



EMPLOYMENT TRIBUNALS

Claimant: Mr S Unwin

Respondent: East Midlands Housing Group Limited

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 21 May 2021

Before: Employment Judge Brewer

Representation

Claimant: In person

Respondent: Mr G Morrison, Solicitor

JUDGMENT

The claimant's claim for breach of contract fails and is dismissed

REASONS

Introduction

1. By a claim form presented on 4 February 2021 the claimant claimed that he was owed notice pay. The case came before me for a final hearing. I had a bundle of documents and heard oral evidence from the claimant who affirmed his evidence, and brief submissions from the respondent.

Issues

2. The single issue before me was whether the claimant should have been paid his normal pay as a payment in lieu of notice.

Law

3. The legal position is set out in sections 86, 87 and 88 to 91 of the Employment Rights Act 1996 (ERA).
4. Section 86 determines an employee's statutory minimum notice period. Section 87 sets out an employee's rights during their notice period.
5. Sections 88 to 91 deal with the calculation of pay during the notice period.

Findings of fact

6. I need only make brief findings of fact in this matter.
7. The claimant was employed from 27 May 2014 until 3 February 2021 as a Management Accountant. He was dismissed on the ground of capability (long-term sickness absence). The claimant was not required to work his notice period.
8. Prior to his dismissal the claimant had been continuously absent on sick leave from 19 February 2020 until his dismissal. The claimant's contract entitled him to 52 weeks sick pay: 26 weeks at full pay and 26 weeks at half pay. Thereafter he went into nil pay. The claimant confirmed that at the date of dismissal he was in nil pay.
9. Clause 10(c) of the claimant's contract of employment requires that the respondent give the claimant 3 months' notice of termination. Clause 10(d) of the claimant's contract of employment entitles the respondent to make a payment in lieu of notice.
10. At the date of dismissal, the claimant had been employed for 6 complete years and he was therefore was entitled to 6 weeks statutory minimum notice under section 86 ERA.
11. Following his dismissal, the claimant undertook early conciliation on 4 February 2021 and he also presented his claim on 4 February 2021.

Discussion and conclusion

12. Section 87(4) ERA has the effect of disapplying the provisions of sections 88 to 91 ERA if the requirement to give notice under the employee's contract of employment is at least one week more than the applicable statutory minimum notice period the employee would be entitled to.
13. As set out in the findings of fact, the claimant's statutory minimum notice period was 6 weeks. His contractual notice was 3 months and therefore section 87(4) is engaged in this case.
14. The respondent was not in breach of contract in not requiring the claimant to work out his period of notice.

15. The effect of the claimant's contractual notice period being more than 1 week longer than the notice he was entitled to under section 86 ERA is that instead of the claimant being entitled to his normal pay during his notice period (or in respect of a payment in lieu of notice), he is entitled to be paid the amount he was or would have been actually in receipt of. In this case as the claimant was in nil pay, his notice pay is nil. This analysis was made clear by the EAT in the case of **The Scotts Company (UK) Ltd v Budd** 2002 WL 31676266.

16. For those reasons the claimant's claim must fail.

Employment Judge

Date: 21 May 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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