

Case Number: 2300669/2022



EMPLOYMENT TRIBUNALS

Claimant: Carl Göran Heintz

Respondent: Summit Architecture Limited

Heard at: London South Employment Tribunal (by Video/CVP) On: 3 November 2022 at 10 am

Before: Employment Judge Chapman KC (sitting alone)

Representation

Claimant: In person (by CVP)

Respondent: In person by Mr Oliver Newell, Director of Respondent Company (by CVP).

Clerk to Tribunal: Mr Scott O'Reilly.

JUDGMENT

1. The Respondent was in breach of contract by dismissing the Claimant without the full period of notice to which he was contractually entitled and without making a payment to him in this regard.

2. The Respondent is ordered to pay the Claimant damages in the gross sum of £2,304 as claimed (from which any necessary deductions of tax and national insurance should be made by the Claimant).
3. The remainder of the Claimant's claim for unauthorised deductions of wages and/or breach of contract (that is, relating to claims for unpaid overtime, an unpaid severance payment and unpaid wages following an increase in pay) shall be adjourned to be heard at a CVP Hearing on **1 February 2023 at 10 am** with a time estimate of one day (and a separate Case Management Order has been made in this regard).

REASONS

Background

1. This Judgment deals only with the Claimant's breach of contract claim for notice pay.
2. This claim for breach of contract arises out of the Claimant's employment with the Respondent pursuant to a written contract of employment signed by the Claimant on 19 August 2020 and by Mr Newell, a Director of the Respondent company, who appears today on the Respondent's behalf, on 21 August 2020. The contract refers to the Claimant's employment by the Respondent as an Architect which employment is stated in the contract of employment to have commenced on 10 August 2020. The contract contains the following clauses which are of relevance to the notice pay claim that I am presently considering:
 - a. Under the sub-heading "*Salary*", "*You will be paid a gross salary of £35,000 ... per annum based on a 40 hour week, which is to be reviewed for an increase to £40,000 ... after three months from the Date of Commencement.*"
 - b. Under the sub-heading, "*Termination of Employment*", "*... your employment may be terminated by you giving the Company or the Company giving you*

*written notice as follows: * During the first 3 months of continuous employment, not less than 1 week's notice; * After the end of the first 3 months of continuous employment not less than 4 weeks' notice."*

- c. There is also provision under the same sub-heading (namely, "*Termination of Employment*") for the Respondent Company to terminate the Claimant's contract on a summary or immediate basis in the event that certain grounds are present (which may be loosely grouped within the descriptive category "*gross misconduct*". This category includes, but is not limited to "*gross default or gross misconduct in connection with your work or in connection with or affecting the business of the Company.*")
3. It is common ground that the Claimant was dismissed by the Company on 29 November 2021 (see, the ET1 Claim Form and the ET3). The background to this dismissal is not seriously in any factual dispute and is summarised below. This was not a summary dismissal because it is also common ground that the Respondent company provided the Claimant with a one week notice period at or about the beginning of November (in fact, on or about 23 November 2021 when the Claimant was informed that he was to be dismissed).
4. In a nutshell, the Claimant's case for notice pay is that he was contractually entitled to a 4 week notice period. In the event, he was given (and worked) for around one week of this 4 week period. The Claimant states that he neither worked nor was paid for the remaining 3 weeks of his contractual notice period. He brings a claim for breach of contract in this regard. The Respondent's position is that, by November 2021 (if not before), it had significant concerns about the quality of the Claimant's work and felt that it needed to act quickly and decisively to bring the Claimant's employment to an end (as it did, ultimately on 29 November 2021). The Respondent checked the UK Government website prior to communicating its decision to the Claimant and believed that it had only to provide a one week minimum notice period (I understand this to be a reference to the statutory minimum relative to the Claimant's length of service).

5. The Claimant claims damages for breach of contract in the gross sum of £2,304 (relating to notice pay). He calculates this as £40,000 (his gross salary as at date of dismissal divided by 52 and roughly multiplied by 3 weeks). The Respondent does not take issue with the sum claimed or with the method of calculation. In the circumstances, quantum or financial remedy is not in issue in this case. Instead, there is a dispute about (contractual or other) entitlement for the reasons that I have already identified in summary.
6. In addition to the ET1 Claim Form and ET3 Response Form, I have been provided by the parties with a number of documents for the purposes of this Hearing (the list which follows is focussed on documents of relevance to the notice pay issue with which this Judgment is concerned):
 - a. The written contract of employment;
 - b. A witness statement or narrative of events from the Claimant;
 - c. Witness statements in support of the Claimant's case from Mohammad Choudhury, Micaiah Newell-Grant, Jimi Deji-Tijani and Anees Imtiaz.
7. The witness statements of Mr Choudhury and the three other witnesses had not been seen by Mr Newell for the Respondent prior to the start of this Hearing. We therefore adjourned from 10.30 am until 11.45 am in order that they could be sent by the Claimant to Mr Newell and read by the latter. I then heard evidence from the Claimant and from Mr Newell followed by submissions from each of them. The other witnesses (I mean, Mr Choudhury and others) from whom the Claimant had obtained witness statements were not called by him to give evidence. I have read these written statements and accorded them such weight as seemed to me appropriate in the light of the other evidence in this matter (taking account of the obvious limitation that Mr Newell has not had the opportunity to cross-examine these witnesses). However, the content of these witness statements seemed to me relevant only as background and is not central to the contested issue. The Respondent has not served its own factual witness statements. However, there is common ground as to the factual background and, notwithstanding the absence of any witness statement evidence from the Respondent, the Claimant was keen that

matters should proceed today (at least with respect to the notice pay issue with which this Judgment is concerned).

Discussion and conclusions

8. The following facts and matters are common ground:
 - a. The Claimant was employed initially on a full-time basis as an Architect by the Respondent and was then made Head of Planning (again, with full-time hours) with greater responsibilities, including for the line management of other staff;
 - b. The Claimant was originally paid £35,000 gross *per annum*, but by the date of his dismissal (from, it appears, around September 2021) this had been increased to a gross sum of £40,000 *per annum*;
 - c. The Claimant was given notice of termination of his employment on or about 23 November 2021 and worked for around one week until his dismissal on 29 November 2021 (I note from the ET1 Claim Form that the Claimant has since found alternative employment with what appears to be a higher gross annual salary);
 - d. The Claimant's employment came to an end on 29 November 2021.
9. As to the contract of employment, this was drawn up by Mr Newell (as he told me, with the assistance of an accountant colleague) and it is common ground that this was the document which governed the Claimant's employment. I have already set out the material terms of the contract. The Claimant submits that the meaning and effect of the same terms are clear as to notice period entitlement. I agree with him about this and there was a clear entitlement to 4 weeks notice of termination of employment (with the length of service that the Claimant had, by that date, accrued).
10. Mr Newell suggested at one point that the concerns that he and perhaps others had about the Claimant's performance at work meant that he might have been entitled summarily to dismiss for gross misconduct (although, in fairness to Mr

Newell, he was reticent to describe such performance as amounting to gross misconduct in terms). There are two problems with such submission. First, I am unable to conclude on the basis of the material before me that such performance fell so short of what might reasonably have been expected that it could fall within the category of gross misconduct described in the contract of employment. Second, and more importantly, the Claimant was not, in fact, dismissed for gross misconduct. There was no summary dismissal in this case. Instead, the Claimant was given one week's notice in the manner that I have described. This notice period was given to the Claimant on the erroneous understanding that the statutory minimum described on the UK Government website "*trumped*" or took precedence over the Claimant's contractual entitlements. It did not. The Claimant is entitled to damages for the breach of contract represented by the additional 3 week period of contractual notice for which he neither worked nor was paid.

11. The parties are, as I have indicated, agreed as to the gross sum due in this regard and this is the sum that I award. As far as the notice pay issue is concerned, I am not asked by the Claimant to make any adjustment in this regard pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 and, in any event, I do not do so (this dismissal did not arise out of any disciplinary or grievance issues which might fall most obviously within a relevant Code). I say this without prejudice to any further submissions that the Claimant might make in this regard when this matter returns to the Tribunal for hearing of the remainder of the claim on 1 February 2023.
12. This concludes the Judgment of the Tribunal on the Claimant's claim for breach of contract with regard to notice pay (only). As I have indicated, the remainder of his ET1 claims will be dealt with on 1 February 2023 and case management directions have been provided by a separate Order in this regard.

Employment Judge Chapman KC

Date 3 November 2022

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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