



EMPLOYMENT TRIBUNALS

Claimant: Miss C Hartnup

Respondent: Gardiner Distribution Limited

Heard at: London South **On:** 26/1/2023
(Croydon) via CVP

Before: Employment Judge Wright

Representation:

Claimant: Mr M Lovelock - representative

Respondent: Ms C Gardiner – company secretary

JUDGMENT

The claimant's claim for notice pay is dismissed.

REASONS

1. The claimant presented a claim form on 5/11/2021 and claimed a month's notice pay. She put that sum as £1865.40.
2. The following summaries are taken from the pleading and witness statements. They are not findings of fact (as no evidence was heard) they are merely a summary of each side's position.

3. There was a clear factual dispute between the parties. The claimant said she resigned on 2/10/2021 giving her contractual four weeks' notice. She said that she was unable to work her notice period and so she claims that sum.
4. The respondent said the claimant resigned on 13/9/2021 in breach of contract as she intended to leave on 23/9/2021 as she was relocating to North Lincolnshire, a four hour drive from her place of work. Although the claimant did not give the respondent contractual notice, it appears that the respondent was not going to take issue with this.
5. The respondent said that the claimant took accrued annual leave and so her last working day was 27/9/2021.
6. The respondent could not allow the claimant to continue in her role working remotely, however, the respondent was just about to advertise a role which could be carried out working from home. This was discussed with the claimant. The respondent said that the claimant took a day's unpaid leave on 28/9/2021 and was then expected to start her new role on 29/9/2021.
7. On 27/9/2021 the respondent emailed the claimant and attached a new contract, for the working from home role said to be effective from 29/9/2021.
8. The claimant queried this on 29/9/2021 as she was unhappy about the fact the new role was a temporary to permanent role, said to be temporary for three months. The respondent said that originally it was going to be a temporary role for six months in order to assess the viability of it, but that it had reduced this to three months to accommodate the claimant.
9. In a response of 30/9/2021 the respondent set out the claimant's options (which included her continuing in the original role, which would require her to be in the office from 8am) and referred to her resignation on 13/9/2021 and her working four weeks' notice until 11/10/2021.
10. This resulted in the claimant raising a grievance on 30/9/2021 and her resignation on 2/10/2021.
11. That is a brief summary of the facts and both side's position. The issue therefore for the Tribunal to determine would be whether the claimant resigned on 13/9/2021 and if so, in what circumstances? If not, did she resign on 2/10/2021 and if so, is she entitled to a notice payment.

12. The case was first listed for a final hearing on 24/6/2022. That hearing was postponed by the Tribunal.
13. The next hearing was listed for 21/9/2021. On the 18/9/2021 the claimant's representative made an enquiry: 'can I as the representative for the claim just be present for the hearing? (without [the claimant] having to be present)?' It does not appear this question was answered, it does however, indicate that the claimant did not intend to attend the hearing. That hearing was postponed on 20/9/2022 following an application made on the same date from the respondent and due to Ms Gardiner's ill health/a medical emergency.
14. The hearing was relisted for 14/12/2022. Having previously complained about the postponement and delay (which he said was causing stress) Mr Lovelock responded within minutes of receiving the notice of hearing to say that as the previous hearing was cancelled at the 'last minute' after he had taken time off work, that he was unable to make the date the hearing was listed for.
15. In view of the delay to date, the Tribunal was reluctant to postpone the hearing for a third time and asked if Mr Lovelock could attend if the hearing was conducted via video conferencing? Mr Lovelock replied that he was not available on 9/12/2022 and asked that the papers be put before an Employment Judge. The hearing was postponed and relisted for 26/1/2023 on 14/12/2023. The hearing started and Mr Lovelock confirmed that the claimant was unavailable. He proposed that he give evidence upon her behalf. Each party had provided a two-page witness statement. Ms Gardiner's witness statement was sent on the 24/1/2023 and the claimant's on 25/1/2023.
16. The Rules provide:

Written representations

42. The Tribunal shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 7 days before the hearing.

Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

17. Notwithstanding the written documentation was not submitted 7 days before the hearing, it was considered.
18. There was no reasonable explanation for the claimant's non-attendance at a video hearing which was only scheduled to last two hours. In view of the circumstances and the claimant's non-attendance, the claim was dismissed.
19. Mr Lovelock enquired about an appeal and he was informed that time-limits to apply for an appeal apply.

26/1/2023

Employment Judge Wright