EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs J Tanna	**v**	**Menarini Diagnostics UK Limited**

Heard at: Watford **On**: 7 February 2019

Before: Employment Judge Bloch QC

Appearances

For the Claimant: Mr Daniel Thorpe – of Counsel
For the Respondent: Mr Paul Tolan – Managing Director

JUDGMENT

1. The claimant's claim of wrongful dismissal is upheld and she is granted the sum of £3420.84 in respect of damages for wrongful dismissal.

2. The claimant's claim of unauthorised deduction from wages in the amount of £900.00 is upheld.

Calculation of Loss

UNLAWFUL DEDUCTIONS FROM WAGES

Car maintenance £ 565.00

Holiday pay accrued up to termination: 2.68 days
Daily take home pay x2.68

WRONGFUL DISMISSAL

Non-contractual payment in lieu of notice

Weekly take-home pay (less income tax and NI) £444.44
Daily take home pay (less income tax and NI): £88.89

Entitlement on termination: 4 weeks' pay
Net pay per week x4 £1,777.76

Other benefits

Pension contribution

Calculated at 10% of gross salary, per respondent's "Table of Benefits – Full Time Employees"	£ 250.00

Use of Car

Calculated according to respondent's annual car allowance, Per respondent's "Table of Benefits – Full Time Employees"	£ 350.00

Life Insurance cover

Calculated according to estimated market value of replacement Policy with £32,500 death benefit (£5 p/month) 4 weeks x £1.15	£ 4.60

Health Insurance cover

Calculated according to estimated market value of policy Comprehensively covering the claimant and her spouse (£150 p/month) 4 weeks x £34.62	£ 138.46
TOTAL	**£3,420.82**

REASONS

1. The claimant worked for the respondent, Menarini Diagnostics UK Limited from the 19 March 2018 to the 23 April 2018 in the role of Diabetes Support Specialist. She was dismissed when she was still in her 12 month probation period.

2. The only issues before me today were in respect of deductions from her wages and whether she was entitled to damages for wrongful dismissal over a period of 1 month.

3. At the hearing today Mr Tolan all but accepted that there was no defence to the unauthorised deduction from wages claim and he was right to do so, given that there was nothing in the contract of employment of anything else in writing or other evidence to indicate an acceptance by the claimant that she was authorising deduction from her wages in respect of the sums which were actually deducted, or for that matter, any other sums. Nor was there any real opposition to the claim for holiday pay given the statutory nature of the claim. Mr Tolan relied upon his usual contractual documents which require whole months to be worked before any entitlement to holiday pay but that is not the statutory position and accordingly the claims for unlawful

deduction of wages in the sum of £565.00 (being a deduction for the costs of repairing the car which the claimant used for the purposes of her employment) and the holiday pay in the amount of £335.00 were awarded.

4. The real issue in the case related to the decision by the respondent not to pay the claimant any notice money in the circumstances which I shall describe. It is common ground that there was a meeting between Alison Tomlinson on behalf of the respondent and the claimant at approximately 8:30am on the 23 April 2018 in order to terminate the claimant's employment. Evidence was given by the claimant (but not Miss Tomlinson) as to what happened on that day. The claimant describes that around 8:30am she met Miss Tomlinson (the respondent's Diabetes Care Regional Sales Manager, the claimant's Line Manager) to hand her a letter signed by the National Sales Manager and informed her that "I was being sacked". The letter (according to the claimant) confirmed that. Obviously, this was a shock and she asked for a second chance. Alison told her she needed to return all of the respondent's equipment. She gave her laptop and all of the relevant passwords and all of the equipment she was carrying in the car. She said that she would make arrangements to return the other equipment to the office. She read the letter and it confirmed that her employment was terminated.

5. In turning to the letter itself the letter states:

> "Following a review of your progress I am now writing to confirm that we are terminating your contract of employment as allowed under our Offer of Employment. You have a contractual right to 4 weeks notice, so we will be terminating your employment with immediate effect and paying you 4 weeks salary in lieu of notice. Your contact with Menarini will, therefore, terminate today, 23 April 2018."

6. The claimant's evidence was having read the letter she understood that her employment was being terminated with immediate effect as it was made clear to her that she should not go back to work or do any work from home. So afterwards, based on what had happened, she did not do any work and returned home to look for a new job.

7. At about 11:30am the claimant received a call from Amy Stevens (respondent's HR Manager) she confirmed the contents of the letter and the claimant agreed with her that she would drive to Menarini's office the next day and return the remaining equipment. When she was gathering the remaining equipment that needed to be returned she deleted all of her emails from her work phone. The emails contained correspondence with hospitals and many of the messages were a standard block of text in follow-up to cold calls. Some of the emails did concern details of face-to-face meetings and appointments but (she in evidence) said that Alison was copied in to all of her correspondence and so was presumably aware of all the claimant's dealings and appointments. So, she understood that by copying her line manager that was the respondent's way of keeping track of what the claimant was doing and who she was seeing and therefore despite

her deleting the emails she understood that Alison would have a record anyway.

8. Two key issues arise in respect of this evidence. The first is precisely when the contract of employment came to an end and the second question is whether the acts of the claimant amounted to a repudiatory breach of her contract of employment.

9. In my judgment dealing with the second matter first the deletion of the emails was a repudiatory breach of contract, if it occurred during subsistence of the contract of employment. As she accepted in giving evidence the claimant was angry about the termination of her employment and it is difficult to understand how her acts in deleting the emails were anything other than intended to cause difficulty or botheration to the respondent. Her explanation that she wanted to return the phone clean (in the manner in which she had received it) does not stand particular scrutiny. The only conclusion I can make was the deletion was part of a fit of pique experienced by the claimant. That said, the question remains as to what the effect of that conduct may or may not have been that in turn depends upon what the status of the employment contract was at the time of the deletion of the emails.

10. In considering the effect of the letter of dismissal and the manner in which it was delivered to the claimant and what was said by Alison Tomlinson I must look at matters from an objective perspective. If viewed objectively would an outside observer consider that the employment was continuing after the claimant had been told she was being “sacked” and there being no evidence to suggest that that was not what was said. However, more significantly is what was the effect of the letter itself. The letter says we will be terminating your employment with “immediate effect”, it does also say that the contract will terminate today on the 23 April 2018. That said, the letter phrase does not indicate when on the 23 April 2018 the employment intended to come to an end, whereas the former part of the sentence states “with immediate effect”. So further, to be taking into account is the fact that the claimant was immediately required (and did) hand over her laptop and all other work materials that were in her car on that day. That on the face of it seemed to indicate very clearly that the claimant was not intended to perform any further services that day. Mr Tolan skilfully argued that a sales job is not limited to client facing activities and that the requirement for her to hand over the remaining items which she had at home was the continuance of her continuing contract of employment rather than simply hand over activities following the termination of employment.

11. In my judgment, looking at the totality of the events, namely what the claimant was told, the explicit and clear language of the letter of 23 April 2018 and the immediate removal from her of all equipment which she had on her including (most significantly) her laptop computer, indicated the XXX adventure that her employment was terminating then and there, i.e. in the morning of the 23 April 2018 before she deleted the emails later that morning. What remained for her to do was what any employee will have to do once his or her employment is terminated which is to hand over documents and other work-related equipment which belongs to the

employer. It is not in my judgment sensible to regard that as pursuant to continuing duties of employment, but simply a matter of property i.e. the employee who retains the property of an employer must under no circumstances hand that back because he or she no longer has entitlement to retain those items.

12. Accordingly, in my judgment while one can have some sympathy for the respondent being faced with the act of the claimant in deleting the emails in the way in which she did, that was not a matter which entitled them (as they did thereafter) to say we now going to terminate your employment forthwith upon repudiatory breach as the contract of employment had already come to an end and there is no room for the employment of the usual ***Boston Deep Sea Fishing and Ansell*** principle that one can feed a bad reason for dismissal with a good one. What happened was an act of destruction of emails but could not be seen as a breach of contract because the contract then no longer existed. The position would have probably been different if the deletion of the emails had taken place unknown to the respondent before 8:30 on the morning in question.

13. I accordingly awarded damages in accordance with the schedule of loss with a minor alteration in respect of the value of the use of the car. There were no particular points made on the schedule of loss by the respondent otherwise than in relation to the use of the car.

14. The respondent placed particular emphasis on the fact (as was accepted by the claimant) that the claimant was paid up to the end of the 23 April. There was, however, no suggestion that the claimant was told that at the time of her dismissal and in any event the fact that the respondent thereafter chose to pay the claimant to the end of the day does not in my judgment impact upon the position as it appeared upon dismissal and handing over letter of dismissal to her.

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Employment Judge Bloch QC

Date: …14 March 2019……..

Sent to the parties on: .....

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For the Tribunal Office