**Case Number: 3311516/2022**

# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| Ms Veronica Conway | V | Paul Cowley t/a Hairs and Graces |

**Heard at**: Watford Employment Tribunal **On:** 1 February 2023

**Before:** Employment Judge Allen sitting alone

**Appearances**

**For the Claimant:** Ms Conway, assisted by her niece Ms Wright
**For the Respondent:** Mrs Lambert, a friend of the respondent with a background in HR.

## JUDGMENT

The claimant was dismissed by reason of redundancy.

The Respondent will pay the claimant **£7,447.02 gross.**

## Reasons

Findings of Fact

1. The claimant is a hairdresser by trade and was employed by the respondent who operated a hairdressing salon called Hairs and Graces.

2. Both respondent and the claimant are dyslexics. This has created its own complications in the calculation of dates and figures. It's apparent that the respondent has less of an issue in this regard, but with the claimant her recollection of dates was unreliable.

3. There is some uncertainty about when the claimant began work with the respondent. The claimant was absolutely certain that she began work with the respondent when her daughter was aged 13. Her daughter was born on the 15 April 1989. Therefore, I find that the claimant started work with the respondent in 2001. Initially, she worked on a part time basis. She extended her hours to full time but her assertion that was when her daughter was 16, in 2005 cannot be correct. Having seen pay advices for 2008 and 2009 I find that the claimant extended her hours to full time in 2009.

4. On 21 June 2022 the respondent's business closed when the landlord repossessed the premises.

5. The claimant's last full day at work was Saturday 18 June 2022. The claimant attended the premises for work on Tuesday 21 June 2022 and found the respondent and his wife outside unable to gain access.

Who terminated the contract

6. The respondent operated his shop Tuesday to Saturday. On Tuesday 21 June 2022 when he arrived to open his shop, he found that he had been locked out by the bailiffs. Due to covid and rising costs he had fallen into arrears with the landlord. The respondent gave evidence that he had reached an agreement with the landlord that he would pay the arrears off in weekly instalments and had been doing so for some time. He was shocked when he found he was locked out. Ms Conway arrived for work shortly before 9am on that day.

7. The claimant's evidence was that she arrived to find the premises locked on the 18 June 2022. This is incorrect. The 18 June 2022 was a Saturday and was in fact the last day she worked for the Respondent. The salon was not locked by the bailiffs until Tuesday 21 June 2022. As stated above the claimant's evidence on dates is unreliable. I disregard any evidence she gave on dates that is not supported by some other evidence. The claimant was clearer when asked to confine herself to days of the week and given this all took place within the space of 1 week, I am prepared to accept the last day she worked was the Saturday (18/6) and when she arrived for work on the Tuesday (21/6) the premises were locked and the respondent was at the door. This coincides with the Respondent's evidence.

8. I have seen 2 text messages sent by the respondent after the bailiffs secured the premises which show he contacted the claimant at 10:27hrs and 12:18hrs updating her on the situation about the landlord and access to the premises. In the first stating 'I'm still waiting to hear from the Landlord and Andrew' in the second 'Landlord not asking any phone calls or emails!'.

9. The Respondent gives evidence the claimant was in contact with him several times on 18 June 2022 by both phone and text from about 7pm onwards. Only documentary evidence of texts was produced. That the claimant had been drinking that evening is not

disputed and at 9:14 on Sunday 19 June sent the respondent a text apologising and explaining that she had a few glasses of wine. She doesn't recall a phone call, only texts.

10. At 7:35pm on Saturday 18 June the claimant sent a text which said simply 'I will go then'. The respondent gave evidence that many years ago (possibly 15) the claimant had argued with a colleague and said she was leaving in similar terms to the text of Saturday 18 June 'I will go then'. On that occasion she had calmed down and withdrew the resignation after a few minutes. Since it was the respondent who recalled this incident, it is unlikely he thought this was an unequivocal resignation on 18 June 2022.

11. I have heard disputed evidence that the claimant was extremely abusive during a telephone call with the respondent on the Saturday evening (18 June) and that he had planned to have her collect her belongings on Tuesday (21 June) and pay her notice. The claimant concedes there may have been a phone call but doesn't remember one but only evidence of texts has been produced.

12. The respondent has provided a schedule from his service provider that between 18:12 hrs and 20:27 hrs on 18 June there were 7 SMST messages between the parties. These correspond to the text messages the claimant has provided copies of. What is missing from that schedule is a telephone call in which the respondent tells me the claimant was goading him and extremely abusive such as to justify his decision to have her collect her possessions on the 21st and pay her notice.

13. I find that the claimant sent a number of texts to the respondent in one of which she said she would go but there is no evidence of a phone call.

14. The claimant asked for her P45 on 24 June 2022 the day she found alternative employment.

15. The parties agree that the claimant was never provided with a contract of employment.

16. The respondent conceded that he was responsible for the claimant's salary from Tuesday 21 June to Thursday 23 June 2022 at a gross rate of £90 per day, £270 total.

17. The claimant has produced a number of pay advises which show that on 30 April 2008, she earned £398.67 and on 31 May; 30 June and 30 September 2008 she earned a similar amount £398.67 per month. This was consistent with being employed on a part-time basis.

18. She also provided pay advices for 30 April 2009, 31 July 2009 and 31 August 2009 each of which show that the claimant earned £953.33 per month. The respondent conceded that this was in line with full time monthly salaries in 2009. I find that in the absence of evidence to the contrary, the claimant extended her hours from part time to full time In April 2009 and not 2005 as she thought.

19. The ET3 disputes that the claimant was in fact an employee of the respondent however, whilst giving evidence the Respondent conceded that she was. The respondent filed PAYE returns for the claimant, paid pension contributions for her and provided her with a P45.

20. Effective date of termination was Tuesday 21 June 2022 because that was the day the respondent ceased to trade out of his salon

21. At the effective date of termination, the claimant's salary was

Monthly £1,646 gross (£1,351 net)

Weekly £379.85 (£311.77 net)

22. She was entitled to holiday which was calculated from 1 January to 31 December. She had taken 5 days holiday between 1 January to effective date of termination.

## The Law

23. It is a well-established principle in the construction of commercial contracts that any ambiguity will be construed against the party seeking to rely on it. In *Graham Group plc v Garratt EAT 161/97* the EAT held that this principle should also be applied to ambiguous words or acts in the context of a dismissal or resignation.

24. What applies to an angry or emotional resignation may also apply to an angry dismissal. In *Martin v Yeomen Aggregates Ltd 1983 ICR 314, EAT*, the employer angrily dismissed M but within five minutes realised it had been over-hasty and varied the penalty to one of two days' suspension. M, however, insisted that he had been dismissed and claimed unfair dismissal. The EAT held that, in the circumstances, there had been no dismissal. Mr Justice Kilner Brown said that it was desirable, as a matter of common sense and good industrial relations, that an employer (or employee) should — in special circumstances — have the opportunity of withdrawing words spoken in the heat of the moment. If words spoken in anger were immediately withdrawn, there was no dismissal.

25. The same objective test applies when the ambiguity occurs in correspondence between employer and employee. Where an employee has received an ambiguous letter, the EAT has said that the interpretation 'should not be a technical one but should reflect what an ordinary, reasonable employee… would understand by the words used'. It added that 'the letter must be construed in the light of the facts known to the employee at the date he receives the letter' — see *Chapman v Letheby and Christopher Ltd 1981 IRLR 440, EAT*.

## 26. Section 139 Employment Rights Act 1996

(1) For the purposes of this Act, an employee who is dismissed shall be taken to be dismissed by reason of redundancy, if the dismissal is wholly or mainly attributable to-

a. The fact that his employer has ceased or intends to cease-
   i. To carry on the business for the purpose of which the employee was employed by him, or
   ii. To carry on that business in the place where the employee was so employed.

**27. Section 135 Employment Rights Act 1996**

(1) An employer shall pay a redundancy payment to any employee of his if the employee-
   a. is dismissed by the employer by reason of redundancy, or
   b. Is eligible for a redundancy payment by reason of being laid off or kept on short time.

**28. Section 182 Employment Rights Act 1996**

(1) If, on an application made to him in writing by an employee, the Secretary of State is satisfied that-

a. The employee's employer has become insolvent,
b. The employee's employment has been terminated, and
c. On the appropriate date, the employee was entitled to be paid the whole or part of any debt to which this part applies,

The Secretary of State shall, subject to section 186, pay the employee out of the National Insurance Fund the amount to which, in the opinion of the Secretary of State, the employee is entitled in respect of the debt.

**Conclusion**

29. Words that are capable of being interpreted as a resignation or a dismissal may not necessarily amount to such in the circumstances. When an employer tells an employee to ‘get out’ or says ‘you are finished’, the question arises as to whether this amounts to an express dismissal or a mere rebuke. Conversely, when an employee storms out of a meeting shouting ‘I’m off’, without stating whether this is a temporary or a permanent move, it may be unclear whether the employee has actually resigned.

30. Broadly speaking, the test as to whether ostensibly ambiguous words amount to a dismissal or a resignation is an objective one:

- all the surrounding circumstances (both preceding and following the incident) and the nature of the workplace in which the misunderstanding arose must be considered
- if the words are still ambiguous, the tribunal should ask itself how a reasonable employer or employee would have understood them in light of those circumstances.

31. I have no trouble concluding Ms Conway used ambiguous words which might be interpreted as a resignation however, she apologised the following morning. Given that she had done so using similar words some years before it is more likely than not the respondent was aware she had not resigned. That it was the respondent who recounted the earlier incident and went on to keep the claimant updated as to the position with the landlord makes that hypothesis even more certain. Keeping her updated is not consistent with the respondent's account that the claimant had resigned.

32. The text sent by the claimant on Saturday 18 June 2022 at 7:35pm says only 'I will go then' which in my view is ambiguous and applying the principles set out in *Chapman v Letheby and Christopher Ltd 1981 IRLR 440, EAT* cannot be construed as a resignation particularly when she followed that up the following morning Sunday 19th 9:14am with 'sorry about yesterday, had a few glasses of wine, starting to think about, you are good boss and nice person'. In my view this is a withdrawal of 'I will go then' and cannot be construed as a resignation.

33. The Respondent will pay the claimant the sum of **£7,447.02**

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|---|---|
| **basic award** | |
| number of qualifying weeks times gross weekly pay 12 x 379.85 | |
| 4,558.20 x 1.5 | |
| **total basic award** | **£6,547.17** |
| **compensatory award (immediate loss)** | **£270** |
| loss of net earnings: 3 days at £90 gross | |
| plus, loss of statutory rights | £250 |
| plus, accrued holiday pay | £379.85 |
| Total compensation | **£899.85** |

**summary totals**

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|---|---|
| basic award | £6,547.17 |
| compensation award | £899.85 |
| **Total** | **£7,447.02** |

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Employment Judge **Allen**

Date: 19/3/2023

Sent to the parties on: 23/3/2023

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For the Tribunal Office

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