



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms L Suleaudu

v

Jewish Care

Heard at: Watford

On: 7 February 2017

Before: Employment Judge Manley

Representation

For the Claimant: In person

For the Respondent: Mr M Curtis, Counsel

RESERVED JUDGMENT

The claimant is not entitled to any further sums of money from the respondent either by way of unlawful deduction of wages or breach of contract. Her claim is dismissed.

REASONS

1. This matter was listed for a one hour hearing. The claimant's claim was for three month's pay from the respondent as a result of the termination of her employment. Her case was that she was forced to resign. The respondent's case is that she resigned voluntarily. We had discussions at the outset about the nature of the claimant's claim and agreed that it came down to these issues:

The issues

2. Did the claimant resign or was she forced to resign and therefore dismissed?
3. Did the claimant receive one week's pay after the resignation or dismissal?

4. Is the claimant entitled to pay up to the end of July 2016 when her contract was terminated or was she on a period of unpaid leave?
5. Is the claimant entitled to three months pay on the basis of being on a six month probationary period?
6. Having discussed the matter with the claimant and the respondent's representative, it became clear that I needed to hear some short oral evidence. The claimant had presented a witness statement and she was also asked some questions. Ms Trup also gave evidence. The claimant had prepared a bundle of documents as had the respondent and I looked at those I was taken to during the course of the evidence.

The facts

7. The facts can be relatively shortly stated. The claimant commenced working for the respondent on 1 April 2016 as a Housekeeper/General Assistant at the Holocaust Survivors Centre in London NW4. Her Line Manager was Magellan Mukete, and a Service Manager was Ms Trup. The claimant signed a written statement of terms and conditions of employment which set out most of the relevant matters. Under Clause 4 it reads:

“4.1 The first six months of your employment will be probationary. Your employment may be terminated on one week's notice given in writing by the company at any time during or at the end of this period following statutory guidelines.”

8. That clause then goes on to describe other details which I do not need to go in to about the probationary period.
9. The claimant is suggesting that she believed the respondent was bound to retain her in employment for the six month period unless there was an act of gross misconduct. That is not what the contract provides for.
10. It appears there was some sort of incident with the chef at the Holocaust Survivors Centre in June and on 27 June the claimant was called in to the office by Ms Trup who asked her about the incident. The claimant's case is that she was told to sign a resignation letter having expressed some dissatisfaction about continuing to work in that environment. The respondent's case is that she offered to resign and Ms Trup asked for her to put it in writing. The resignation appears at page 57 and reads as follows:

“Dear Sir/Madam,

Reference: Housekeeping resignation

I am writing to advise you that I wish to give my resignation with immediate affect to terminate my present position. I would like to thank you for giving me the opportunity to work in your organization”.

11. I accept the respondent's evidence on this. The claimant struck me as a relatively forceful character and I cannot see that she would have agreed to sign such a letter if she had not wished to give her resignation. She wrote and signed the letter having expressed difficulties about working with the chef. In an email sent by the claimant to Ms Trup on 20 July the claimant said this about the discussion on 27 June:-

“I volunteer to leave to allow peace in the workplace. It was agreed then that if I resigned with immediate effect you would hold the resignation so I should try and find a transfer to another branch of Jewish Care which I tried to do.”

12. Ms Trup then asked her if she could complete an Exit Questionnaire and she did so with Ms Trup asking her the questions and writing down what the claimant said. At page 61 of that document it is recorded “*May look to transfer within Jewish Care*”. It is signed by the claimant and by her Line Manager.
13. There was considerable discussion about the possibility of the claimant working elsewhere in the respondent organisation and Ms Trup told me, and I accept, that she said she would put the resignation on hold to give both the claimant and the respondent time to see if there was any alternative place that she could work. I also accept that Ms Trup said that she would be paid up to the end of June and I accept that the payslips (pages 51, 52 and 53) indicate that she was paid until the end of June with a small amount for July. In essence, the claimant was paid for a week beyond the time she actually carried out any work for the respondent.
14. The respondent did take some steps with respect to the claimant working elsewhere within the organisation for them. For reasons I do not need to go into, this did not happen and Ms Trup, who was going on sabbatical for a few weeks prepared a letter to take effect from 27 July if no alternative work was found for the claimant. It appears that the claimant may have gone to the wrong place or she was not given clear information about where to go.
15. Although I accept that she did visit some part of the respondent's organisation she did no work in this time. The claimant points out that there was no agreement that she would not be paid but neither does she say that there was agreement that she would be paid. There was no evidence that the claimant understood she would receive pay whilst not at work. The claimant's employment formally terminated on 25 July.
16. The claimant complained about the fact that she had not been found other work in the organisation. The complaint was investigated fairly thoroughly by Jewish Care after the claimant's employment terminated.

The law and submissions

17. The claimant's case must be one of either unlawful deduction of wages under part 2 of the Employment Rights Act 1996 if such deductions took

place, or one of breach of contract if she can show that there was a contractual term which was breached by the respondent.

Conclusions

- 18. This is a fairly straightforward matter. I am unable to read the contract in the way which the claimant suggested that she was entitled to be paid for the whole of the probationary period. The respondent could terminate that with one week's notice as stated clearly as clause 4.1.
- 19. Turning to the issues as set out above, I find the following: I find that the claimant resigned her employment. She wrote a letter and signed its intention is clear. I do not find that she was pressured to write it. This means that she was not entitled to notice from the respondent. In any event, I find that the claimant did receive payment for that week from the respondent as is clear from the payslips. I accept that they cover a whole month and that she received a full months pay up until the end of June and then a small amount for what would seem to be around a day's pay in July.
- 20. I can not find that there was any agreement that the claimt would be paid in the period of time that was allowed for a search for alternative employment. The claimant has not satisfied me that there was any agreement that she should be paid and she carried out no work for the respondent as set out in my findings of fact. She was on something akin to unpaid leave.
- 21. The claimant was not entitled to three month's pay and she cannot show that she is entitled to any further payments from the respondent and her claim must fail and is dismissed.

Employment Judge Manley

Date: 14 February 2017.

Sent to the parties on:

.....
For the Tribunal Office