatively long and detailed.
6. After these initial discussions we had a break for me to read the central documents, skeleton arguments and witness statements. The claimant had made an application the previous day for the response to be struck out for late compliance with tribunal orders. When we met after the break, and after I had explained the tests to be applied to such an application, the claimant agreed to withdraw it.
7. We then proceeded with cross examination of the witnesses and oral submissions. As it was relatively late and I had been referred to several higher court cases, I decided to reserve my judgment, not least because I was aware from the very detailed submissions before me that reasons would be requested.

## Facts

8. The relevant facts are largely not in dispute and can be shortly stated. The claimant commenced employment with the respondent on 23 January 2023 as a contracts co-ordinator. The name of the respondent on many of the documents was Medical Research Council (MRC) which forms part of the respondent. He was to work part time for 20 hours over a two-day period. The pattern of working was discussed and largely agreed before his appointment. Although I heard some evidence about disputes which arose about working hours during the claimant's short employment but that is not relevant to the issue which I have to determine. The claimant's line manager was a Ms Noble who had support from Ms Millar in HR.
9. There was a written contract of employment which stated (page 75):  
*"Employment is subject to the satisfactory completion of a probationary period of 6 months.  
Your appointment will be confirmed, provided your performance, attendance and conduct have been satisfactory. If you do not reach the required standards your appointment will normally be terminated, although in exceptional circumstances the probationary period may be extended.  
During your probationary period, either party can terminate employment by giving to the other the following notice:  
Bands 1-4: 5 weeks notice  
Bands 5-7: 2 weeks notice  
The probation procedure is set out in the MRC's Probation Policy."*
10. The probationary policy referred to was also in the bundle of documents (page 170-178). It is not disputed that the policy formed part of the claimant's contract of employment. The probation policy is detailed with a procedure to be followed in including the holding of a *"probation assessment meeting to assess your performance and behaviour in your probation period"*.
11. The claimant also points out that the probation policy's preamble states that it applies *"to all employees of the MRC for at least the first 6 months of employment"* (page 171). Under the procedure at 1.4 (page 171), there is a three month and a 6 month assessment and at 2.4.2 (page 173) it states *"The manager will carry out two probation assessments with the employee, a 3 month probation assessment and a 6 month probation assessment"*.
12. Part of the policy reflects the contractual provision above and reads (page 172):  
*"During the probationary period, either party can terminate employment by giving to the other the following notice:  
Bands 1 – 4: 5 weeks' notice  
Bands 5 - 7: 2 weeks' notice"*

*These notice periods will continue to apply until the employee has received notification in writing that their appointment is confirmed and that they have passed the probationary period. The MRC will provide this notice should you fail the probation period.”*

13. This notice provision was repeated in the respondent's Notice Period Policy. The claimant's notice period was 5 weeks. It is not in dispute that there was no contractual right for the respondent to make a payment in lieu of notice.
14. As well as issues about working hours, the respondent began to have other concerns about the claimant's behaviour and, from an email the claimant himself wrote on 22 February 2023, where he said he had lost trust and confidence in the respondent, it seems he was also concerned. Ms Millar sought permission to terminate the claimant's employment from the Chief Operating Officer, Ms Rodrigues in early March and this was given.
15. By letter of 7 March 2023 Ms Millar invited the claimant to a probation assessment meeting under the probation policy, to be held on 10 March 2023. The letter stated that the meeting could result in one of three options: “1) *The confirmation of appointment*; 2) *The probation period to continue* or 3) *The termination of your employment*”.
16. The claimant asked for specific information but it seems no further details were provided before the meeting. The meeting went ahead, after a slight delay, on 15 March 2023, with the claimant accompanied by an employee representative. The notes of the hearing were in the bundle and show Ms Noble summarising her concerns with some specific examples and the claimant responding. The outcome, after a break, was that the claimant's employment was to be terminated with five weeks' notice to be paid in lieu.
17. A letter was sent the same day (pages 117-118) and advised the claimant of his right to appeal the decision in line with the probationary policy. The claimant exercised his right of appeal and was invited to an appeal meeting before an appeal panel on 14 April 2023. After an exchange of correspondence, where the claimant asked for an assurance that he would not be reinstated, which was not given, he withdrew his appeal on 30 March 2023.

### **Law and submissions**

18. This is a claim for breach of contract so common law, rather than any statutory provisions, must be applied. I must consider the terms of the contract of employment, largely those that are expressed in the written documentation and apply their natural and common sense meanings. In some circumstances, I may need to consider implied terms but that is not argued to be applicable here.

19. The contractual terms to be considered are those about notice of termination of employment and the probationary policy. If the claimant succeeds, I would need to look at any unreasonable failures to follow the ACAS Code of Practice on Disciplinary Procedures.
20. Both parties took me to several cases which they believe provide guidance on the issues I had to determine. For the respondent, Mr Livingston, submitted that the notice provision as quoted above contained both in the probationary policy and the notice clauses gave both parties an unfettered right to terminate on (in the claimant's case), five weeks' notice. At common law, it is submitted by the respondent, an employer does not have to show cause to terminate and neither does the claimant. Only if the employer gives a false reason or if there are exceptional circumstances might there be any possibility of a breach of contract arising. (Rawlinson v Brightside Group Ltd [2018] IRLR 180, Aspden v Webbs Poultry & Meat Group (Holdings) Ltd [1996] IRLR 521 and Jenvey v Australian Broadcasting Corp [2002] IRLR 520)
21. The claimant relied heavily on Gunton v Richmond upon Thames LBC [1980] ICR 755 for his arguments that there was a breach of contract which amounted to a wrongful dismissal. In short, the employee was successful in that case because it was found the dismissal on notice was unlawful because the disciplinary policy had not been followed. Damages would be assessed on the basis of how long it would have taken for the process to be followed (subject to mitigation). In that case, Buckley LJ stated:-  
  
*"The date when the contract would have come to an end, however, must be ascertained on the assumption that the employer would have exercised any power he may have had to bring the contract to an end in the way most beneficial to himself; that is to say, that he would have determined the contract at the earliest date at which he could properly do so".*
22. The claimant also referred to several other cases in his written submissions where the Gunton case had been applied. In Janciuk v Winerite Ltd [1998] IRLR 63, the court decided that the employer only needs to compensate for the time it would have taken to follow the procedure. He also referred me to several cases including Shaw v B&W Group Limited UKEAT/0583/11, British Heart Foundation v Roy UKEAT/0049/15 and Mr A Hewston v Ofsted [2023] EAT 109 but these cases are relevant to gross misconduct dismissals and, in some cases, the interplay between unfair and wrongful dismissal.
23. The essential question for me to decide is whether the dismissal by this employer was in breach of contract because of any failure to follow the probationary policy. No questions of reasonableness arise. The claimant's case is that the respondent was bound to follow the policy with assessments at three and six months before it could terminate. The respondent's case is that it was entitled to terminate with notice because that is what the contract says.

**Conclusions**

- 24. I will provide my conclusions in line with the agreed list of issues, although, to some extent, they overlap. Some of them will be obvious from my findings of fact but some might need further elaboration.
- 25. I cannot find that the claimant was dismissed in breach of the probationary policy. That policy specifically and incontrovertibly states that notice of termination can be given during the probation period.
- 26. Nor can I find that the respondent was not entitled to dismiss during the probation period for the same reason. The respondent was entitled, because the contract says so, both within the probationary policy itself and in the notice clauses, to dismiss with five weeks' notice.
- 27. The respondent was not entitled to make a payment in lieu of notice because that right is not in the contract. However, the claimant cannot show any loss which flows from that payment being made. I make no findings on the question of whether there were any failures to follow the ACAS Code as it does not arise.
- 28. The claim is dismissed.

---

**Employment Judge Manley**

Date: 19 January 2024

Sent to the parties on:  
22 January 2024.

.....  
For the Tribunal Office