



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mrs Christine Anne Watkins

**Respondent:**  
Glidefield Ltd

**Heard at:** Leeds (by CVP video link)

**On:** 21 May 2021

**Before:** Employment Judge R S Drake

## Representation

Claimant: In Person

Respondent: Mr Paul Dresser (Operations Manager)

# JUDGMENT

- 1 The Claimant's complaint of breach of contract fails. It is therefore dismissed.
- 2 I exercise my power under Rule 62 to set out reasons in full as below.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals. This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

# REASONS

## Introduction

1. First, I record my gratitude to the parties for coping with initial technical problems which, when overcome, did not prevent due and appropriate conduct of their respective cases. I heard oral evidence from the Claimant herself and the Respondent's Operations Manager Mr. Stephen Dresser. I also received a modest number of documents produced by the Claimant and rather more from the Respondent including certain key items. I also heard final submissions before reaching my conclusions, which I was able to explain after due deliberation.

## Issues

- 2 I determine that the issues to be examined (though some were more or less relevant than others as will become apparent) were agreed as follows: -
  - 2.1 What were the Claimant's original contractual terms as to notice or pay in lieu?
  - 2.2 Had there been any change and if so, when?
  - 2.3 What were her terms as at the date of termination of her employment on 11 February 2021?
- 3 Remedy
  - 3.1 If the Tribunal were satisfied that the Claimant is entitled to three months' notice how were pay and benefits in lieu calculated?
  - 2.2 The standard of proof required is the usual civil law standard and thus that of a balance of probabilities.

## The Facts and Reasons for the findings thereof

4. I made the following findings of fact based upon evidence that it heard both orally and by reference to bundles of documents produced by both parties. Each was thoroughly cross examined. I also considered not only the written statements of the above-mentioned witnesses, but also, when attention was drawn to them, the contents of a documents bundle comprising over 35

pages. Lastly, time was allowed at the conclusion of oral testimony to enable both sides to give final oral Submissions which were also considered in detail.

3 Using abbreviations of “C” and “R” for Claimant and Respondent respectively and referring to witnesses and documents in bold type page numbers in the Evidence Bundle or paragraphs in witness statements, the findings of fact relevant to the Tribunal’s decision are as follows: -

5.1 C was employed by R from an unspecified date in November 1998 as an Accounts Assistant and by 1 April 2008 had the benefit of a formal written Statement of Main Terms and Conditions of Employment document signed by a representative of the Respondent and by her on that date. This appears as document **Ref1B**.

5.2 R is an engineering company which trades in Bradford. Good terms and relations exist between the parties at all relevant times.

5.3 The contract contains the following provision under the heading “Notice of Termination”.

“Your standard hours of work are 40 per week worked between 8:30 am to 5:00 pm Monday to Friday with a 30-minute lunch break”.

At the end of the document appears the caption as follows: -

“I have read and understand the terms and conditions stated in this contract of employment and I confirm my acceptance of them”.

It is then signed and dated by C. This demonstrates the methodology or recording and agreeing terms between the parties.

5.4 There are no conflicts of evidence on what happened at certain meetings which followed. The COVID-19 pandemic intervened, and the Claimant was put on furlough. In September 2020 when she was asked to return to work, she asked for and was granted leave to vary the number of days she worked per week by reducing them from 5 to 3. Initially it was agreed that these would be Monday Tuesday and Wednesday.

5.5 There were several telephone conversations between the claimant and a Mr Sean Teale of R in which it was agreed not only that the number of days work per week were reduced to three but that these would be from Wednesday to Friday each week and that in all other respects the rest of C’s terms of employment would remain unchanged. The relevant words used are as follows as they appear in a confirmatory letter from Mr Teal dated 9 September 2020 (**Ref1A**): -

“I am writing to confirm our telephone conversation of the last few weeks concluding with our conversation yesterday you had previously suggested that you wanted to work part time and we discussed this. We subsequently agreed that your working time would be reduced to three days a week as this would satisfy your personal and financial requirements. I confirm that this will not affect your length of service with the company, and that all other terms of your employment remain unchanged. We have agreed that initially you will work Wednesday to Friday each week, although this might change if the business and work requires. I have provided 2 copies of this letter so please sign one to indicate your acceptance of the terms and return it to me.”

The Claimant did so countersign the same on 11 September 2020.

5.6 C argues that by using the word “initially”, R were indicating that this change in her terms would be temporary. but I find that the word “initially” relates purely to stating which days of the week were to be worked and do not modify the expectation that only three days would be worked per week whatever days they were.

5.7 Unfortunately, because of ill health and other circumstances, C’s employment was terminated by R on 11 February 2021. Between 11 September 2020 and that date there have been no further changes in C’s terms and certainly no reversion of expectation as to the number of days to be worked each week from three to five.

5.8 R paid C in lieu of notice 12 weeks’ pay based upon a multiplicand of three days per week and thus they paid her the sum of £2,761.92. She argues that her pay in lieu of notice should be calculated based on five days per week and that thus she should have received £4,503.32 and that there is thus a shortfall of £1,841.28. She argues that therefore R are in breach of contract to this extent. She is not pursuing a claim for unfair dismissal.

#### Conclusions on Application of Law to Facts

6 I find that before September 2020 provided for 5 days work per week, and after 11 September 2020 that was reduced to 3 days work per week and nothing in the letter recording this promises any change.

7 Further, nothing happened after 11 September 2020 to cause any change to the basis of C’s working week being 3 days so that insofar as the letter of 9 September 2020 countersigned by her 11 September 2020 amounts to a contractual variation, no contract is open ended. However, I find that this argument is fundamentally flawed in law since all contracts of employment, other than for fixed periods, are for indefinite periods unless and until terminated by either party on notice or otherwise. Therefore, the terms which

prevail in this case are those which are recorded in the last contractual document or the last change to that document, and in this case that is the Respondent's letter 9 September 2020 countersigned by the Claimant 11 September 2020.

- 8 In the absence of evidence of change of terms to three days per week, calculating notice entitlement on this basis is completely right in law. Therefore, the Claimant's claim fails and must be dismissed in its entirety.

Employment Judge R S Drake

Date: 21 May 2021

Date: 2<sup>nd</sup> June 2021