



EMPLOYMENT TRIBUNALS

Claimant: Mr J Maries-Darg

Respondent: Taylor & Co Auctioneers

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Birmingham

On: 18 June 2019

Before: Employment Judge Kelly

Representation

Claimant: In person

Respondent: No appearance

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent is ordered to pay the claimant damages in the sum of £889.95.

REASONS

1. Mindful of rule 47, we have considered whether we should dismiss the claim or proceed in the absence of the respondent. We have also considered if we should adjourn the Hearing.
2. There is no information on the file indicating that the respondent could not attend the Hearing and we have decided to proceed with it, in its absence.
3. The relevant facts are as follows:
4. The claimant had existing employment at an annual salary of £15,000. The respondent offered the claimant new employment at a higher salary and on a full-time basis, which induced the claimant to resign from his existing employment. The respondent offered the claimant unconditional employment by letter of 14 November 2018, such employment to start on 3 January 2019, at an annual salary of £16,000. No period of notice to terminate the

employment was stipulated. The claimant accepted the offer by letter of 20 November 2018. The respondent withdrew the offer by email of 6 December 2018. The claimant started alternative new employment on 1 February 2019. The claimant said that his marginal tax rate is 20% and he also pays national insurance contributions. He accepted that his marginal tax rate should be seen as 30%.

5. The claimant claimed one month's pay as "lost income", plus half a month's wages, as compensation and the cost of his time pursuing the matter.
6. A response was received in which the respondent defended the claim on the basis that the claimant had notice of the withdrawal of the employment offer 4 weeks prior to the agreed start date.
7. We find that, at the point of the claimant accepting the respondent's unconditional offer of employment, on 20 November 2018, a binding contract was formed ("the Contract"), under basic principles of contract law which require an offer, an acceptance, consideration, intention to create legal relations and certainty.
8. We refer to the following cases:
9. Firstly, *Sarker v South Tees Acute Hospitals NHS Trust [1997] IRLR 328*. In this case, the EAT decided that an employment tribunal had jurisdiction to consider the claimant's claim for breach of contract in circumstances where the contract was terminated before she began work under it, on the basis that the claim was one which arose or was outstanding on the termination of employment, as required by Article 3(c) of the Industrial Tribunals Extension of Jurisdiction Order 1994. (The relevant law is now the Employment Tribunals Extension of Jurisdiction Order 1994.) This was on the basis that the claimant was employed under the contract of employment, even before the employment started.
10. Following this authority, we find we have jurisdiction to consider the claim under Article 3(c) of the Employment Tribunals Extension of Jurisdiction Order 1994 in that the claimant was employed under the Contract and his claim concerns the termination of this Contract and so the claim arose or was outstanding on the termination of his employment.
11. Secondly, *Gill and others v Cape Contracts Ltd [1985] IRLR 499* in which plaintiffs were induced to resign their existing employments by an offer of higher wages for employment of at least six months. After resigning from their existing employments, the defendant withdrew the job offers prior to their start dates. The Northern Ireland High Court held that the plaintiffs were entitled to damages for breach of warranty by the defendants in circumstances in which the defendants failed to honour a representation to the plaintiffs forming a collateral contract that, if they gave up their existing employment, they would be employed by the defendants for approximately six months at higher wages than they currently enjoyed. If a representation is made in the knowledge and intention that the representee will act upon it, it is a warranty, sounding in damages, if broken.
12. On the same basis, we find that the claimant is entitled to damages for breach of warranty by the respondent in circumstances in which the respondent failed to honour a representation to the claimant forming a collateral contract that, if

he gave up his existing employment, he would be employed by the respondent full time at a higher wage than he currently enjoyed.

13. We find that the claimant has no entitlement, in the alternative, to damages for breach of his contract of employment. In the absence of any longer expressly agreed notice entitlement, the respondent was entitled to end the claimant's employment without notice under section 86 Employment Rights Act 1996, because the claimant had been employed for less than one month when notice was given.
14. We find that the claimant is not entitled to further "compensation and the cost of his time pursuing the matter". The question of "compensation" is covered by the award of damages mentioned above. He would only be entitled to an award for his time if the Tribunal thought this proper where, in pursuing the matter, the respondent acted vexatiously, abusively, disruptively or otherwise unreasonably in the way in which the proceedings have been conducted (Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2014), or other grounds in the same provision which have no applicability here. We do not consider that the respondent's failure to attend today's hearing represents such conduct, it having presented a written response, and there are no other features of its conduct of the proceedings which indicate it has behaved vexatiously, abusively, disruptively or otherwise unreasonably.
15. Turning now to the question of how much the damages to be awarded to the claimant in relation to the respondent's breach of a collateral contract. In the absence of any warranty by the respondent as to the expected length of the contract of employment, we consider that the damage caused to the claimant should be calculated as his losses during the period from the proposed date of the start of the employment, 3 January 2019, to the date before which the claimant started new employment, being 31 January 2019. Dividing his annual salary by 365, his daily pay rate was £43.84. The number of days from 3 January 2019 to 31 January 2019 is 29 days. $29 \times 43.84 = £1271.36$. Deducting tax at the marginal rate of 30% results in a net of tax figure of £889.95. Accordingly, we order the respondent to pay to the claimant damages in the sum of £889.95.

Signed by Employment Judge Kelly

Dated on 18 June 2019