



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102091/2019

Held in Dundee on 4 June 2019

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Employment Judge J Hendry

15 **Mrs A Wallace**

**Claimant
Represented by
Mr R Miller
Solicitor**

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VTech SMT Ltd

**Respondent
Represented by
Mr R Hetman
Managing
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 The judgment of the Tribunal is that the claimant's effective date of termination was 10 September 2018 and that her application having been lodged on 7 February 2019 is out of time and that accordingly the Tribunal has no jurisdiction to hear her claim which is dismissed.

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REASONS

1. The claimant in her claim form sought a finding that she had been unfairly (constructively) dismissed by her employers, the respondent. Her position was that she had given the respondent company a letter of resignation on 5 11 September with one month's notice and that she would be leaving on 11 October which she said was the effective date of termination.
2. The respondent company took the position that she had resigned without notice on 10 September. They also argued that she had not worked her full notice period provided by her own written resignation.
- 10 3. Both parties lodged productions (C1-4 and Ra-Rj and 1-7).

Issues

4. The issue for the Tribunal was essentially a factual one as to when the claimant had in fact resigned from her employment and the effective date of termination.

15 Evidence

5. The Tribunal heard evidence from the claimant on her own behalf and from Mr R Hetman the Managing Director of the respondent, Ms Robyn Hetman Accounts Manager and Mr Derek Walker, Sales Manager.

Facts

- 20 6. The claimant started work with the respondent on 2 March 2015. Her job title was given as Office Clerk in the statement of main terms of employment that she was provided (R3).
7. The respondent employs approximately 20 staff. They supply equipment and other products to the electronics assembly industry. Their Managing Director is Mr R Hetman. The Accounts Manager is Ms Robyn Hetman his 25 daughter. The Sales Manager is Mr Derek Walker.
8. The claimant was unhappy about the way in which she had been treated at work for some time and had raised a grievance in June. She believed that

her employer's attitude towards her had altered following this and that they had become both hostile and over-critical of her work.

- 5 9. Two issues had arisen between the claimant and her employers whether or not the claimant was required to accrue holidays before she could take them. She had contacted ACAS and taken advice. She told Mr Hetman that she did not have to accrue holidays before taking them. A meeting was arranged with Mr Hetman at that time. He explained that the company's position was that staff were paid on or about the 15th of each month. The company was concerned that a member of staff could take holidays that had not yet accrued and leave on the 15th of the month after being paid for the whole month and that this would leave the company out of pocket. The claimant agreed to a compromise which was that she could take holidays although they had not accrued but she would be paid at the end for the month.
- 10 10. The claimant remained unhappy about the position and sought a meeting with Mr Hetman on 10 September.
- 15 11. On that date the claimant was called into an office. Mr Hetman, Ms Hetman and Mr Walker were aware that the claimant wanted to revert to being paid on the 15th of the month. The respondent's management believed that this would prove difficult as the payroll was outsourced. They were irritated at what they saw as the claimant wanting to revert back to the previous position by being paid on the 15th of the month. Mr Hetman explained that the company could not just change the date back. The claimant, referencing the earlier meeting indicated that he had said at that meeting that it could be changed. Mr Hetman was indignant at the suggestion. He now took the position that it could only be changed at the end of the year. The claimant suggested to Mr Hetman that this is not what he had said at the earlier meeting. Mr Hetman then asked Ms Hetman if she recalled him saying that and she responded that she could not remember. He pressed her and she eventually agreed that he hadn't said this. Mr Walker was asked the same question by Mr Hetman and confirmed that he had not said this.
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12. The claimant was angry and indignant. She felt that the meeting was oppressive and intimidating. She believed that the three individuals were lying. She became upset and distressed. Mr Hetman told her to go home.
13. The claimant had for some months suffered from a stress and anxiety condition of which the respondent's managers were aware. They believed that the primary cause of this condition was personal difficulties the claimant was experiencing and not issues at work. The claimant believed that problems at work were the principal cause of her anxiety.
14. The claimant got up to leave and said that 'they' had got what they wanted and that she was leaving and not coming back.
15. The claimant then left the office, removed personal items from her desk and left the building. She did not turn up for work the following day.
16. In terms of the respondent's sick pay policy a staff member who is off ill is required to contact the company and advise the company of their absence. They are also required to submit 'Fit Notes' in order to be paid statutory sick pay.
17. The claimant was very stressed and anxious after the meeting. She was too unwell to attend work on 11 September. She managed to arrange a doctor's appointment for Wednesday of that week. She also considered her position in relation to her employment and decided to resign with notice. She accordingly typed a letter dated 11 September 2018 in which she resigned giving one month notice. She hand-delivered the letter to the company that evening. The premises were at that point closed.
18. The claimant's letter of resignation (C2) stated
- "Dear Mr Hetman,*
Letter of Resignation 11 September 2018
Please accept this letter as my resignation as of today 11 September 2018 taking my month's notice to 11 October.
Some of the reasons for this: I've been made to feel humiliated and worthless in my role as VTech SMT Ltd which has had a huge effect on my work & home life, with the situation getting worse on an almost

daily basis, this in turn has made me very anxious, unsettled and with a feeling of dread every morning not knowing what I was coming into. ... On numerous meetings with yourself (MD) Robyn (line manager) & Derek (Director) you've reneged on issues raised at these meetings, saying one thing and changing it the next, this happened frequently ..."

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19. Mr Hetman considered the terms of the letter. He discussed it with his daughter and Mr Walker. They were concerned that they might have given the claimant cause to resign so decided to reassure her that she had not been dismissed by them. They wrote on 11 September 2018. Ms Hetman typed the letter and Mr Walker also read it. The letter stated:

"Dear Agnes

Further to our meeting this morning, you were informed of the Company's position with regards to your request, reference date of monthly wage. During this meeting, you accused myself and two other members of staff of lying, stating you don't need to listen to what was being said, got up and left the meeting and the office.

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I would like to notify you in writing that you have not been dismissed from your job and on that basis we expect you in work tomorrow morning as usual. If you are not coming in please advise us of your intentions in writing, otherwise we will assume you have dismissed yourself."

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20. The respondent wrote on 12 September (C3)

"Dear Agnes

Reference; letter of resignation received 12 September 2018

I am sincerely sad to hear the way you've felt over the past couple of months about work but I know you've been under pressure with family matters and as a company, we have been very flexible with yourself.

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I don't want to comment on the majority of your letter at this moment in time but as I have said to you on several occasions, you are a valued member of staff as every member of staff has a role to play in the organisation.

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Please note, your position with VTech will be held open until 11 October 2018 and with regards to the existing pay run, you'll be paid the days you've worked plus your SSP until 10 October less any holidays taken and days off. This will be paid on to your account for 1 October.

We wish you all the best for you and your family during these difficult times.”

21. The claimant attended her GP. She received a Fit Note indicating that she was suffering from stress at work and signing her off work for four weeks. This sick note was passed to the respondent. They took no action.

22. The respondent heard nothing further from the claimant and they wrote on 24 October (C4)

“Dear Agnes,

We hope this letter finds you and your family well.

As stated in our letter dated 12 September 2018, we kept your position open until 11 October 2018. Contrary to your belief that VTech ‘wanted to get rid of you’ this was never the case, such that we have decided to keep your position open until 31 October 2018. If we don’t hear back from you by 31 October, we will advertise your position.

Please contact us if you have any further questions or if you wish to reapply.

Yours sincerely

R Hetman.”

23. The claimant was not paid statutory sick pay during her absence.

24. The claimant instructed her solicitors and contacted ACAS. An ACAS certificate was issued on 9 November 2018.

Witnesses

25. I found the claimant generally a credible and reliable witness except in relation to the matters that I will mention later. I believe that she gave a relatively accurate account of the meeting on 10 September, certainly more accurate than the version spoken to by Mr Hetman, except that she did not

agree that she'd said that she was leaving and not coming back. She also indicated in her evidence that she had telephoned Mr Derek Walker on Tuesday or Wednesday about being signed off sick. I did not accept this evidence.

- 5 26. I did not find the respondent's witnesses particularly impressive although Ms Hetman's evidence was slightly more persuasive. In all I found them not particularly credible or reliable, but I did not discount all their evidence.

Submissions

- 10 27. Neither party made any legal submissions. It was accepted that the case revolved around essentially a factual dispute as to what had happened and whether the claimant resigned at the meeting or by letter.

Discussion and Decision.

- 15 28. If the claimant had resigned at the meeting on the 10 September it was accepted that the claim was out of time but if the end of the notice period given in the letter stated 11 September was the effective date of termination then the claim was out of time.

29. It was important to look at the full picture and not only the events of the 10 September but also parties' subsequent actions.

- 20 30. Turning firstly to the meeting the evidence of the respondent's witnesses has to be examined in a little more detail as I have expressed reservations about accepting it in full. Mr Hetman is a clever and very confident individual. Both he and the other two witnesses were very keen to give what can only be described as an edited version of the meeting on 10 September. The claimant, in their accounts, had been completely unreasonable and become upset for no discernible reason. They made no reference to the claimant having challenged Mr Hetman over earlier statements he had made, and the alleged change of position being adopted by him and Mr Hetman insisting in pressing his colleagues to say if he had lied. Although both Mr Walker and Ms Hetman eventually agreed that this
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30 sequence of events had occurred before the claimant became upset. I regret to say I came to the view that there had been a certain amount of

rehearsal in relation to the position that the company was going to take. I was also of the view that there was nothing unreasonable in the request being made by the claimant and the alleged problem of changing the date of the claimant's wage payment because of outside payroll providers seemed overegged.

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31. Nevertheless, I did not wholly discount the respondent's witness's evidence. Crucially I accepted that the claimant had said that they had got what they wanted and that she was leaving and not coming back. I also accepted that she had removed personal items from her desk (this was not challenged in cross examination).

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32. I also had considerable reservations about the evidence of Mr Walker. He seemed to find it difficult to answer relatively straightforward questions and he too was very keen to stick to the company line as it were. In particular he did not explain why, in the letter of 9 September, they saw the need to reassure the claimant that she had not been dismissed when, if as he suggested, the claimant had no grounds whatsoever to think that she had been dismissed or how and why she could have come to that view. Neither Mr Hetman or his daughter were able to provide an explanation either. I concluded that the claimant was correct in her evidence that Mr Hetman had told her to go home and that this was why the company felt the need to say this.

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33. The claimant told the Tribunal that she had notified the company of her absence by telephoning Mr Walker. Mr Walker vehemently denied that the claimant had contacted him in accordance with the sickness policy. This might have cast doubt on the claimant actually having resigned at the meeting. I accepted his evidence. If she had telephoned as she had alleged then a record would exist of this telephone call. No such record has been produced but in light of Mr Walker's vehement denial I concluded that I reluctantly could not accept the claimant's evidence on this matter.

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34. It is not uncommon for Tribunals to have to consider whether certain words or common phrases amount to a resignation or dismissal. The Tribunal, and employers, have to be aware that things are often said in the heat of the moment. The employers here were aware that the claimant had been

diagnosed with a stress/anxiety condition. It was surprising that they made no mention of the claimant's resignation in correspondence but the impression I was left with was that they knew things had gone badly at the meeting and that they might face a claim and accordingly they were keen to persuade the claimant to come back.

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35. The words that were said by the claimant are significant namely that they had got what they wanted. In the context of this case that refers to the claimant leaving her job. She had previously made a complaint of bullying against Mr Hetman and believed that the company wanted to make things difficult for her so she would leave. She was unhappy not only with the refusal to pay for holidays which had not accrued and which she apparently wanted to look after ill relatives but with these other workplace issues.

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36. To say that she was leaving might in other situations be ambiguous. She might be saying no more than she was leaving the room or the meeting. But to say that she was leaving and not coming back and then to remove personal items for her desk paints a picture of someone meaning to resign and carrying through the intention. If you add to that the fact that she did not return to work or telephone about her absence and the employers writing that her job was being held open then the common understanding of parties seems to have been that a resignation had taken place. That resignation was not waived in some way by the employers during the next few weeks as they did not seek to discipline her for not attending work nor did they pay her sick pay nor did she return to work. On the other hand, the employers did not process her P45 or write to clarify whether she had meant to resign on the 10 September. To an extent matters were superseded by the claimant's letter of resignation.

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37. Considering all the evidence of both the background and what I believe happened at the meeting I have reluctantly come to the view that the claimant did indeed resign on the 10 September and that accordingly the claim is out of time.

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38. For completeness I would mention that we spent some time on a rather misconceived argument put forward by the respondent that the claimant had not worked her notice and was in breach of the notice provisions. The

argument advanced seemed to turn on the fact that the claimant's last Fit Note was only for four weeks and not a full calendar month. The contract required notice of a calendar month. This had no relevance to the issue of the effective date of termination unless the respondent accepted that the resignation had been constituted by the giving of notice itself. The claimant remained unwell and could no doubt, if asked as she confirmed in evidence, have provided a further Fit Note to cover this period. At the time of her absence she was not asked to provide one covering this period and no sick pay or indeed pay in lieu of notice was paid.

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Employment Judge:	Mr JR Hendry
Date of Judgment:	21 June 2019
Date sent to parties:	21 June 2019

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