



EMPLOYMENT TRIBUNALS

Claimant: Mr R Parammal Mohanan

Respondent: Hilton Hotel UK Limited – Hilton Leicester

Heard at: Leicester **On:** Tuesday 2 October 2018

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr D Northall of Counsel

JUDGMENT

1. The claim of unfair dismissal is dismissed because the Claimant does not have the necessary qualifying service to bring such a claim.
2. The claim of a failure to pay holiday pay is dismissed on withdrawal by the Claimant.
3. The claim of unlawful deduction from wages in November and December 2016 is dismissed on withdrawal by the Claimant.
4. The claim of wrongful dismissal fails and is dismissed.
5. The claim of unlawful deduction from wages in respect of lieu payments also fails and is dismissed.

REASONS

1. Mr Mohanan represented himself and gave evidence on his own behalf. Mr Northall of Counsel represented the Respondents and he called Mr J Dixon, a General Manager who took the decision to dismiss Mr Mohanan. He also called Mr Barkat, a Financial Analyst who gave evidence in respect of the claim for lieu payments. I will deal first with the claim for wrongful dismissal.

2. Mr Northall agrees that the burden of proof lies with the Respondents to show that there has been a significant breach going to the root of the contract of employment. Put another way a breach which is so serious that it entitles Hilton in this case to terminate Mr Mohanan's contract of employment without the normal obligation to pay notice pay.

3. The matter begins with a complaint by Mrs Jamnian Maboon which we see at page 60A of the agreed bundle. She says in that complaint which she has signed that Mr Mohanan has been pestering her and harassing her. She goes on:

“This has been going on for some time. I have asked him to stop and have had to physically push him away from me. He has sometimes followed me into the walk in fridge. I am frightened of him. He has asked me to kiss him and I do not like this.”

4. Following that complaint Ms Maboon was interviewed as part of an investigation and the notes which are signed by her begin at 60C and conclude at 60J. In those notes she expands and confirms the original allegations. Mr Mohanan is also seen as part of the investigation and at that time as he has throughout he denies the allegations and says that they are not true. Three other witnesses were interviewed. Firstly Mr Costell at page 64A and he makes a further allegation that Mr Mohanan ground his body against him.

5. The next witness is a Mr Lewis Martin at pages 64B and C. He corroborates Ms Maboon’s main complaints and also corroborates Mr Costell’s allegation. There is a further statement of Ms Treanor who is a Food and Beverage Supervisor. In essence she says that Mr Mohanan made comments such as “I love you. Oh you are my favourite and I miss you”. But she says she had not taken it seriously and had therefore not taken any action.

6. As a consequence of these statements Mr Mohanan is called to a disciplinary hearing and the allegation against him is inappropriate and indecent behaviour specifically sexual harassment. Mr Dixon conducts the disciplinary hearing; takes into account the witness statements I have referred to. These are put to Mr Mohanan at the disciplinary hearing and we see the full notes of the disciplinary hearing in the bundle. Again Mr Mohanan denies that any of the allegations against him are true. It is clear from the disciplinary hearing that Mr Dixon placed most weight on Ms Maboon’s evidence and regarded the other evidence as corroborative of Ms Maboon’s complaints. He reached the decision to dismiss and in terms of this issue he terminated Mr Mohanan’s contract summarily ie without paying notice.

7. On the balance of probabilities has the employer Hilton proved that the allegations made by Ms Maboon are accurate. I remind myself that all of Hilton’s evidence on that point are written statements signed as Mr Dixon confirmed by each of the witnesses. However they have not been tested by cross examination whereas Mr Mohanan’s evidence has. I therefore must give less weight to the written statements. But as Mr Northall submits, why should the written statements be doubted. Mr Mohanan has put forward a number of suggestions as to why the principal complainant Ms Maboon might have made the statements but they are contradictory and in my view not credible. In relation to Mr Martin Mr Mohanan did complain to the General Manager about Mr Martin’s conduct in October 2016 and I accept that that might have given Mr Martin a motive to give evidence against Mr Mohanan. He however only corroborates what the other witnesses have said.

8. Returning now to Mr Mohanan's evidence I have to say that I did not find him a convincing witness. I accept that he has language difficulties. I accept that English is not his first language and it is clear that he did not always understand the questions being put to him at least initially. However there were matters in his evidence which caused me some doubt. For example for the first time in cross examination he told the Tribunal that whilst being escorted from the premises on his being suspended Ms Maboon told him in front of witnesses that she had made no allegations against him. He does not refer to that in the disciplinary hearing, nor does he refer to it in his appeal letter at page 92A.

9. I therefore conclude that on the balance of probabilities Ms Maboon's allegations are proven and I have no doubt that they constitute a significant breach going to the root of the contract of employment which entitles Hilton to summarily dismiss.

10. The other matter I need to determine is a claim by Mr Mohanan in relation to 4 days that he says that he worked and which entitled him to be paid for them. The relevant contractual provision is at page 50. Mr Northall in my view correctly submits that even if Mr Mohanan did work those 4 days, 2 of which he can identify as being 14 and 15 September 2016, the other two he believes were in October, does that entitle him to a payment. I agree with Mr Northall that the contractual provision is silent as to payment in lieu and its clear meaning is that time is to be taken ie lieu time within 12 weeks of the date of accrual. It gives no right to payment if that is not done. So as a matter of construction I agree that Mr Mohanan could not succeed. If I am wrong about that it is clear on the evidence of Mr Barkat that Mr Mohanan did not work on 14 and 15 September because he neither clocked in or clocked out. And as to the other dates again the evidence at page 111 does not show any days at all worked by Mr Mohanan in the month of October. It shows him to have been off sick for the whole of the month. Mr Mohanan's claim in that regard must therefore fail both as a matter of construction and on the evidence.

11. At the end of this decision Mr Northall made an application for costs. Given that this is a complex and difficult question I feel that it would be unfair for Mr Mohanan to have to respond to such an application without first seeing the decision and my reasons for reaching it. Thus I make the following directions.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Seven days from the date that this decision is sent to the parties the Respondents are to put their application for costs in writing.
2. Mr Mohanan has 21 days from the date that he receives that application to respond to the Respondent's application.
3. Unless the parties disagree I propose to deal with the application for costs on the basis of the parties written submissions.

Employment Judge Blackwell

Date: 26 October 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

NOTES

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.
- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>
- (v) The parties are reminded of rule 92: “*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.