



# EMPLOYMENT TRIBUNALS

**Claimant**

Miss T Boyd

v

**Respondent**

Sin Bar Ltd

**Heard at:** Bury St Edmunds

**On:** 16 January 2020

**Before:** Employment Judge Laidler

**Appearances**

**For the Claimant:** In person.

**For the Respondent:** Mr S Khan, Director.

## RESERVED JUDGMENT

**The effective date of termination was the 28 November 2018 and the claim was therefore received in time and the tribunal has jurisdiction to determine it.**

## REASONS

1. The claim in this matter was received on 7 February 2018. The claimant asserted that she had commenced employment on 1 June 2010 and was still employed. However, she claimed unfair dismissal, holiday pay and indicated she was in dispute with her employer claiming SSP with HMRC. The claimant was sent a letter by the Tribunal on 1 March 2019 stating that the Tribunal had no jurisdiction to decide if there had been an underpayment of SSP which remained a matter to be dealt with by Revenue.
2. The claim had named Mr Shabbir Khan as the respondent. No response was received from him. A letter was sent on 5 May 2019 asking the claimant to confirm the correct legal title of her employer.
3. The claimant initiated ACAS Early Conciliation again on 7 May 2019 against Sin Bar Ltd. The date of the certificate is 15 May 2019. The original ACAS certificate named Mr Khan and had been initiated on 3 February 2019 with the certificate issued on 5 February 2019.

4. The claim was served on Sin Bar Ltd on 17 June 2019 giving a date for its response of 15 July 2019. The correspondence was returned to the Employment Tribunal. A hearing that had been listed for 6 August 2019 was postponed, it believing that the respondent had not submitted its response.
5. On 5 August 2019 Mr Khan emailed the Employment Tribunal stating he had been telephoning but had not been able to speak to anybody and asked that he be telephoned.
6. On 20 August 2019 believing that the respondent had not entered a response, a letter was sent to the respondent indicating that a judgment may now be issued.
7. By email of 20 August 2019 Mr Khan wrote to the Employment Tribunal indicating that the response had been submitted on 15 July 2019 and that he had received an automated response stating it had been received. He was waiting for further directions. On 21 August 2019 he sent again the information he had sent on 15 July.
8. As the respondent had stated in its response that the claimant had resigned on 22 October 2018 and that her claim had been received out of time it was then directed that the claim be listed for an open preliminary hearing to:
  - 8.1 clarify what claims were brought by the claimant;
  - 8.2 determine whether they had been brought in time;
  - 8.3 In the event that any claims proceeded to make necessary case management orders. An order was also made for the preparatory work that the parties needed to do in preparation for that hearing and this was sent to the parties on 6 October 2019.
9. This hearing was listed on 22 September 2019 and notice sent to the parties on that date. It appears it was sent by email to both the claimant and to Mr Khan at his gmail address.
10. Mr Khan responded to the claimant's claim with further information in addition to his response by an email of 27 December 2019 copied to the claimant.
11. When the administration telephoned the parties the day before this hearing to ensure they were attending, Mr Khan stated he did not know about the hearing and wished to apply for a postponement. He did however attend.
12. On discussing at the outset of the hearing what Mr Khan had received he explained that correspondence had been sent to the place where the claimant was employed in Ipswich and as he is not permanently based

there, he was not receiving all correspondence. He had asked the Tribunal to make sure that they sent correspondence to his gmail.com email address. On checking the file, it was clear that was where correspondence had been sent. Mr Khan then confirmed that he had received notice of hearing but had not received the order for directions. He had believed that the claimant had been asking for more time and therefore had thought that the hearing was not going ahead. He was expecting further correspondence about the hearing and was surprised when he heard from the Tribunal that the hearing was listed for today.

13. The claimant had however prepared a bundle and it was agreed that the matter would proceed on the basis that Mr Khan had provided further particulars of his response and the claimant had also prepared a witness statement. The claimant was called to give evidence as was Mr Khan.
14. From the evidence heard the Tribunal finds the following facts.

**The facts**

15. The claimant commenced employment in 2010 when she was originally employed as door staff. At the time the company was run by a Mohammed Abbis and Hiwa Sabir. After 3 years the claimant took on the role of venue manager.
16. The respondent's premises are a late night drinking establishment open Thursday, Friday and Saturday nights from 10pm to 3am that plays recorded music by a DJ. The claimant also had the responsibility of being the Designated Premises Supervisor (DPS) which meant she was responsible for the sales of alcohol on the premises and upholding the premises licence conditions and complying with the Licensing Act 2003.
17. In or about March 2018 the ownership of the respondent transferred to Sin Bar Limited run by Mr Khan. The claimant's employment continued. As Mr Khan lived in London a lot of the responsibility fell on the claimant. The claimant found that she got regular telephone calls from Mr Khan, some out of hours. She found him very questioning and that he would shout and swear at her in front of other staff and customers.
18. In or about June 2018 the claimant started to suffer with symptoms of back pain which caused her to be more tired than normal as she could not sleep well. She was struggling to walk and attend work, but still attended work taking regular doses of medication. On 18 August 2018 she attended the out of hours doctor with severe pain in her back and was prescribed Codeine and Diazepam, advised not to attend work that weekend. Mr Khan was not happy with this when she informed him. She again attended the doctors on 12 and 18 October and was prescribed further medication.
19. On Saturday 20 October the claimant experienced a very difficult evening at the bar as a major incident happened when a huge fight occurred, and the claimant was helping customers who had been hurt. She was dealing

with the emergency services when Mr Khan kept telephoning her. The claimant found the evening extremely stressful.

20. On 21 October 2018 the claimant took an overdose due she feels to the pressure and stress of her job and Mr Khan's actions and behaviour towards her.
21. On 22 October 2018, the day after, the claimant sent a text message to her former employer Hiwa Sabir who was a friend asking that he pass a message onto Mr Khan. That message was seen and stated:-

“Can u call jd for me tell him I won't bk I took an overdose last night everything getting on top of me!!!! I just don't want to talk to him xxx”

The response was that he hoped the claimant was ok and that:

“also told him he said why not call him. Talk to you soon xxx”

22. On 28 October 2018 (6 days later) Mr Khan sent the claimant a text message stating:

“You know that you can always talk to me right? No matter you work for me or not you will always be like my sister and are family. Was calling you to find out if you ok especially kids. Plz call me I am worr8ed about you.”

23. Mr Khan relies on that text message as evidence that when he said the claimant could talk to him no matter whether she worked for him or not, that was proof that the claimant was no longer was employed. His evidence however was inconsistent. To start with he stated that Hiwa did message him on 22 October 2018 but then he stated that it was on the Saturday night he was told the claimant was rushed to hospital and that is why he messaged the claimant saying that she could always talk to him whether working or not. He said that he heard from Hiwa on 22<sup>nd</sup> but only that the claimant had quit not that she had taken the overdose. He only heard about the overdose and being rushed to hospital on 26/27 which is why he texted the claimant saying that she could always speak to him. The Tribunal does not accept that evidence as credible. It has not heard from Hiwa. However, it has seen the text messages in which Hiwa said that he had spoken to Mr Khan on 22 October. There is nothing though to say that he had communicated to Mr Khan that the claimant had resigned.
24. The Tribunal accepts that Mr Khan and the claimant then had a conversation on or about 28 or 29 October and he asked the claimant to obtain prices for the head doorman Richard Halls to get his own licence. That explains the text message seen in the bundle on 30 October where it would be £100 “done via e-learning”.
25. On Friday 2 November a meeting took place in the bar between the Mr Khan, Richard Halls and the claimant to clear up everything that had gone on in the previous two weeks. The claimant apologised for leaving them in the lurch and wanted to explain what had happened. The claimant

believed they had resolved everything. The claimant left believing she was still employed. The claimant disputes that there was ever talk about a security company being set up by the respondent which she might wish to work for. What she says was discussed was opening up of the upstairs at the bar. The tribunal accepts that the parties then continued with the claimant as an employee of the respondent.

26. The claimant had been the personal licence holder for the property for about 15 years and that was what she was concerned about as it was going to take her time to recover and she felt that she could not continue to hold the licence if she was not on the premises.
27. On 13 November the claimant sent over to the respondent a sick note which had signed her off sick on 9 November for the period 7 - 26 November with back pain. She explained that if the physio did not work, she would be seeing a spine specialist. She also sent the respondent a copy of medication she had been prescribed. His response in a text message was "Sorry to hear that this is the reason I said sort out your issues, health and life ...". Which the claimant took to mean to take time off.
28. There were then text messages between the parties in which the claimant asked about sick pay and Mr Khan stated that he did not provide it. The claimant knew that she did not have an entitlement to contractual sick pay but was asking about statutory sick pay. Mr Khan stated he could not afford it and if he did manage to arrange something 'it will be a loan and documented. There is no sick pay'.
29. The claimant replied that she had never been in a job before where she did not receive SSP. This demonstrated that the claimant considered she was still employed. Mr Khan did not state that the claimant had resigned but 'there is no sick pay for anyone in SIN, I will try to do something personally as a loan to you, that the best I can do'. The claimant refused this. Mr Khan replied that he had accountants and administrators involved and having 'sick pay or sick leave is gonna miss (sic) everything so I can't do that or add that now, secondly if I do it can not be for one person but for all as this is not fair, that's why I said I will do it from personal'. The claimant restated her position that she would sort it out herself and Mr Khan replied 'ok confirm this about what they say and we can figure something out'. At no time did he say that he believed the claimant to have resigned.
30. On 18 November 2018 Suffolk Constabulary wrote direct to the claimant in relation to taking swabs at the bar premises for drug testing. The claimant's position is that she would not have been written to if she had resigned with immediate effect. She remained the designated person until 26 November. She had informed Sally Wilson at Suffolk Constabulary that she was not at the premises whilst off work.

31. In an email of 25 November, the claimant told the respondent she was 'resigning as DPS of the premises...as at the moment I am currently off sick and will be for the near future due to ongoing back problems.' She stated in the email "As of my position as manager I will keep you informed of sick notes and any treatment I am going to have to receive." She had sorted out the sick pay issue. The claimant did not receive a reply to that email
32. By email of the 28 November 2018 the claimant wrote again to Mr Khan. She stated:
- 'I have come to the conclusion you no longer want me to be the manager of Sin where I have been employed for the last 9 years, to be honest I am very upset and hurt that I have now been removed from the Sin page as well now, I only resigned from being DPS due to my on going back problems, which now I have been referred to a spine specialist, because the roles and responsibilities that a DPS has to take on has to be on the premises more than off and take care of the day to day running of the business as it stands I am unable to do this properly due to lifting all the deliveries in myself on a week to week basis.
- ... I am disappointed that I have been treated like this, so I will be sending someone in to collect my personal belongings...
- ...I would also like my telephone number taken off of google relating to the bar, and I would like all of my pictures taken off the Facebook page...
- ...
- I wish you all the success in the business going forward.'

## Conclusions

33. To decide if the claim is in time the tribunal must first determine the effective date of termination when the employment came to an end.
34. The tribunal does not accept that the employment ended on the 22 October or any date in October. The claimant may have asked the former owner to advise the respondent about her overdose and that she was not coming back but she did not then resign. The tribunal has considered all of the messaging between the parties and it is quite clear from it that both parties believed and behaved in a way only consistent with the employment relationship continuing. The claimant sent in sick notes and asked about sick pay. The respondent stated he did not pay sick pay but at no time did he state he had no obligation to as the claimant was no longer employed.
35. On the 2 November 2018 the claimant attended a meeting at the bar with Mr Khan at which the events of the past few weeks were discussed and as the claimant put it 'everything resolved'. The parties continued after that meeting with the claimant as an employee
36. The claimant resigned her position as DPS as she was concerned she could not fulfil the licensing requirements if she was off on long term sick. Her email made it clear that she was not resigning her management

position. Mr Khan did not reply to state that he believed she had already done so.

37. What this tribunal has concluded brought the employment relationship to an end was the claimant's email of the 28 November 2018. She made it clear that she considered she was being pushed out of the business and she would be sending someone to collect all her belongings. It is clear from that email that she considered she was from then on no longer employed. The 28 November 2018 is the effective date of termination.
38. The claimant had three months from that date to present her claim i.e. by the 27 February. She did so as the ET1 was received on the 17 February 2019. The claim was presented in time and will now proceed to a hearing at which the claims will be determined

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Employment Judge Laidler

Date: .....18/02/2020.....

Sent to the parties on: ...25/03/2020.....

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For the Tribunal Office