EMPLOYMENT TRIBUNALS

Claimant: **MRS BUSRA BERBER**

Respondent: **SENOL & SENOL LTD**

Held at : Manchester **On: 3 February 2023 and 16 January 2024**
28 February 2024 – In Chambers

Before: Employment Judge Holmes (sitting alone)

Representation:
Claimant: In Person
Respondent: Mr T Fuller, Employment Consultant

RESERVED JUDGMENT

It is the judgment of the Tribunal that:

1. The claimant was dismissed, on or about 24 January 2022.

2. Her claim for unfair dismissal was presented on 15 September 2022, and was therefore presented out of time.

3. The claimant has not shown that it was not reasonably practicable to have presented this claim in time, and it is dismissed.

4. In relation to the claimant ‘s other claims , they too were presented out of time, the claimant has not shown that it was not reasonably practicable to have presented these claims in time, and they too are dismissed.

REASONS

1. By a claim form presented on 15 September 2022 the claimant brought claims unfair dismissal, and for notice pay, arrears of pay and holiday pay.

2. The respondent denies the claims, contending that the claimant was dismissed, but her dismissal it was on 24 January 2022, so her claims are all out of

time. In the alternative , the respondent contends that the claimant's dismissal was fair, or would have occurred in any event. The alternative response to the other claims for notice pay and holiday pay is that nil sums are due to the claimant.

3. The Tribunal accordingly by letter of 15 November 2022 listed this public preliminary hearing to determine:

When the claimant was dismissed

Whether her claim was presented out of time , and, if so, whether it was not reasonably practicable for the claimant to have presented her claim in time , and if not, whether she then presented it within a reasonable time.

4. Whilst the claimant was legally represented when the claim was issued, and was until recently, she was not so at this hearing. Further, a Turkish Interpreter was provided by the Tribunal.

5. The respondent was represented by Mr Fuller, consultant. There was an agreed bundle of some 97 pages, with one additional page that the claimant wished to rely upon added at page 98. This was the original bundle, and references to page numbers "of the bundle" are to this bundle. In due course, however, a further , supplemental, bundle was produced, and references to page numbers in this bundle are in the format "SB…"

6. At the outset the Employment Judge explained the procedure to the parties. He also noted that the issues in the Notice of Hearing were slightly inaccurate, as it seemed to him that in addition to when the claimant was dismissed, there was also the issue of whether she was dismissed. He therefore proposed that the issues be redefined to include that issue, and the parties agreed. He also noted that there was reference to "the claim" in the singular, whereas the claimant has made other claims in addition to the unfair dismissal claim. The implications of the Tribunal's findings for those claims will be considered at the conclusion of the judgment.

7. The claimant gave evidence at the hearing on 3 February 2023, and for the respondent Serkan Senol gave evidence. At the conclusion of the hearing on that day, however, the Employment Judge ordered the claimant to provide further disclosure in relation to her visa application, and made provision for her to conclude her closing submissions.

8. The claimant, who has been advised by, but not represented in the hearing by, solicitors , provided further documentary evidence on 10 February 2023. It was, however, redacted, and incomplete. The Employment Judge accordingly made a further order, sent to the parties on 27 February 2023, for the claimant to provide further disclosure by 20 March 2023, following which a further hearing was likely to be required for this further evidence be considered, and the claimant to be questioned about it.

9. The claimant complied with this order on or about 20 March 2023. A further hearing was listed, but there were postponements for a variety of reasons. The claimant made a further witness statement dated 25 August 2023 , in which she set

out more details of how she obtained the new employment with Sanli Design Limited. The result was the further hearing being held on 16 January 2024, at which the claimant gave further evidence, and was questioned in particular about the further evidence that had been submitted to the Tribunal following the original hearing.

10. The parties made further submissions, in writing , the respondent's being dated 16 January 2024, and the claimant's 28 January 2024. Having heard the evidence , considered the documents and the submissions of both parties, the Tribunal finds the following facts relevant to the preliminary issues it has to determine:

10.1 The respondent specialises in shading systems, architectural and engineering activities, with one office located in Manchester. The claimant , who is of Turkish origins, was employed by the respondent as an Architect on 22 June 2018. She was based in Manchester, and her role was to design outdoor plans for shading systems, prepare bids and project proposals, and generally complete projects from design through to construction.

10.2 From November 2020, the claimant began working 3 days per week due to studies at university.

10.3 On 23 June 2021 the claimant suddenly left work because her husband had died suddenly . It was she who found him. She did later discuss the position by telephone with Mr Serkan Senol, the CEO, but they did not really discuss when she may be coming back to work. Mr Senol just expressed his condolences and told her to go and settle things, and to call him back.

10.4 The claimant returned to Turkey in order to arrange and attend her husband's funeral.

10.5 The claimant called Mr Senol some time in September 2021 to update him on her situation, and she said something to the effect that she was waiting for her visa to be issued so she could come back to the UK.

10.6 Mr Senol next received a text message from the claimant on 18 October 2021 where she said that she hoped to come to London the next day as she had now received her visa, and she would give him a call [page 59 of the bundle]. He acknowledged her messages, but she did not call him on 19 October 2021. There ensued between 20 and 26 October 2021 various messages between the claimant and Mr Serkol, but the upshot was that they did not manage to have a discussion which took matters any further [pages 59 and 60 of the bundle].

10.7 On 27 October 2021 at 13:57 the claimant and Mr Senol did manage to speak. discussing why the claimant was moving to London. Whilst the details of what was said are not agreed , it is clear that there was discussion of the claimant moving (or having moved) to London, and how she wanted to work from there. Mr Senol considered that the company did not need another Architect in London and her posting in Manchester was necessary to service clients in the Northwest region. He considered It would not have worked, logistically or financially, for the claimant to travel from London to carry out the work in Manchester, and commercially for the company it made no sense to permit this. The claimant , however, had

proposed to study for a Ph.D in London, and had understood what when she did this she would be able to carry out work for the respondent in London.

10.8 Mr Senol's position was that if her preference was to work in London then these working conditions would not be suitable for the respondent. Neither party contends that there was any termination of the claimant's employment during this call, but Mr Senol was clear that if the claimant were unable to fulfil her role in Manchester then there would be no further basis to continue the employment relationship. Matters were left open, with Mr Senol saying that the claimant could call him if she wanted to evaluate her situation and talk to him about the terms of her employment, and she said that she would think about this and come back to him.

10.9 After the call on 27 October 2021 there was, both sides agree, no further communication between the parties until , at the earliest, January 2022 .

10.10 On 3 January 2022, however, the claimant obtained new employment with Sanli Design Ltd, and was provided with an Employment Contract [pages SB 15 to 17]. That is a company based in Wallington, Surrey, and the claimant was employed by it as a Design Co-ordinator for an initial probationary period of 3 months, and thereafter on the basis of termination by either party on 2 weeks notice.

10.11 In her further witness statement the claimant claims that she "became overwhelmed" with her efforts to reach Serkan Senol for a response as to when she could come back to work. Whilst she claims that he said that he would let her know about the decision on October 27 2021, the Tribunal does not accept this, and it is not supported by any of the contemporaneous evidence.

10.12 The claimant , who was by now living in or near London, was assisted by her close friend, Miss Fatma Busra Kose, and her mother, Mrs Emine Berber to obtain this new employment. as Miss Kose, had previously worked at Sanli Design in London. On November 23, 2021, Miss Kose contacted Mr. Veli Sanli to enquire about potential architectural assistant positions. Mr. Sanli invited her to his office for an in-person conversation on November 24, 2021, and he extended an offer for a part-time position starting in January 2022.

10.13 On December 27, 2021, the claimant submitted the starter checklist form , an HMRC P46 form, to Mr. Sanli via email. That document is at page SB68, and in it the claimant put an X against option B on the form, which provides as follows:

This is now my only job but since last 6 April I have had another job, or received taxable Jobseeker's Allowance, Employment and Support Allowance or taxable Incapacity Benefit. I do not receive a State or Occupational Pension

10.14 On December 23, 2021, the claimant had called the accountants of Sanli Design Ltd to seek clarification about employee statement choice before submitting the form. She says that they advised her to tick box B, and that they stated that if she did not pay tax since July 2021 with Senol and Senol Ltd., she could tick box B.

10.15 The claimant invites the Tribunal to note that her mental state prevented her from actively seeking employment. Miss Kose facilitated her connection to her former employer through verbal communication over calls. This she describes as a "casual" relationship, therefore, all communication made via calls and in person to arrange this job.

10.16 The claimant did not inform the respondent of this new employment, and it was not mentioned at all in her witness statement to the Tribunal, nor, until ordered to do so, did the claimant disclose any documents relating to this new employment.

10.17 The company handbook which is referred to in the claimant's contract of employment with the respondent [pages 86 to 89 of the bundle] provides at clause 25 [pages SB 46 and 47]:

25. OTHER EMPLOYMENT AND PRIVATE TRADING – this clause does not apply to Zero Hour Contracts

It is expected that you will devote your whole time and attention to this Company during your working times. Therefore, you must not take on other employment or work outside working hours without first asking the Manager and obtaining his or her written permission.

Permission will not be unreasonably refused but if we are not happy about the other employment or business activity we may ask you to choose between working for us and continuing with your other activities.

Some examples of when permission would normally be refused are where the outside work damages or interferes with your own capacity, capability or credibility in doing your work for us or affects your performance of your duties or exposes you to a conflict of interest of where there could be damage to the Company's interests or reputation.

You must not:-

Set up in business (either alone or with others) which competes with any aspect of our business.

Or

Do any work of any nature in any capacity for any of our competitors.

10.18 The claimant did not comply with these provisions of the Handbook.

10.19 On 7 January 2022 Mr Senol sent the claimant an email referring to the details from their last call and that she had said she was going to think about our chat and call me, but that she had not yet been in touch [page 62 of the bundle]. He referred to her absence being unpaid, and that she had until 21 January 2022 to let him know what she intended to do.

10.20 Because the claimant was not working, he did not send this email to her work email address, he sent it to her personal email address, which is 'busraberber@hotmail.com'. He did not hear from the claimant in reply to this email.

10.21 Having already explained to the claimant that he could not permit her to work from London , something she had not asked for before the conversation in October 2021, and the claimant having also said she would contact him, but had not done so, and having ignored his first email, he no longer believed the claimant had any intention of returning to work for the respondent.

10.22 He therefore sent a further email to the claimant on 24 January 2022, explaining that he found her silence unacceptable and, because her actions left the respondent in a commercially disadvantaged position, her employment was being terminated [page 61 of the bundle].

10.23 Whilst Mr Senol had said the claimant's final day of employment was 27 October 2021, he later accepted , having had the benefit of legal advice that this was not correct. He believed that he was terminating her employment on 24 January 2022 in this email, and this was her final day of employment, although she had not worked at any point after 27 October 2021 to when her employment ended on 24 January 2022. Although reference was made to the claimant being paid notice pay and holiday pay, these amounts were in fact nil, as can be seen in the payslips at pages 66-71 of the bundle.

10.24 This email too was sent to the claimant's personal email address. Mr Senol had previously sent a number of emails to this personal email address of the claimant in the past, and she had replied to him from the same email address as well. Examples of such emails are at pages 51-58 of the bundle.

10.25 Mr Senol had also 'CCd' another company email address into his email to the claimant on 24 January 2022, and at pages 63-65 of the bundle is a copy of that email thread received by the 'Accounts' email address being forwarded on , and being received by the recipients of that email thread.

10.26 The respondent has produced [pages 90 and 91 of the bundle] screenshots of the sent emails page of Mr Senol's email account from which he says that these emails were sent. Whilst the claimant has suggested that these have been manipulated or in some other way faked to show that emails were sent to her which were not, there is no basis upon which the Tribunal can accept such a serious allegation of what would be an attempt to pervert the course of justice. The only evidence that the claimant relies upon is her alleged non – receipt of these two emails.

10.27 The Tribunal does not accept that the claimant did not receive these emails. On a balance of probabilities she did.

10.28 Mr Senol heard nothing from the claimant in reply to his emails of 7 and 24 January 2022.

10.29 Following the termination of the claimant's employment, Mr Senol instructed the respondent's Accountants, Stonebridge Accountants, to issue the claimant her P45. He asked that the claimant's P45 be issued to her by an email dated 28 February 2022 [page 74 of the bundle].

10.30 The P45 that was then issued is at pages 75 to 77 of the bundle. It gives the claimant's private address as 104 Chichester Road, Hulme, M15 1UP. The claimant's leaving date, however, is stated as 28 February 2022.

10.31 The claimant had a BRP (biometric residence permit) to work in the UK. Her previous one expired during her absence from work after the death of her husband, but then another was issued on 5 July 21 and was valid until 22 June 22 [page 85 of the bundle]. She did mention in her message to Mr Senol on 18 October 21 [page 59 of the bundle] that she had received her visa in Turkey which enabled her to get back into the UK and she hoped to return to London on 19 October 21.

10.32 The claimant considered that she was in the battle of mental breakdown had huge anxiety. Whilst she was waiting for the company to call her, the respondent considers that it was the other way round.

10.33 In June 2022, the claimant applied to extend her visa which was due to expire. [page 84 of the bundle].

10.34 The claimant's application for an ECAA visa is dated 20 June 2022 [pages SB26 to 32].

10.35 The claimant sent an email to the respondent dated 14 June 22 to ask for some documents that her Immigration Solicitor said that she needed in order to apply to extend her visa [page 78 of the bundle]. She has produced a photograph of a hand holding a posit-it note on which three items are noted – an SA302, a P45 and a "last payslip" [page SB24]. She says that this is what her immigration solicitor advised her to request from the respondent. The email to Mr Senol reads:

Hope you and your family are well.

For my VISA extension application for June 2022, I would like to request a few documents. I have included my visa representative, Ms Cagla, in the CC line of this email. May we have the following documents in the shortest possible time?

1. Pay slips starting from July 2021
2. P60 document
3. P45 document

Thank you in advance.

10.36 The claimant then messaged Serkan Senol on 5 July 22 at 11:23 asking him to contact her after she called him but there was no answer. He texted her saying that he would send the documents tomorrow (page 79 of the bundle).

10.37 As she was struggling get hold of Serkan Senol , and at the suggestion of her immigration solicitor , she decided to contact Oguz Senol who is Serkan Senol's father, but also in charge of decisions in the company. She called Oguz Senol on 5 of July 2022. She was dissatisfied with the response that she received from Oguz Senol. The details of this conversation are largely irrelevant to the issues in this hearing, although they have been extensively quoted in the claimant's witness statement. In short, the claimant considered that Oguz Senol was inconsiderate, made inappropriate comments , and was unpleasant in this call. She makes the point that he did not mention that her employment had ended in January that year. He did , however, end the conversation by saying that Serkan Senol would be in contact with her.

10.38 On 6 July 2022 the claimant commenced early conciliation.

10.39 At 18.59 on 11 of July 2022, the claimant received by email from Serkan Senol the information for her visa application that she had asked for payslips, P60 and P45 [page 78 of the bundle] based on Visa document list provided by solicitor. The email also stated expressly that her employment had been terminated by them on 28 February 2022. The copy of the P45 enclosed was that at pages 75 to 77 of the bundle. He invited the claimant to contact him if she had any queries.

10.40 At or about the same time Serkan Senol sent a message (presumably a text) to the claimant , in Turkish, telling her that he had sent her the email. The claimant replied at 9.19 the following morning, 12 July 2022, simply thanking him. The next text from the claimant later that day from the claimant to Serkan Senol related to any enquiry that she had received from a former customer, whom she had directed to contact Mr Senol [pages 59 and 60 of the bundle].

10.41 The claimant remained employed by Sanli Design Ltd. until 31 July 2022, and hence was employed by that company at the time she was submitting her visa application in June 2022.

The respondent's submissions.

11. The respondent's written submissions are dated 16 January 2024. As they are available to be read, they will not be repeated here. They address the further evidence that the claimant gave, and the further documents that she disclosed. The respondent invited the Tribunal to find that the claimant was dismissed by the email sent to her on 24 January 2022, and to find that this dismissal was communicated to her, and hence was effective.

The claimant's submissions.

12. The claimant's written submissions are dated 28 January 2024, the Tribunal having granted her an extension of time for their submission. Again, as they are available to read, they will not be repeated here. The relevant issues that the claimant raises will be considered in the discussion below.

Discussion and findings

13. Before embarking on an explanation of what amounts to a dismissal, it is worth mentioning the other ways in which an employment contract can be terminated. These are:

resignation of the employee

termination by agreement between the employer and the employee

termination by operation of law, including frustration of contract. None of these count as a dismissal in law.

Resignation.

14. A resignation is the termination of a contract of employment by the employee. It need not be expressed in a formal way and may be inferred from the employee's conduct and the surrounding circumstances — ***Johnson v Monty Smith Garages Ltd EAT 657/79***. It is not usually difficult to recognise a resignation, but there are circumstances in which the situation may not be so clear. An employee's request for a P45 (which is given or sent to an employee on the termination of employment) cannot, by itself, be construed as a resignation. Such a request has to be considered in the light of all the surrounding circumstances — ***Bates v Brit European Transport Ltd EAT 309/94***.

15. In his judgment in that case Mummery J, said this (the judgment oddly lacks paragraph numbers, but these dicta appear at pages 9 and 10 of the judgment) :

"In summary the reason why we find this to be an erroneous decision is that the Tribunal based its conclusion of resignation on a request for a P45 in a letter. The letter cannot itself be construed as a letter of resignation. The request for a P45, whether made in a letter or orally, is not itself clear evidence of a resignation. A P45 is needed whenever there is a cesser of employment. Employment may cease by reason of dismissal. It may cease by reason of resignation. The mere request for a P45 is ambivalent.

Secondly, if it is said that we must read that letter in the context of the circumstances in which it was written, we have already explained the legal error of the Tribunal on the findings of fact it made as to Mr Bates motive or purpose in resigning. Those findings were made without the Tribunal observing the rules relating to natural justice."

16. Thus the Tribunal considers that whilst a request for a P45 is not, of itself, to be treated as a resignation, it is a factor which can be taken into account, in all the circumstances, in determining whether the employee has in fact resigned.

Dismissal.

17. The central issue here is whether there was a dismissal, and , if so, when did it take effects? A mere intention to dismiss does not of itself constitute a dismissal. That intention must be communicated to the employee. The dismissal will not be effective until the employee actually knows he is being dismissed; it does not commence from the date when he or she might reasonably have been expected to receive the notice

(eg by letter sent in the ordinary post): see ***Brown v Southall & Knight [1980] IRLR 130, [1980] ICR 617***, as explained in ***McMaster v Manchester Airport plc [1998] IRLR 112.*** This longstanding approach was approved by the Supreme Court in ***Gisda Cyf v Barratt [2010] IRLR 1073***

18. At common law, the date of termination is simply the date upon which the contract comes to an end. If the employment is ended with notice, that date will be the expiry of the notice period. Where no notice is served, it is the date when the employee ceases to work (in a case of resignation), or is summarily dismissed by the employer. Unlike statutory rights such as the right to claim unfair dismissal, it is not possible in a common law action for wrongful dismissal to extend the date of termination for any purpose beyond the date of actual termination.

19. The Supreme Court has held that, in the absence of any specific contractual provision, contractual notice sent by post does not take effect until the employee has read the letter containing the notice or had a reasonable opportunity of doing so. The notice is not effective on any earlier deemed service date or on delivery to the employee's address if he or she is not there — ***Haywood v Newcastle upon Tyne Hospitals NHS Foundation Trust 2018 ICR 882, SC.*** The majority in the Supreme Court held that notice had not been given when the letter arrived at the claimant's house on a day when she was absent on holiday. The notice was only given as a matter of law the following day when she returned and opened the letter.

20. The claimant , the Tribunal notes, was clearly aware of the law on this issue, as she expressly refers to it in para. 28 of her first witness statement.

21. Before proceeding any further, the Tribunal must make it clear that some matters referred to in the claimant's further submissions cannot be considered. This is not to be critical of her, as she is not legally qualified or represented, although she has had some legal assistance. Those matters are where the claimant makes reference to what may have been said or written during the ACAS early conciliation process. That period is covered by privilege, and all communications during it are without prejudice. That means that neither party can refer to what the other side did or did not raise during that process, unless there is agreement (which there is not) that they may do so. Thus the respondent cannot argue that the claimant , for example, did not dispute during that process, that she had received the disputed emails, nor can the claimant , as she has sought to, argue that the respondent made no mention of the January emails. The Tribunal can only act upon the evidence that has been adduced in open form before it.

22. It also has to be observed that the claimant's original witness statement and the documents that she originally disclosed gave no indication whatsoever that in the period between her leaving work on 21 June 2021, and resuming contact with the respondent on 14 June 2022 she had been employed by another employer. That information only came to light as a result of her disclosure of her immigration application, in which it was revealed that she had been employed by another employer since 3 January 2022. That was something of which the respondent was wholly unaware until late in these proceedings. Further , the manner in which the claimant provided this further disclosure was not open and transparent.

23. Three things , all closely related, come through very strongly from the claimant's evidence, and her submissions. The first is that she was very disappointed at the respondent's lack of support, as she saw it, following her bereavement. She has sought in her evidence to suggest that the respondent was meant to get back to her with some suggestions for her continued employment, preferably in London, and that there was a deadline for this of 27 October 2021. That suggestion is only made in her second witness statement, and is significantly absent from her first. The claimant seeks to paint a picture of becoming "overwhelmed" by her efforts to get a response from Serkan Senol. Those efforts were from 18 to 26 October 2021 (see pages 59 to 60 of the bundle). It is true that they ended on 26 October 2021 with Serkan Senol promising, but failing, to call her the following day, but there is nothing thereafter to show that the claimant made any further efforts to chase up Serkan Senol. Rather, it appears that the claimant seeks to rely upon this perceived failure on the part of the respondent to justify her then seeking and obtaining the new employment with Sanli Ltd, which she concealed from the respondent and the Tribunal.

24. The second feature is that the claimant was clearly very upset by the response she got from Oguz Senol on the telephone when she spoke to him in July 2022. If her account (which the Tribunal suspects is verbatim , because it was recorded) is correct, Oguz Senol was indeed rather unsympathetic, and he said some inappropriate things. That is not, however, of any direct relevance to the issues before the Tribunal. It would, however, further fuel the claimant's feelings towards the respondent, and how it responded to her tragic personal circumstances. The Tribunal finds it significant that the claimant initiated early conciliation on 6 July 2022, the day after this conversation with Oguz Senol, and before she learned (on her case) that the respondent was contending that she had been dismissed in January 2022, or , indeed, at any time.

25. The third feature, on a similar theme , is how the claimant seeks to explain and justify her concealed further employment by Sanli Ltd by contrasting the kindness and sympathy shown towards her situation by Mr Sanli with the callous disregard for it demonstrated by the respondent. She seeks to justify taking this employment by reason of her mental state, and financial concerns, and also explains her failure to notify the respondent in accordance with the Handbook on the facts that she was on unpaid leave, so did not need to do so. That is one explanation, another, more probable, in the view of the Tribunal , is that by January 2022 the claimant did not regard herself as being any longer employed by the respondent.

26. All of this, the Tribunal considers, raises serious questions as to how reliable the claimant's evidence is. The Tribunal has a strong impression of the claimant feeling (quite understandably) very badly treated by the respondent, who she seeks to blame for her situation. Her submissions make frequent reference to her condition as a widow with PTSD and mental health issues which she considers the respondent failed to take account of.

27. The Tribunal also notes how the claimant makes frequent criticism of both Mr Senols and accuses them of discrimination. She also seeks to rely heavily upon her mental health and grief as potentially affecting her cognitive functions, and decision making abilities. No medical evidence has been provided for this, and it is, in fact, a

double edged sword – these matters may explain how the claimant might indeed have received the emails from Mr Senol in January 2022, but may not have appreciated their significance. Whilst she may regard that as unfair, that is not a relevant consideration for the Tribunal.

28. Rather, the crucial factual issue is whether the claimant was dismissed, and when. that comes down to the Tribunal having to decide, on a balance of probabilities, whether she received the email of 24 January 2022 in which she was informed that her employment had been terminated, and the email before it on 7 January 2022 in which she was warned that she would be treated as having resigned if she did not respond. By implication, the claimant is also disputing that she received or was aware of any P45 being issued in February 2022.

27. This is, of course, a negative, and it is always hard to prove a negative. The respondent has given evidence that the email address used was the claimant's personal email address, and that it had previously used this successfully. The claimant has adduced no evidence of any other emails sent by any other persons not being received around this time . It is, the Tribunal considers, of some significance that the first contact that the claimant made with the respondent after 26 October 2021 was not until 14 June 2022, and was in very simple terms, merely requesting copies of documents, including her P45. No mention is made about the respondent failing to respond to her since October 2021, or even requesting any update on whether and when she might be able to return to work. This begs the question, why, if the claimant did not believe that her employment with the respondent had ended, did she request a copy of her P45? She has sought to rely upon a lack of understanding of this document, and the effects of her health on her thought processes, but she had not previously asked the respondent for one during her visa application processes.

28. At the time that the claimant made her visa application, she was still employed by Sanli Design Ltd. There would thus be no P45 from that company , so the need for one could only have arisen in connection with the claimant's employment by the respondent.

29. The claimant makes the point that it would be equally odd for her to request a P60 for the same period, but the Tribunal does not agree. Even if the amounts shown would have been nil, a P60 showing what she had earned with the respondent during her employment would still be a relevant document. A P45, however, would only be relevant if the employment had ended.

30. Further, a P45 is not a document which passes solely between the parties, it also goes to HMRC. The claimant has produced no evidence from her HMRC account (to which she is entitled access) which supports her suggestion that no P45 was actually issued in February 2022.

31. That the claimant asked for such a document strongly suggests that she knew or believed that her employment with the respondent had ended. A further, and in the Tribunal's view, telling , piece of evidence is the claimant's immediate reaction to receipt of the respondent's email of 11 July 2022. That email , and its enclosures, coupled with the express reference by Mr Senol to the claimant's employment having

terminated on 28 February 2022, made it clear that the respondent was saying that the employment had terminated. The claimant's immediate reaction, in a text to Mr Senol at 9.19 the following day , by which time she must have had time to read the email and the attachments, was simply to say thank you. Later the same day, quite gratuitously and rather helpfully , the claimant sent her next text message to Mr Senol, at 11.31, in which she went on to tell him that she had directed an enquiry from a former customer to him. This is not the reaction of a person who finds out for the first time that their employer is claiming , out of the blue, that their employment had ended some 5 months previously. The claimant, in her further submissions , says that she was angry but did not show it, because she had already spoken to ACAS, which she had. That may be so, but it is highly surprising that at no stage prior to the submission of the ET1 on 15 September 2022 did the claimant openly assert that she was not aware she had been dismissed until 11 July 2022.

The finding and its effect upon the claims being presented out of time,

32. The Tribunal accordingly finds that the respondent did indeed dismiss the claimant, on 24 January 2022. It communicated the dismissal to her, and the Tribunal is satisfied, the claimant was aware of that communication, so it was effective.

33. Thus, the Tribunal finds that the claimant was indeed dismissed, but that this was on or about 24 January 2022. As she did not commence early conciliation until 6 July 2022, over 2 months outside the primary time limit, and then did not commence the claims until her ET1 was presented on 15 September 2022, all these claims are considerably out of time.

34. As the claimant has not advanced any argument as to why it was not reasonably practicable to have presented the claims in time, the Tribunal cannot extend time for their presentation. This, of course, is the logical consequence of the Tribunal's finding of fact that the claimant was informed of the termination of her employment in January 2022. If she had not been, she could have argued that it was not reasonably practicable to have brought her claims because she was unaware of that fact, but as the Tribunal has rejected that argument on the facts, she cannot rely upon that as amounting to a lack of reasonable practicability.

35. The claimant cannot therefore seek an extension of time for the presentation of all her claims (for the same time limit will apply to them, as will be the provision that extensions of time can only be considered if it was not reasonably practicable for the claimant to have presented the claims in time), and they will all be dismissed.

An alternative finding.

36. If, however, the Tribunal were wrong in its finding that the dismissal was communicated to the claimant , and therefore was ineffective, the question would arise as to what the position , in law, then was between January 2022 and 11 July 2022.

37. That position was, the Tribunal would find, that the claimant's employment contract having been effectively suspended, but continuing in a somewhat fragile and shell – like existence from June 2021 until January 2022, the claimant then acted

inconsistently with it by accepting, without informing the respondent, other employment from 3 January 2022.

38. Whilst the caselaw makes it clear that the concept of self – dismissal or "deemed" resignation is a flawed one, it is nonetheless possible, as discussed above, as a matter of law for an employee to resign by conduct. As with actual dismissal by the employer, this will require communication to the employer, but a Tribunal is entitled to look at the whole of the course of conduct of an employee in determining whether , by their conduct , an employee did in fact resign.

39. The course of conduct in this case has its roots in the agreed suspension of the contract of employment from June 2021. The parties agreed at that point that the claimant need not provide any work for the respondent, and she was free to take time off, following the tragic and sudden death of her husband, but would not be paid. Whilst thereafter there was some discussion around October 2021 as to when , and indeed, where the claimant might return to work, the fact is nothing more was done by either side, the claimant did not return to work, and the respondent did not pay her, for the next three months, and beyond.

40. It was in that context that the claimant obtained other employment in January 2022. On the claimant's case that there was no further communication between the parties from 26 October 2021 to 14 June 2022, in which the claimant asked for, amongst other things, her P45, in circumstances in which she had already obtained and was still working in other employment. Additionally, on the P46 form that the claimant completed when starting work at Sandli Design Ltd. , [page SB68] the claimant stated that this new employment was now her only employment, but that she had had (past tense) other employment in the tax year. The claimant claims that this was on the advice of the accountants to Sandli Design Ltd., but that seems unlikely, as the claimant says they referred to her having paid no tax since July 2021, but the relevant date for this form is 6 April 2021, the start of the tax year. The claimant had been paid by the respondent since April 2021. More likely , in the Tribunal's view, is that this was a recognition by the claimant , even before the email of 24 January 2022 from Mr Senol, that her employment relationship with the respondent had ended.

41. That course of conduct ,then, taken as a whole, culminating in the request for a P45, in the Tribunal's view, amounted to a resignation by the claimant. That would, of course, have meant that her employment ended on 14 June 2022, so her claims would then be in time, but, as there was no dismissal, she could not claim unfair dismissal, nor, as she ended her employment with no notice on 14 June 2022, could she claim notice pay. That would leave, technically, her claims for holiday pay, but as can be observed about all her claims, they can have no monetary value as the claimant was not entitled to any pay.

42. That is because, both sides agree, at the time that her employment ended (how and when does not matter) the parties had agreed that she need not carry out any work, and she had no entitlement to be paid. The quantum of all her claims, therefore, would be nil, even if any of them succeeded.

43. For all these reasons the Tribunal has no jurisdiction to hear the claimant's claims which were all presented out of time, and the claimant has not established that it was not reasonably practicable for them to have been presented in time, or that they were then presented within a reasonable time. Her claims are dismissed.

Employment Judge Holmes

DATED: 4 April 2024

RESERVED JUDGMENT SENT TO THE PARTIES ON 19 APRIL2024

FOR THE TRIBUNAL OFFICE

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