EMPLOYMENT TRIBUNALS

Claimant: **Miss K Main**

Respondent: **Adecco UK Limited**

Heard at: **Birmingham** **On:** **14 & 15 March 2017**

Before: **Employment Judge Broughton**

Representation

Claimant: Mr R Owen

Respondent: Mr R Hayes

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unpaid holiday pay is dismissed upon withdrawal.

2. The claimant's claim for unpaid bonus fails and is dismissed.

3. The claimant's claim that she was dismissed on 2 June 2016 succeeds. The claimant was unfairly dismissed.

REASONS

1. At the outset of the hearing the respondent's representative made an application to admit certain "without prejudice" documentation related to communications that the claimant had with ACAS. It was suggested that such

information evidenced unambiguous impropriety and, specifically, perjury on the part of the claimant.

2. It was suggested by the respondent that the information demonstrated that the claimant had not been dismissed but I did not consider that the communications were unambiguous or improper, let alone evidencing perjury.

3. The respondent was principally referencing the fact that the claimant did not expressly describe herself as believing she had been dismissed, nor did they evidence the shock which the claimant was alleging in her witness statement. Rather, the respondent suggested, the claimant was claiming an entitlement to a redundancy payment following lay-off.

4. Having considered those documents they did not appear to me to suggest much, if anything, more than the various emails that had been exchanged between the parties on an open basis in June 2016 and they were, therefore, matters which could quite properly be explored by the respondent in cross-examination on the documents that were already before me.

5. Accordingly, I was not willing to admit those additional documents.

6. It is regrettable, therefore, that I had already had sight of those documents but it seems to me that the respondent cannot be prejudiced by their own application.

7. The key facts in this case were at largely agreed and the agreed chronology is annexed to this judgment.

8. The claimant's ET1 was submitted on 5 September 2016 and stated that the claimant believed her termination date to have been 2 June 2016. Specifically she stated that she believed that she had been unfairly dismissed by the respondent on 2 June when she discovered, on receiving her P45, that her employment had been terminated.

9. The claimant's contract of employment that was current at the relevant time had been signed by her on 1 November 2013. It provided that the claimant was an employee of the respondent. It specifically provided that:-

"Adecco will seek suitable work assignments for the employee to carry out on a continuous basis in accordance with the employee's skills, qualifications and experience and Adecco will offer such work assignments to the employee as and when such work assignments become available".

10. It also provided that

"the employee will be obliged to accept any assignment which Adecco requires the employee to carry out and which Adecco considers suitable for the employee given the employee's skills, qualifications and experience".

11. There were then some provisions about minimum hours and pay. The employee was required to work exclusively for Adecco.

12. In the addendum to those terms and conditions which related to the claimant's assignment at IBM, the contract stated as follows:

"Bonus

You may be eligible to participate in a discretionary Performance-Related Bonus Scheme during your assignment at IBM. Your eligibility to participate in this scheme is subject to the rules of the IBM Bonus Scheme…Payment of any bonus award is at the absolutely discretion of Adecco."

13. Payment was based on the business performance of IBM and the apportionment of bonus was based on individual performance. There was no guarantee of any payment. It was to be based on previous years' performance. Bonus was expressly stated to be non-contractual.

14. The provision then went on to state as follows:-

"You will not be eligible to receive a bonus payment or any part of the bonus payment if the following applies;

If before 31 December of the relevant year where the bonus payment is assessed you have given notice to end your assignment at IBM or are

no longer working on assignment at IBM you shall have no right to a bonus payment or any part of a bonus payment."

The Issues

15. The issues before me that were to be determined at this hearing had been identified at a Preliminary Hearing on 2 November 2016 before Employment Judge Kelly.

16. The principal issue before me was whether the claimant had been dismissed. The claimant contended that the combination of her 25 year assignment with IBM coming to an end, when coupled with the respondent's failure to offer her any suitable alternative employment for over one month and the receipt of her P45, amounted to a dismissal. She argued that the dismissal took effect on 2 June 2016, the date she received her P45.

17. The respondent contended that the claimant had not been dismissed. They suggested that there was no intention to dismiss and the P45 should not have been produced without an explanatory letter.

18. The respondent further suggested that the claimant did not genuinely believe that she had been dismissed or, in the alternative, that a reasonable person would not have reached that conclusion in all the circumstances of the case.

19. The respondent acknowledged that the claimant's contract of employment had terminated by the time of the hearing but suggested that she had remained employed until she acted in a way that was inconsistent with her continuing employment by obtaining alternative work.

20. The only other issue in the case was whether the claimant was entitled under the terms of her contract to payment of a bonus worth £383.

21. The respondent asserted that this was not payable, the amount effectively being the total of a consolidated performance-related pay rise that was only properly payable until the termination of the claimant's assignment with IBM.

The Law

22. It was common ground that the initial burden is on the claimant to show that she had been dismissed. The standard of proof is that of the "balance of probabilities". It was for me to consider whether or not it was more likely than not that the contract was terminated by dismissal.

23. It was also common ground that the circumstances in this case were difficult and gave rise to some ambiguity.

24. I considered the following cases:-

Frederick Ray Ltd -v- Davidson EAT678/79. In that case the employee was off sick and the employer had told his wife that he was still employed if he had not received his P45. Some days later he was sent his P45 and claimed that this was an unfair dismissal. The EAT held that sending a P45 would not by itself amount to a dismissal but, in the circumstances of the case, there was a dismissal because of what had been said to the employee's wife.

Kelly -v- Riveroak Associates Ltd UKEAT/0290/05. In that case the Employment Tribunal had concluded that the employment relationship continued after the sending of a P45, notwithstanding the fact that both parties considered that the employment relationship had ended, at least by the time of the receipt of the P45. The EAT overturned that finding but, in any event, the circumstances did not reflect the situation in the case before me. The case did, however, suggest that I should look to see whether there were any facts which could contra-indicate the effect of the P45 which stated, or at least appeared to, that the employment contract was at an end.

I note at this point that, whilst the date of leaving on the P45 was stated as being the date on which the claimant last worked on the assignment with IBM, it was common ground that this was not the date of termination. The claimant acknowledged that there was to be a period thereafter during which the respondent sought suitable alternative work for her and it was her case that following a period of a few weeks and the receipt of the P45, the dismissal then took effect on the date of receipt of the P45, 2 June 2016.

I was also referred to two further cases specifically involving this respondent.

The first of those was Adecco Group UK & Ireland -v- Gregory UKEATS/0024/14 and UKEATS/0026/14.

That was a case in which the employee had not been provided with any work for a couple of months and then was issued with a P45 with the respondent's standard letter. That covering letter was omitted on the facts of the case before me. The original tribunal concluded that the issue of the P45 did amount to a dismissal but that decision was overturned and the issue remitted largely on the basis of the construction of the language of the accompanying letter. Mr Justice Langstaff stated in his judgment at paragraph 14:

> "*The question, as it seems to me, to be addressed by the tribunal is: "who really ended the contract of employment?" That is always going to be difficult in a situation in which there is agency work, where an employee may, for instance, have the services of a number of agencies by which to secure work. There may be many situations in which it is plain from looking at the relationship between agency and worker that it has ceased. That will largely be because over a period of time the one provides no work for the other and the other does not work for the first. If the situation is that the agency has simply withdrawn work which it might otherwise have been expected to provide, a factual conclusion might follow that the agency had by its actions deprived the employee of work and that could, in the relevant context, amount to a dismissal, though it may be very difficult to place a precise date upon it since no definite action will have been taken.*
>
> *15. The converse is true too. If an employee simply drifts away, the agency will have them, as it were, on their books, but there will be no meaningful relationship between them. If the question arises for legal reasons when precisely the relationship ended, the difficulties of analysis are plain. If the question arises who ended it, again the difficulties may exist. Where it is the worker who simply drifts away, loses touch and makes no use of services which remain available, then she is no position to prove, as prove she must if she is to make a claim in respect of her dismissal, that she has been dismissed because the circumstances are at least equally consistent with her having ceased to be an employee from*

her own wish. There is no formal resignation in such a case, but there can be no doubt to any objective observer that the relationship has ended."

Finally, I was referred to Sandle -v- Adecco UK Ltd UKEAT/0028/16.

That was a case where no P45 had been issued but an assignment had come to an end and the respondent had failed to take proactive steps to find other work for the claimant and made little attempt to contact her. The Employment Tribunal found that there had been no direct dismissal as the respondent had done nothing to communicate a dismissal to the claimant and therefore the employment relationship was still ongoing when the claim was lodged. The claimant had not met the burden of proving that she had been dismissed for the purposes of section 95 Employment Rights Act 1996. The EAT found that the tribunal had not erred.

At paragraph 30 the EAT found as follows:

> "*Where there are no contra-indications, the sending of a P45 can also be taken to communicate a dismissal, but it is the receipt of the P45 that is the crucial event (the communication of the employer's decision to treat the employment contract at an end).* (See Kelly -v- Riveroak). *And for completeness, we note that the receipt of a P45 may not be the relevant act that determines the question of dismissal: if the dismissal is communicated by some other means at an earlier time, that will be the effective date of termination of the employment contract, not the later receipt of the P45.*"

At paragraph 40 the EAT continued:-

> "*A dismissal may be by word or deed, and the words or deeds in question may not always be entirely unambiguous; the test will be how they would be understood by the objective observer. Further, as the case law shows, an employer's termination of a contract of employment need not take the form of a direct, express communication. It may be implied by the failure to pay the employee, by the issuing of the P45 or by the ending of the employee's present job and offer of a new position (as in* Hogg -v- Dover College).

Decision

Bonus

25. I accept the claimant's evidence that she had been told by Andrew Sweet that she would receive a bonus and a pay rise and that figures were discussed. I accept that she believed, albeit wrongly, that there were two elements to the bonus and that these were separate from the pay rise.

26. I also accept the unchallenged evidence of Andrew Sweet, who was no longer employed by the respondent, that the figures provided were only provisional and needed to be revised downwards quite substantially.

27. I further accept that, in reality, there was only one element to the bonus, that being the lump sum known as GDP. It was not in dispute that the claimant received payment for this.

28. The other element to what was unhelpfully also called bonus, TCR, was, in fact, a consolidated performance related pay rise.

29. This was the evidence of the respondent's witnesses and was further evidenced by what had transpired with regard to the claimant's bonus and pay rise in 2015. It was further evidenced by the anonymous payslips of another employee.

30. For reasons best known to themselves the respondent chose to present this "bonus" by reference to the total amount that pay would be increased in the year but, in practice, it was paid monthly.

31. An email was produced during the hearing which confirmed the 2 elements of "bonus" that were payable to the claimant.

32. The TCR element was to be backdated to 1 January and the claimant did receive that element as back pay in April 2016. She also received the pay rise element in that month.

33. Effectively, therefore, the claimant was arguing for the remaining 8 months of the TCR. The only evidence which she had in support of this claim was her conversation with Mr Sweet and the bonus provision in her contract. She said

that because the TCR had already been earned based on the previous year's performance she was entitled to it in full.

34. The conversation with Mr Sweet was only intended to be an indication of what the bonus payments were likely to be and did not have contractual weight. It is understandable, however, that the claimant was both confused and disappointed as a result.

35. The contract referenced bonus but also emphasised that any such payments were not contractual and were discretionary.

36. In any event, I do not accept that the TCR was, in truth, a bonus. It was a performance related pay rise and, accordingly, it was bound to cease on the termination of an assignment. The respondent followed their past practice and, indeed, their practice for other employees in this regard and cannot be said to have been acting arbitrarily, capriciously or perversely.

37. The wording of the contractual documentation was far from clear and the communications with the claimant compounded that but, ultimately, there was nothing which could support a contractual entitlement to TCR being rolled up from future months and paid to the claimant on termination of her assignment.

Dismissal

38. In relation to the alleged dismissal, the respondent argued that the claimant did not genuinely believe that she had been dismissed.

39. They challenged the claimant's evidence on the basis of her written communications at the time which did not expressly raise, challenge or query the dismissal. I would accept that this was surprising.

40. The claimant, however, said that she understood that she had been dismissed, did not see any reason to challenge that and just wanted her redundancy entitlements. That was not inconsistent with her communications even though they could equally have been read to indicate that the claimant believed that she was still employed and was seeking to invoke the statutory redundancy procedures following layoff. That was how the respondent interpreted them at the time, not knowing, of course, that the claimant had not been sent their standard covering letter.

41. The respondent did not, they said, even understand that the claimant was arguing that she believed that she had been dismissed until several weeks later or even the issue of the claimant's ET1.

42. The claimant was a lay person and, at the relevant time had not been in receipt of legal advice. Having worked for so long on the same assignment with the same client she was in uncharted territory. Accordingly, I accept her evidence that she understood the receipt of her P45 to amount to a dismissal. She knew that the leaving date on the form was not the date of termination and that her employment had continued through May. It was the date of receipt of the P45 that she relied on as the effective date of termination.

43. The context is all important. Having ceased work at the end of April she received no communications about any further work as an employee of the respondent. The only communication she received was in the middle of May about the possibility of applying for a role to be employed by a client of the respondent on a much lower salary. She received nothing thereafter until the P45.

44. Thereafter, the claimant requested a redundancy payment on two or three occasions but the respondent did nothing to suggest that she was still employed, they did not inform her that she had not been dismissed and, most tellingly, there were no attempts to find her alternative work. All that she received was a misconceived counter-notice under the statutory lay off procedures.

45. I accept that there were, in accordance with the respondent's submissions, a series of unfortunate events. Firstly, there was the ending of the claimant's assignment after 25 year's service. Then the respondent was unable to identify any suitable alternative employment for the claimant. Then they issued the P45 without the usual covering letter, albeit they were initially unaware of that omission.

46. I can understand why, in those circumstances, they may then have been under the impression that the claimant was claiming under the lay off procedures. I am even willing to accept that the counter-notice was a genuine error, the respondent not realising that the offer of alternative employment was with a client and not themselves, or not realising that such a scenario did not amount to an offer of suitable alternative employment. The fact that they sought to rely on the

claimant's notice as being her email of 15 June, however, as opposed to her email of 9 June appears likely to have been because they were already outside the prescribed time to respond otherwise. In any event, none of that explains the fact that there were no further communications with the claimant and no further attempts to find her work.

47. The respondent's subsequent actions, therefore, seemingly confirmed the claimant's understanding.

48. It seems to me that, on balance of probabilities, a reasonable bystander would have concluded as the claimant did. A 25 year assignment, followed by no offer of suitable employment and the passing of almost 5 weeks, would assume, on receipt of a P45, that their employment had been terminated and the absence of any contra-indicators thereafter would confirm that view.

49. It is true that many would, at least, have directly questioned the P45 but I accept that the claimant merely accepted it and wanted to move on.

50. The respondent's communications about lay off procedures were not understood by the claimant as in any way suggesting that she was still employed, merely that the respondent was disputing her entitlement to a redundancy payment. In my view, any lay person who had not been through a similar situation before would have understood those communications in the same way.

51. The respondent suggested that it was not in their interests to dismiss. That was certainly true but I do not accept that the claimant, or any reasonable observer, would have thought in any great detail about why the respondent acted as they did and whether it was rational.

52. The case law does not particularly further inform my view. In short, a P45 may evidence dismissal but does not necessarily do so. A failure by an agency to offer work will, ultimately, lead to a dismissal but the passing of time in this case was not sufficient, without more, to do so. I do not, however, accept that the claimant remained employed until she found alternative employment. The respondent had not offered her work for months and so her employment must have ended at some point prior to her obtaining alternative employment. No other date logically presented itself or was argued for.

53. The acts and omissions of the respondent in totality, including the P45 were sufficient to amount to a termination in the view of the claimant and a reasonable observer. That termination must have been a dismissal.

54. By virtue of previous concessions, therefore, the claimant was unfairly dismissed and the case will proceed to the remedy hearing already listed.

Employment Judge Broughton

13 April 2017

JUDGMENT SENT TO THE PARTIES ON

21 April 2017

ANNEX

CHRONOLOGY OF AGREED FACTS

20.05.91	Start date of Claimant's continuous employment with Adecco, on assignment with IBM (Claimant had been at IBM in other capacities since November 1983)
30.10.08	Claimant paid £500 bonus in recognition of 25 years' sterling service on assignment at IBM.
31.03.14	Claimant received Basic Pay of £2,151.67 (up from £2,000.96 in the previous two months), plus Back Pay of £150.71 (equal to backdating the monthly increase by 1 month) (**p. 87**). There is no evidence of the Claimant receiving a lump sum by way of bonus on any of her 2014 pay slips (**pp. 85- 96**)
28.05.15	Claimant received Basic Pay of £2,201.38 (up from £2,151.67 the previous month (**pp.100-101**), Back Pay of £49.49 (roughly equal to one month's increase) and an Admin Bonus of £831.41
18.03.16	Respondent's Andrew Sweet ("Andrew") sent the Claimant a letter by e-mail giving notice that her assignment was coming to an end w/e/f 29 April 2016 (**p.47**)
	On or shortly before this day the Claimant met Andrew at Adecco's office in Birmingham. The Claimant's account of this meeting (**p. 48**) is that:

- Andrew informed [her] of two bonuses totalling £862 which will be paid end April.
- 2% pay rate increase, backdated to January. This was not confirmed in writing, but it was paid in April (**p.112**)
- Eight days vacation to be paid (see **p. 113**)
- Andrew offered to arrange opportunities for the Claimant to refresh her interview technique.
- Andrew advised the Claimant to update her CV with a 'key skills' section, and to guard against using IBM terminology.

The Respondent agrees that the Claimant was entitled to, and was paid, TCR whilst on assignment at IBM in 2016, but that the TCR bonus was paid in the form of 2% of salary, paid monthly and backdated to January 2016 (2% of the Claimant's salary over 12 months is c. £383). TCR *was* what the Claimant calls a 2% salary increase, and not a further lump sum (coincidentally equal to 2% of salary), payable in addition to a 2% salary increase.

It also believes that the Claimant was only entitled to TCR when on assignment at IBM. The Claimant received one-third of the £383 TCR she would have received had her IBM assignment lasted until the end of 2016; she was entitled to no more TCR after 29 April.

24.03.16 Andrew e-mailed the Claimant with links to some opportunities for her to consider (**p.54**)

29.03.16 The Claimant replied to Andrew's e-mail, indicating that the roles were either in the wrong location and/or that the salary was not within her range (**pp. 52-53**; but contrast with the Claimant's written contracts of employment (paragraphs 1, 3 on **p.35**;

paragraph 3 on **p.41**) She also offered to meet Andrew in Warwick on March 30th (**p.51**).

30.03.16	e-mail from Andrew, confirming he would call her to arrange a meeting the following week, to go through the Claimant's file and to give the Claimant some interview practice (**p.51**). Claimant sent updated softcopy CV to Andrew and Laura Penny (Adecco Birmingham New Street) (**pp. 83- 84?)**
01.04.16	Matt Hancocks ("Matt") from Spring Personnel (a sister company of Adecco), e-mailed the Claimant to arrange a call on April 4th to discuss a new opportunity. The Claimant replied, asking him to confirm a time for their call on the afternoon of April 4th (**p. 58**).
07.04.16	Andrew's e-mail to Claimant urging her to contact Matt in connection with a role as PA to a partner at an accountancy practice (**p.50**). This e-mail also contained links to other roles.
08.04.16	Claimant e-mailed Matt as she had not heard further from him. Matt confirmed that he was awaiting further information from his client about the above PA role (**pp.57-58**).
19.04.16	Matt e-mailed the Claimant to say that the client was now looking for an administrator to support a team rather than a PA to support 1- partners, on a lower salary than previously thought. He also wanted to discuss a possible opportunity in admin support to the sales team of an IT company he was working with (**p. 54**). The Claimant replied asking for an indication as to salary and, in the case of the IT company, also as to location (**p. 53**). Matt explained that he was waiting on further confirmation from the client in relation to the former, and that the latter was a speculative approach to a client recruiting in other areas (**p.53**).

28.04.16 Claimant paid Basic Pay of £2,233.44 (up from £2,201.38 in each of the previous 3 months (**pp. 109-111**)) Back Pay of £95.76 (roughly equal to the increase from March's pay to April's multiplied by 3), and an Admin Bonus of £478.14 (**p. 112**) This Admin Bonus is in the same ball-park as the GDP bonus of £461.90 paid to Debbie Andrews in April 2016 (**p. 77**)

NB: £32.06 per month over 12 months is worth £384.72 -- not unlike the sum the Claimant claims by way of TCR. Indeed £95.76 (3 months' backdated increase) multiplied by 4 is £383.04 -- even closer to the £383 the Claimant expected by way of TCR in 2016.

29.04.16 Claimant's last day on assignment at IBM (see **pp. 47; 81**)

12.05.16 Andrew e-mailed the Claimant regarding the opportunity in Birmingham City Centre discussed previously:

"*I am continuing to support your redeployment and I am pleased to say I have identified a new opportunity which would suit your hourly rate, location and criteria set out in your Adecco Contract of Employment. The role is located in Birmingham City Centre, and is for a PA/ Team Support to 2 Directors of an Accountancy Practice, it is a full time permanent role and the salary is negotiable from £18,000 - £22,000 based on experience.*

If you are interested in this role, please can you kindly confirm by COP Friday 13th May. Upon receipt, I can arrange for the Adecco consultant to discuss next steps in relation to potential start date and understanding more about the role, etc." (**p. 61**)

13.05.16 Claimant replied to Andrew's e-mail of 12th May, declining this role:

> "*You must be aware that my current salary is £27,000 and I have over 30 years experience. At first glance, this opportunity does not appear to match my situation.*
>
> *I look forward to hearing from you with a similar opportunity that I have had over 30 years plus.*" (**p. 61**)

16.05.16 In reply to a further e-mail from Andrew, the Claimant confirmed she did not want to be put forward for this role, because:

> "*Andrew, that is correct. The salary is not in my range*." (**p. 60**)

27.05.16 Claimant paid £855. 52 in lieu of accrued but untaken holiday pay (**p. 113**)

02.06.16 Claimant received P45, without any covering letter (**p. 81**) The Respondent believes that the absence of a covering letter was an administrative error, and that the Claimant ought to have received a letter in the terms of the template on **p.114**

09.06.16 Claimant sent e-mail to Andrew:

> "*Further to a conversation I had with Jennifer on Monday, 6 June, and again today, I understand that you have been out of the office and she has been unable to contact you.*
>
> *On my April salary slip, I was paid my salary, back pay and Admin Bonus, and in May, I was paid my 8.33 (recurring) days*

holiday. However, I have not received Top Contributor Reward which should be £383. As advised by you on Friday, 18 March, bonus would be £862, of which I've been paid £478.14 Admin Bonus. Can you please clarify and advise the date of the outstanding payment. I presume that will affect what is stated on my P45, which I received on Thursday, 2 June.

*Also, please advise the process for Statutory Redundancy, now that it has been a month since my end of assignment at IBM and no appropriate opportunities from Adecco forthcoming. Please advise amount, how it is calculated and when it will be paid, thank*s." (**p. 62**)

15.06.16 Claimant wrote again to Andrew:

"*I am writing again as I have not received a reply to my email dated 9 June 2016 (see below). I would be grateful if you could email me to confirm receipt.*

Two points:

1. Can you please let me know when I will be paid Top Contributor Reward, as it has been outstanding since the end of April. Can you please confirm that you will be sending an updated P45 to reflect this additional amount and also when I can expect it.

2. Can you please advise on the Statutory Redundancy, how much it will be and when it will be paid.

Can you get back to me by midday on Friday, 17 June, otherwise I will have to seek legal support. This situation has been affecting my health and I do not want it to be outstanding any longer. I am sure you can understand the need to close this out, without further delay." (**p.64**)

Andrew confirmed by return that he was on annul leave and would get back to her on Monday (**pp.63-64**)

21.06.16 Email from Andrew to Claimant:

"*Apologies for the delay, I am catching up from my week off on annual leave last week, I sent your query off to our HR team yesterday and am currently awaiting a response which I will have by the end of the day today and will then onwards send to you.*" (reproduced in the Claimant's e-mailto Andrew on **p. 63**)

To which the Claimant replied (**p. 63**):

"*Andrew*

I was disappointed that you did not contact me yesterday, Monday, 20 June (as stated in your email dated 15 June) and, then further to your note at 07:55 this morning, again by the end of the day today (your email dated 21 June).

"Hi Karen

Apologies for the delay, I am catching up from my week off on annual leave last week, I sent your query off to our HR team yesterday and am currently awaiting a response which I will have by the end of the day today and will then onwards send to you.

Kindest regards

Andrew"

I have copied your manager, Michelle, so that she can help to pursue these points with you and, as a matter of urgency, before legal procedures begin.

This is affecting my health, and these further delays are making it worse. I have worked for Adecco for c25 years, so would expect to be treated with dignity and respect.

Can you please get back to me by 16:00 tomorrow,

Wednesday, 22 June regarding TCR, updated P45 and redundancy payment, thanks."

22.06.16 The Claimant received an e-mail from Andrew (**p.65**), enclosing a letter treating the Claimant's e-mail of 15 June as notice of intention to claim a redundancy payment following lay-off, and serving a counter-notice denying the redundancy claim:

"*Adecco believes that we have offered you alternative work in liner with your contractual terms and conditions as a PA/Team Support to 2 Directors of an Accountancy Practice who are a client of the Adecco Group, this role was highlighted to you on 12/05/16 which was within your 4 week layoff period however, you declined this permanent role on the 13/05/2016 and your 4 week layoff period ended on the 27/05/2016*" (**p. 67**)

The Claimant replied to Andrew by e-mail (**p.65**):

"*1. Can you please let me know when I will be paid Top Contributor Reward, as it has been outstanding since the end of April, and confirm that you will be sending an updated P45 to reflect this additional amount and when I can expect it.*

2. I do not accept your counter notice of my redundancy claim on the basis that the role that you identified was not reasonable due to the substantial decrease in salary, and I am now taking legal advice."

28.10.16 Through her legal adviser the Claimant confirmed, amongst other things, that she did not believe she had been laid off, but that she claimed to have been unfairly dismissed or dismissed by reason

	of redundancy when she received a P45 without any explanation (**p. 115**; see also 02.06.16, *supra*)
02.11.16	Preliminary Hearing at which, amongst other things, the parties confirmed that the Claimant did not seek a redundancy payment following lay-off, in which case this was not an issue to which the Respondent had to respond (**pp. 27- 31**, esp. **p. 28**)
04.11.16	The Respondent's legal adviser e-mailed the Claimant and her legal adviser, to seek clarification in connection with the issues relating to unpaid TCR bonus and/or holiday pay (**pp.117- 119**)
22.11.16	The Respondent's legal adviser wrote to the Claimant/her legal adviser, amongst other things to request the Claimant's thoughts on the TCR bonus and holiday pay issues in the light of the e-mail of November 4th (**p.117**)