



# EMPLOYMENT TRIBUNALS

**Claimant: Mr. R Smith**

**Respondent: The Vicarage Freehouse and Rooms Limited**

**Heard at: Birmingham**

**On: 22 November 2017**

**Before: Employment Judge Self**

## Representation

**Claimant: In person**

**Respondent: Miss L. Halsall – Consultant**

## JUDGMENT

1. By consent:
  - a) The Claimant was wrongfully dismissed and the Respondent shall pay the Claimant £653.85 less appropriate tax and National Insurance deductions in relation thereto;
  - b) The Respondent made unlawful deductions of the Claimant's pay and shall pay £294.23 less appropriate tax and national insurance deductions in relation to the unpaid holiday pay and £130.77 less appropriate tax and national insurance deductions in respect of the non- payment of salary for 2 July 2017.
2. It is recorded that it is agreed that the said payments have now been made.
3. The Claim for an additional notice pay is dismissed and it is recorded that the Claimant was entitled to one week's notice only.
4. The Respondent's application for costs is dismissed.

# WRITTEN REASONS

## Upon the Claimant's Request

1. This matter was heard on 22 November 2017. No written reasons were requested immediately but the Claimant has subsequently requested written reasons notwithstanding oral judgment having been given and the amount at issue being modest.
2. On the day before the hearing the Respondent paid 1 day's salary, 2.25 days' holiday pay and one week's notice pay which had been outstanding since the dismissal. In the course of the hearing the Claimant suggested that he believed that such delay was a regular feature of the Respondent's behaviour towards departing staff. The failure to pay timeously does not reflect well upon the Respondent but I am unable to make any general finding as to the Respondent's behaviour with previous staff nor is it relevant.
3. By the time of the hearing the sole matter to be decided was a consideration of whether the Claimant was entitled to be paid one months' notice, as he alleged, or simply one.
4. I heard oral evidence from the Claimant and also from Mr Dominic Heywood. There was a small bundle provided for the hearing and I have taken note of such documents as were provided to me and also I was grateful for the brief submissions made.
5. The Claim Form was issued at the Tribunal on 22 August 2017 and it recorded that the Claimant was employed between 21 February 2017 and 2 July 2017 as the General Manager of The Vicarage Freehouse and Rooms. At para. 8.2 the Claimant stated, inter alia:  
  
**"I received an e-mail offering me the position of General Manager at The Vicarage. The e-mail stated my salary with reference to this being reviewed after three months. No further information was given to me about any other probationary period"**.
6. The Claimant went on to state that on 2 July he was summonsed to a meeting by the father of the Directors (Mr Heywood Senior) of the Respondent, who was not employed by the Respondent, and was told that his contract was being terminated immediately and that he was to be paid one month in lieu of notice as detailed in the contract. He claimed £2833.33 in respect of that notice period.

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7. In their response the Respondent asserted that the Claimant's probationary period was 6 months. They further asserted that there were concerns about the Claimant's performance and productivity which they asserted that they raised with him on a regular basis the Claimant denied this. At paragraph 10 of the Claim Form the Respondent asserted that the Claimant was told that he would be paid in lieu of notice but that Mr Heywood Senior did not know what the notice entitlement was and so did not give it a period.

8. The Claimant was interviewed twice prior to commencing his employment and was sent the letter of offer. That letter read as follows so far as is material:

**"I am pleased to offer you the position of General Manager at a salary of £34,000 per annum. We would also like to offer you a bonus scheme that will be mutually defined and agreed within 6 months of the start of employment. We would also factor in a review of your salary package 4 months from your start date.**

**Within 2 months of your commencement date a statement of the main terms applicable to your post will be made available to you".**

9. I have seen a template for the Statement of main terms and conditions which is contained within the bundle but the Claimant is not identified within that document and nor is the contract signed. The Respondent's evidence was that this contract of employment was issued but was never sent back and the Claimant's position is that it was issued and returned. Although not signed it seems to me that both parties are content that it contains the terms and conditions that were applicable to the Claimant and I find that the contract does contain the relevant terms and conditions under which the Claimant worked.

10. Under the heading Notice of Termination given by Employer it states that the Claimant was subject to a 1 week notice period if he was dismissed in the period between one month's service and the "successful completion of your notice period" and 1 months' notice if he was dismissed in the period between the "successful completion of his notice period but less than 5 years' service.

11. A large part of the bundle is taken up by a Company handbook in the Respondent's name. The Claimant did not accept that he had seen that document and did not accept that it applied to him. Within that is the following:

**"You join us on an initial probationary period of 6 months. During this period your work performance and your general suitability will**

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**be assessed and if it is satisfactory your employment will continue. However if your work is not up to the required standard or you are considered unsuitable we may ... terminate your employment. WE reserve the right not to apply our full contractual procedures during your probationary period.”**

12. The Claimant was employed for approximately four and a half months. The Claimant's case was that it was clear from his offer letter that his probationary period was 4 months because it was at that point that a review of his salary was promised. Once 4 months had elapsed then his probationary period had concluded and accordingly he was entitled to a month's notice as opposed to one week. The Claimant did not accord the 6 month period at which time the bonus scheme would be available to him in the same way.
13. As with many small employers a laxity in process from an HR perspective has ultimately led to the question marks that have allowed the Claimant to even consider bringing this claim. It would have been helpful if the probationary period had have been spelled out in the contract but it was not. It would be helpful if there was clear and cogent evidence that the Company Handbook was shown and made available to the Claimant on his induction or upon joining but there is no such record. That would have clearly set the probationary period at 6 months and any argument to the contrary would be futile. There is no clear documentary evidence that the Claimant knew of the Handbook.
14. Having said that the Claimant accepted that he had seen and signed the contract and so would have seen the Handbook referred to. As a manager doing his day to day job and dealing with staff it is likely that he would have needed to refer to the same. If he didn't see the Handbook then he should have done and I find on balance that the Claimant was aware of the Handbook which was available in the premises and from that document could and should have seen that the probationary period was set at 6 months. He did not last until the end of his probationary period and accordingly his notice was one week which he has now been paid. On that basis the Claim for one month's notice must be dismissed. I do not accept that Mr Heywood Senior asserted that a month's notice was payable but even if he did I find that any such statement was in error and without knowledge of the actual contractual position.
15. Even if I am wrong on those points it seems to me that the Claim must also fail. I do not accept that an indication in an offer letter that salary will be reviewed at the end of 4 months is indicative and consistent with that period being the date when the probationary period ends. A similar argument could be deployed for the period of 6 months re the bonus or for neither of those periods.

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16. In the absence of the Handbook the probationary period does not have a fixed term and in those circumstances would be dependent upon when a probationary review takes place. There was certainly no express indication to the Claimant that he had passed his probationary period and at the meeting on 2 July the Claimant was dismissed for what was said to be poor performance. I have no idea as to the Claimant's capabilities but justifiably or unjustifiably the Respondent felt that it should dismiss when it did without going through a full process and the same seems consistent with the failure of a probationary period.
17. Whether the Claimant was dismissed before the end of the 6 month probationary period contained within the Handbook or he was dismissed after 4.5 months following the probationary review it is quite clear to me that the Claimant never successfully completed his probationary period and so never got to the point where a month's notice was applicable. His application for notice pay equating to one month is therefore dismissed.

Employment Judge **Self**

13 February 2018.

