



EMPLOYMENT TRIBUNALS

Claimant: Mr G McCracken

Respondent: Fugro Gb Marine Limited

APPLICATION FOR INTERIM RELIEF

Heard at: Reading **On:** 3 December 2020

Before: Employment Judge Gumbiti-Zimuto (sitting alone)

Appearances

For the claimant: In person

For the respondent: Dr Edward Morgan, counsel

JUDGMENT

The employment tribunal cannot consider the claimant's application for interim relief because it was presented outside the time limit in section 128 (2) Employment Rights Act 1996.

REASONS

1. Section 128 of the Employment Rights Act, provides that an employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and that the reason (or if more than one the principal reason) for the dismissal is one of those specified in, among others, section 103A may apply to the tribunal for interim relief. The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
2. Today the first issue I have to determine is concerning what is the effective date termination of the claimant's employment? Was it the 3 November or the 30 October? If it was 30 October, the tribunal does not have jurisdiction to consider interim relief application because the claim was presented on the 10 November 2020 which is more than 7 days after the effective date of termination. The 3 November 2020 is just in time. The facts in this case to are relatively straightforward up to a point.
3. On 30 October the claimant wrote an email setting out his resignation from his employment with the respondent he did not specify a notice period he did not

specify whether the resignation was intended to be with immediate effect. The respondent's general counsel, Annabelle Vos, wrote to the claimant on the same day asking him whether he was resigning with immediate effect. The claimant did not respond to that email immediately he eventually gave a response but that was on the 10 November 2020. In the absence of any response from the claimant, a letter was sent to the claimant from the respondent's HR Business Partner Becci Clarke on 2 November 2020 in which it was presumed that the claimant was resigning with intention to give notice. However, subsequently on 10 November 2020 the claimant clearly and unequivocally stated in writing that when he gave his resignation, he was not intending to give four weeks' notice and he that he had resigned his employment with immediate effect. If that is right the claimant's employment ended on the 30 October, the claimant's application for interim relief is out of time and the tribunal does not have jurisdiction to consider the application because it was presented more than 7 days after the effective date of termination of the employment.

4. What the claimant says at the hearing today is that it was not his intention to resign with immediate effect on the 30 October and that what in fact he was doing was expressing a desire to terminate his employment by resignation. The claimant points to interactions that he had at 18:04 on 30 October, about three hours after he sent his resignation of employment email, which he says shows he was clearly planning and intending to carry out work that he was employed by the respondent to undertake. There is clearly a stark contradiction between what the claimant has written and stated on the 10 November and what is being said today.
5. I have had to consider whether I accept what the claimant says today is the correct position rather than what the documents, which are not disputed, clearly show which is that the employment was ended with immediate effect on the 30 October.
6. I am unable to accept what the claimant has told me today for number of reasons.
7. The first reason is that the claimant is alive to the various concepts and notions that the law is considering where there is a resignation. The email of the 10 November expressly rejects the suggestion that he was giving four weeks' notice: *"My intention was to resign with immediate effect on the afternoon of Friday 30th October... You will also have noted that I pointedly did not offer my contractual four weeks' notice."* Even if the claimant did not have a sophisticated legal knowledge reference to notice is something that is commonly understood by people in work, people are generally well aware of what a notice period is. The claimant however does have some legal training and I note the nature of work that he was employed to do for the respondent, he will be well aware of what a notice period, and as his written statement set out above shows, he was not resigning with notice, this is an important and significant matter. It was not a comment made without realising what was meant by it.
8. The second feature that I take into account in coming to my conclusion is what took place between the claimant and the respondent in the period between the 30 October and 10 November, trying to reasonably and fairly assess the

interactions, tells me about what the intention of the claimant was on 30 October. There is nothing in the interaction between the claimant and the respondent that points to the employment relationship continuing, if anything the indication is the exact opposite. The claimant in his correspondence and communications with his line manager is setting out conditions which if satisfied might result in his being willing to re-establish the employment relationship which has ended by his resignation on the 30 October.

9. The matters which the claimant has referred me to in respect of communication and interactions in relation to his work at 18:04, some three hours after his resignation, also must be given consideration in the same way. While I was not entirely clear what the matter relates to as I do not have a detailed knowledge of the background and the detail of the claimant's work to be clear about it, however, it does seem to me that that on its own even if the type work that the claimant was employed do it would not be fundamentally inconsistent with the claimant having resigned his employment. In his submission to me today the claimant has spoken of his intentions and expectations at the time, it is clear that what the claimant was intending to do was resign his employment with a view to forcing the respondent's hand to take action which would mean he could re-establish his employment. It seems to me that an arrangement to speak to someone later on in the following week, which is what the claimant explained was arranged at 18.04, is not in itself inconsistent with the claimant having resigned his employment. That course of action does not operate so as to lead me to doubt my conclusion that the resignation on the 30 October was intended to be a resignation with immediate effect as opposed to resignation with notice. In those circumstances the claimant's employment ended on the 30 October 2020 and the Tribunal cannot consider the claimant's application for interim relief.

Employment Judge Gumbiti-Zimuto

Date: 4 December 2020

Sent to the parties on:

.....6/1/21.

For the Tribunal:

.....