



EMPLOYMENT TRIBUNALS

Claimant: Miss S Duval

Respondent: YR Free Technologies Limited

Heard: By video **On:** 9 February 2023

Before: Employment Judge S Jenkins

Representation:
Claimant: In person
Respondent: Mr R Marsden (Principal)

JUDGMENT having been sent to the parties on 13 February 2023, and written reasons having been requested by the Respondent in accordance with Rule 62(3) of the Employment Rules of Procedure 2013, the reasons are as follows:

REASONS

Background

1. The hearing was to consider the Claimant's claim for breach of contract relating to the amount of notice she received from the Respondent on the termination of her employment.

Facts

2. The facts of the case were not in dispute. The Claimant, the Respondent's Financial Controller, was given three weeks' notice by the Respondent of the termination of her employment by reason of redundancy on 16 June 2022. The Respondent had been acquired by its current owners in May 2022 in something of a state of financial distress, and the new owners sought to make cost savings, which included the redundancy of the Claimant. The Claimant, whilst understandably disappointed at being made redundant, did not raise

any concerns about the fairness of her dismissal.

3. The Respondent could not locate any written contract of employment with the Claimant. It then took advice on the amount of notice that it was required to provide, and was told that, in the absence of a specific contractual provision, the statutory notice provisions set out in section 86 of the Employment Rights Act 1996 ("ERA") would apply. As the Claimant had been employed for three complete years of service, that meant that she was considered to be entitled to three weeks' notice. As I have noted, that notice was provided, commencing on 16 June 2022, and expiring on 7 July 2022, when the Claimant's employment ended.
4. Following the service of notice, the Claimant objected to the period of notice. She contended that she had understood that, after completion of her probation, her notice entitlement would be three months. She also contended that the "industry standard" for someone in her role was three months, providing emails from two recruitment agencies in support of that. She also noted that the notice period in the new role she had obtained to replace her employment with the Respondent was, after a three month probation period, to be three months. Despite that objection, the Respondent maintained its position that the Claimant was only entitled to three weeks' notice.
5. Following the termination of the Claimant's employment, she obtained an alternative position, commencing on 1 August 2022, at a higher salary than that she enjoyed with the Respondent.
6. It was agreed that the Claimant's gross monthly salary with the Respondent was £3,937 per month, which equated to £908.54 per week.

Law

7. Section 86 ERA provides for minimum periods of notice of termination of employment. In relation to notice given by an employer, section 86(1) provides that where an employee has been continuously employed for one month or more than the notice entitlement is not less than one week's notice if the period of continuous employment is less than two years, and one week's notice for each year of continuous employment if the period of continuous employment is two years or more at up to a maximum of twelve weeks' notice for 12 years or more employment.
8. Subsection 3 of section 86 provides that, "*Any provision for shorter notice in any contract of employment with the person who has been continuously employed for one month or more has effect subject to subsection... (1)*".
9. Section 86 therefore provides for a minimum period of notice of employment to be given regardless of any express or implied contractual provision.

10. At common law however, every employee is entitled to notice of termination of their contract of employment, regardless of its length. In the absence of any express or implied contractual term, the common law rule is that a reasonable period of notice must be given, and what amounts to a reasonable notice period depends on the facts of the particular case, including the employee's length of service, their status, and the usual provision within the particular profession in question.
11. If insufficient notice is provided by the employer, the employee is entitled to damages for the breach of contract that will then have arisen. The amount of damages is such sum as would put the employee in the same financial position as they would have been in if full notice had been given. The employee is under a duty to mitigate their loss by searching for, and accepting, alternative employment, with any earnings in mitigation being set against the damages that would otherwise have been ordered to be paid.

Conclusions

12. If the statutory notice provisions set out in section 86 ERA applied then the Respondent fully complied with its notice obligations. However, as I have noted, the common law rule is that reasonable notice must be given and that can be greater than the statutory minimum.
13. I noted the documentary evidence produced by the Claimant from two recruitment agencies, from her employment following on from her employment with the Respondent, and also from her new employment, which she had obtained at the start of 2023. All of those indicated that a three month notice period would usually be applicable for someone carrying out the role of financial controller.
14. I noted that that the role of financial controller is a responsible one. It attracted a salary with the Respondent of just over £47,000 and attracted a salary slightly higher again in the Claimant's subsequent employment. It therefore seemed to me to be reasonable that the notice entitlement of someone fulfilling the role fulfilled by the Claimant for the Respondent would be three months.
15. The notice given by the Respondent expired on 7 July 2022, whereas, in relation to what I considered to be the reasonable three-month period, it should have expired on 15 September 2022. However, as I have noted, the Claimant commenced employment with a subsequent employer on 1 August 2022, and enjoyed a higher salary in that role than she had with the Respondent. That meant that there were then only 16 working days in the period between 8 and 31 July 2022, for which the Claimant needed to be compensated. At a gross daily rate of £181.73, that led to a gross sum of

£2907.68, and the Respondent was ordered to pay the Claimant that sum.

Employment Judge S Jenkins
Dated: 3 March 2023

REASONS SENT TO THE PARTIES ON
7 March 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS