EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
MS E VANKOVA	v	CONTARDO IMAGING LIMITED

Heard at: Watford **On**: 16 and 17 March 2020
Before: Employment Judge Skehan
Members: Ms Telfer

Appearances
For the Claimant: In Person
For the Respondent: Mr Fuller, consultant

RESERVED JUDGMENT

1. The claimant's claim for automatically unfair dismissal contrary to section 100 of the Employment Rights Act 1996 is unsuccessful and dismissed.

2. The claimant's claim for direct race discrimination contrary to section 13 of the Equality Act 2010 is unsuccessful and is dismissed.

3. The claimant's claim for unpaid annual leave contrary to the working time regulations was withdrawn by the claimant and is dismissed.

4. The claimant's claim for breach of contract relating to her notice period is successful.

5. This matter is listed for a remedy hearing on 16 September 2020 as the tribunal heard evidence on liability only. It is hoped that the parties will be able to resolve the issue of remedy by agreement without the need for remedy hearing. The claimant was paid for one weeks' notice. The claimant was entitled to one months' notice. The appropriate remedy amount will be the claimant's normal monthly basic salary, less one week's pay. Figures should be calculated on a net basis.

REASONS

1. During day one of the hearing, unfortunately, a tribunal member became ill. Following discussion with the parties, both parties agreed and recorded in writing that the tribunal should proceed to determine this matter with the Employment Judge and a single employee member.

2. The claimant issued proceedings in this matter on 23/09/2018. She claimed automatically unfair dismissal because she brought health and safety matters to the respondent's attention, race discrimination, breach of contract and a claim for unpaid accrued but untaken annual leave. The claim in respect of annual leave was withdrawn at the outset of the hearing. The claim was defended and the respondent's form ET3 was submitted on 20/11/2018. The issues to be determined was set out as the case management hearing of 10/05/2019 were revisited at the start of the hearing, agreed by the parties and are not repeated herein.

3. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.

4. We heard from the claimant on her own behalf and we also heard from Ms Ke. We heard from Mr Childs on behalf of the respondent. All witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined.

5. The respondent is a specialist imaging printing company for both consumer and commercial clients. They offer custom-made prints on a range of products including fabrics, clothing, homeware and leather.

6. The claimant is Russian. She was employed by the respondent from 01/06/2017 to 20/08/2018. The claimant has less than 2 years' service and no 'ordinary unfair dismissal' claim. The claimant worked under a Tier 2 (general) Visa, sponsored by the respondent. According to Mr Childs, the claimant's Visa was awarded on a points-based system requiring the claimant to have scored 70 points on the Tier 2 test to be eligible for a UK Visa. The points system awards 30 points for having a valid 'certificate of sponsorship'. This requires the respondent as her sponsor to have a Tier 2 sponsorship licence, which it did. The points based system awards 20 points for receiving the appropriate salary for the job in question. In the claimant's case she required a minimum salary of £30,000 per annum. Mr Childs told us that it was his understanding that should the claimant not achieve a salary of £30,000 per annum or more, she would not qualify for her Visa. The points-based system offered 10 points each for English language and funds. Mr Childs told that it was his understanding that any role taken by the claimant would also need to meet the skills shortage test. This involved, inn general terms, the role being advertised with a subsequent inability to fill it.

7. Mr Childs told us during the course of cross examination that the respondent was subject to a spot check by the Home Office recently. He considered that he had good understanding of the sponsorship scheme and the Home Office rules and requirements as they applied to the claimant's Visa.

8. The claimant said during the course of her evidence that she could earn a salary lower than £30,000 and that would be acceptable by the Home Office to retain her Visa, however the claimant's evidence was unclear. The claimant was asked if she agreed with the respondent's evidence that the

Visa required her to earn £30,000 or more. The claimant responded 'I don't know for sure, I can't remember.'

9. The claimant initially joined the respondent's content marketing team. She became the online public relations manager within search engine optimisation (SEO) towards the end of January 2018. Her line manager was Leo Cerda, a British national. The respondent describes the claimant as a valued and diligent employee. Mr Childs said that there had never been any question over her capability, her commitment or her value to the respondent. During her employment the claimant performed well within her role and the respondent acknowledged her successes and her hard work. Notwithstanding the claimant's hard work, Mr Childs said that although time and resources had been put into making the claimant's role a success the return on the respondent's investment was meagre. Revenue streams were not significant enough to break even and for that reason, the claimant's role was identified as a loss-making role for the respondent. The respondent stresses that there is no criticism of the claimant within this scenario.

10. Mr Childs said that he made the decision to place the claimant's role at risk of redundancy owing to declining sales and in the absence of success from the online strategy. Mr Childs told us that other areas of the business were doing well and the company has expanded operations in India.

11. In July 2018, Mr Childs had considered creating a role of Digital Project manager on 04/07/2018. He wrote text for a possible role and this was placed on the website to see how it looked in context. However, on review Mr Childs decided that this was not a role that was required. Mr Childs told the tribunal that no person was ever interviewed for this role and it was never filled.

12. In addition to identifying the claimant's role at risk of redundancy, Mr Childs also identified Mr Leo Cedra's role as at risk of redundancy as he worked in the SEO department also. The respondent undertook consultation meetings with the claimant prior to confirming her position as redundant and terminating her employment.

13. The claimant said that there was no real or genuine reason for the termination of her employment. She said that her department was successful and her position had been successful.

14. There was a heatwave in the UK in July 2018. Shavita Kerai works within the respondent's HR department. Daniel Monoz and Fabio Rodrigues work within the respondent's IT department. On 05/07/2018 the claimant contacted Shavita Kerai as follows:

> EV 17:03 Hello dear Shavita, hope you are well. Do you think there is something we can do with the Air conditioner? We have an hour to go and we are all boiling here and sweaty ha ha
>
> SK: 17:04 I will get someone to reset it. Thanks

15. The claimant says that she raised her message as a joke to get her point across and to get someone to fix it.

16. On 23/07/2018 the claimant messaged her colleague Daniel Monoz. The exchange is as follows:

a. 13:21 EV Hello Daniel Hope you are well and had a good weekend. Could you please help me with a little fan on my desk? I could not find a free socket to connect it thanks

b. 14:47 EV: hello?

c. 14:59 DM: hello

d. 15:20 EV: are you coming?

e. 15:39 DM: what do you need. We have had some problems with one webpage and am working on it. I can go in a few minutes

f. 15:40 EV: a socket to connect my fan to. Cool thanks

g. 15:42 DM I don't know if I have any…. I will try to find one

h. 15:42 EV maybe there is a free one under my desk - I just cannot reach it myself!

i. 16:3 EV I am dying from the heat here; it's been 3# hours since I called you

17. On 23/07/2018 the claimant emailed Daniel Munoz and Shavita Kerai, and copied Fabio Rodrigues at 17:27. The email says:

> Hello dear all
>
> Can please someone come and help me to turn on the fan at my desk? I bought it myself and brought to the office but there is no free [socket] under my desk, and there is a lot of mouse poo under my desk too.
>
> I am dying from the heat here, and I asked Daniel at 13.20 over Skype. Why is it taking so long? Who shall I ask?
>
> @Shavita Kerai, if Daniel is so super busy with his work, maybe we can have someone else from the production to come please? I really need this working.
>
> Many thanks

18. The claimant says that she was sweating in the office through the hottest summer in the UK. She was not 'dying' but was feeling terrible. She was trying to work in the heat. The claimant says that following her email, Shavita 'called me out' publicly in front of other colleagues. By way of explanation the claimant says that rather than discuss the matter with her in a private room, Shavita said to the claimant in front of her colleagues ' Eka, mouse droppings, heat situation, what's wrong with you?' The claimant considered that Shavita behaved unprofessionally. The claimant said she did not complain as there was no one to complain to. The claimant said she believed that her comments would have been raised with Mr Childs straightaway and the claimant said that she was sure Mr Childs would have been aware of her complaints.

19. Mr Childs says that he was entirely aware of the above correspondence and at no time had any complaint relating to any health and safety matter, mouse droppings or temperature made by the claimant been brought to his attention, prior to these proceedings.

20. Mr Childs said that the respondent displayed standard health and safety posters within the office and that he was named within these posters as the health and safety officer. These were placed in the kitchen and in the corridor and referenced in the respondent's handbook.

21. The claimant said she did not complain formally to Mr Childs as she wished to keep her job. She was trying to make peace with the respondent and retain her employment. She was intimidated by Mr Childs but needed her job to keep her visa.

22. Mr Childs said that there was a heatwave in June /July 2018. It was not impossible to work but it was uncomfortable. This was the case across the country. The respondent had and continues to have air-conditioning units to avoid uncomfortable temperatures but their units may have been less efficient due to the unusually high demand for it at that time of year. Fans were provided to keep people as comfortable as possible. Mr Childs did not consider the temperature within the office to be at such a level that it could have been considered dangerous to employees.

23. Mr Childs told the tribunal that the respondent's offices had mice. There was a local supermarket nearby that contributed to the problem. Staff eating at their desks had not helped the situation and notices had been put up by the respondent. Mr Childs said it was not a significant problem within the respondent as they employed pest control to regularly attend the offices together with a daily cleaner to remove any traces that may attract mice. Mr Childs considered this to be a commonplace problem within offices and one which was acknowledged and under control. Mr Childs said that he would have welcomed complaints from the claimant as it would have highlighted that his steps to address the mice problem were not working and he would have had the opportunity to take further measures.

24. The respondent has a very diverse workforce. It employed 104 individuals of which only 13 are of UK nationality. 73 are EU nationals and 18 are from the rest of the world. The claimant told the tribunal that she believed Mr Childs employed so many foreign nationals because he wanted to treat them less favourably. The claimant says that she knew this was a strong statement but believed that she was evidence of her allegations. She told the tribunal that she believed Mr Childs could pay people less than those from the UK and that those people not from the UK are less likely to stand up to him if they have concerns. People depending upon Visa's cannot raise issues and there was a culture of fear in the respondent company. The claimant referred to an email sent by Mr Childs following the Brexit referendum dated 27/06/2016, prior to the commencement of the claimant's employment, indicating that Mr Childs had welcomed the outcome. The claimant says that this email showed Mr Childs to the anti-immigrant. This email states inter-alia:

> As you know there has been a massive change in UK status with the EU with vote for leave. It's not a vote against European people… I voted leave, and after initial surprise, I feel a huge wave of opportunity ahead of us. It is better for us – all nationalities.… Your job, your lifestyle your place in Britain is secure. This vote is not anti-immigration, despite how the news media presented it. We are pro movement of people, have been for 1000 years and will continue. If anyone has a problem or question, or is having a bad experience in

work or outside, please discuss it with me as I am keen to hear feedback and help. You have our support.…

25. The claimant says in her witness statement that Mr Childs informed her that the fact that she was not British was the reason why they did not consider her for other roles in her department. During the course of cross-examination the claimant told the tribunal that those words were not used. She says that Mr Childs referred to the skills shortage test and the Visa requirements within consultation meetings and these requirements only applied to the claimant because she was not British.

26. At the time of the claimant's redundancy, the claimant believes that she should have been considered for the following vacancies:

    a. The role of digital project manager. The claimant disputes Mr Child's evidence that this was never a finalised role as she saw the role description.

    b. Content manager/copywriter. This role was accepted by Jonella on 25/07/2018. The salary agreed for this role was £20,000 per annum. Mr Childs says that this role was not considered for the claimant as it could be was filled and did not provide sufficient salary in any event for the claimant's Visa requirements.

    c. Content manager. This role was filled by Becca in May 2018 on a salary of £25,500 per annum. Mr Childs says that this role was not considered for the claimant as it was not vacant and did not provide sufficient salary in any event for the claimant's Visa requirements.

27. Both parties' evidence in relation to the claimant's notice period was somewhat confused.

    a. We were not provided with a copy of the original contract of employment supplied to the claimant. The claimant emailed Mr Childs on 27/03/2017 telling him inter-alia that 'I have noticed that there is only one week of notice period in the contract, which is extremely difficult for me (as I would need to find the company who can provide sponsorship). Is there a chance that we could do at least one month in my contract? Please let me know [as] this is very important in my Visa situation.'

    b. Mr Childs replied on the same day saying, 'one month' notice is fine for your contract, except in the unlikely concern of misconduct or grievance. We will amend this'

    c. The claimant received a written contract of employment with the following notice provision:

        i. notice period to be given by the employer to the employee

        … Less than 1 months' service -nil

        1 months' service but less than 2 years - one month.

    d. Mr Childs told us that regardless of the written contract he would expect the claimant's notice period to be one month from the commencement of her employment as this was the deal that they had reached by email.

e. Towards the end of February 2018, the respondent wrote to all of its staff highlighting various changes that were to be made to their terms and conditions of employment. The respondent sought, amongst other things to increase employees' annual leave and introduce a company sick pay scheme.

f. Mr Childs told us that the claimant's bespoke one month' notice period was overlooked and there was no express intention on the respondent's part to change the claimant's notice period at this time.

g. A new contract was provided to the claimant and her colleagues. The relevant parts of the contract are:

> We are introducing new benefits in proposing the following changes to the terms and conditions of employment contracts. Please read carefully and sign if you are in agreement with them. All additions/changes are highlighted in green. [The tribunal was provided with a colour copy of the document.]…….
>
> Notice period to be given by the employer to the employee:
>
> the company has the right to serve notice of termination of your employment at any time in accordance with the notice provisions below.
>
> One months' service but less than 2 years - one week……..
>
> [The notice period provisions were not highlighted in green.]

h. The claimant said, during the course of cross examination, that she spoke to the respondent's HR person Barbara who explained that the company were changing the sick pay provisions. The claimant was unclear as to whether or not she had realised at the time that the new contract purported to change her notice period.

i. The claimant said that as she had a bespoke agreement in respect of her notice period, the document says that all changes were in green, the notice provision was not in green and therefore it was not envisaged that the notice provision would be changed by the new document. The claimant signed the document but did not retain a copy.

j. Ms Ke said that her terms and conditions changed at the same time. She did not know and it was not brought to her attention that the respondent intended to change notice periods.

28. By letter dated 13/08/2018 the respondent terminated the claimant's employment. The claimant was provided with one weeks' notice and her final day of employment was stated to be 20/08/2018.

29. We note the Home Office letter to the claimant regarding her immigration status dated 17/09/2018 which states that it was informed by the respondent on 15 August that the claimant had ceased to be employed. Mr Childs said that the respondent updated the information it was required to provide to the Home Office once it had made its decision to terminate the claimant's employment.

The Law, Deliberations and Findings

Unfair dismissal

30. Section 100 (1)(c) of the Employment Rights Act 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that …being an employee at a place where there was no workers health and safety representative or safety committee, she brought to her employer's attention, by reasonable means, circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health or safety.

31. It was submitted that Mr Childs was the 'representative of workers on matters of health and safety at work or member of a safety committee' by reference to his name being on the health and safety posters as designated health and safety officer. The employment tribunal does not consider the health and safety officer to be the designated representative of workers or members of a safety committee. We conclude that the respondent's workplace is one where neither post exists as envisaged under section 100(1) (c) of the Employment Rights Act 1996.

32. What was the reason for the claimant's dismissal? The decision to dismiss the claimant was made by Mr Childs. Generally the tribunal found Mr Childs to be a straightforward, open and helpful witness.

33. We note that the claimant relies upon three exchanges set out above. the claimant's reference to mice droppings is made with reference to difficulties in operating her fan rather than being the primary purpose of the email. Further, these references are made in the context of an acknowledged problem within the respondent's offices that was known and had been openly addressed by Mr Childs. Steps, including pest control and cleaners have been taken by the respondent to try to deal with the mice problem. The claimant's reference to high temperatures are made in the context of a heatwave. The first email is 'jokey' in nature. The others are practical requesting help with a fan. The emails are addressed to the IT/HR support workers. The tribunal concludes that the purpose of these emails was to gain assistance with access to a socket rather than to bring any health and safety concern to the respondent's attention. The respondent did not treat these emails as a health and safety complaint, and the tribunal considers this unsurprising. We consider this relevant in assessing the likelihood of the claimant's complaints being passed to Mr Childs. Taking the entirety of the available evidence into account we conclude, on the balance of probability, that the claimant's exchanges as referenced above were not brought to Mr Childs attention and Mr Childs did not know of these complaints as he has stated in his evidence.

34. In the circumstances, the burden of proof in establishing an automatically unfair reason lies with the claimant. The evidence provided by the respondent leads us to conclude that the respondent had identified a reduced requirement for and redundancy situation within its SEO operation. The fact that the respondent's business in other areas may be prospering or the respondent may be expanding in other geographical locations is irrelevant in the circumstances. Both the claimant and her line manager were placed at risk of redundancy. We conclude on the balance of probability that the reason for the termination of the claimant's employment related to redundancy. The claimant's claim for automatically unfair

dismissal contrary to section 100 of the Employment Rights Act 1996 fails and is dismissed.

35. In light of our findings as to the reason for the claimant's dismissal and in particular our finding that it was unconnected to the claimant's allegations, we have not considered whether the claimant's allegations fall within the statutory framework of bringing circumstances connected with her work which she reasonably believes were harmful and potentially harmful to health and safety.

Direct Disability discrimination contrary to section 13 Equality Act 2010 (EQA)

36. To establish a claim of direct discrimination, the claimant must show that she has been treated less favourably in some way than a real or hypothetical comparator. Section 23(1) of the EQA provides that there must be no material difference between the circumstances of the claimant and the comparator. The tribunal must ensure that it is comparing like with like, except for the protected characteristic of race. The burden of proof provisions in the EQA 2010 are set out in *section 136(2) and (3)* and states: "(2) If there are facts from which the court [or tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision." This is effectively a 2 stage approach: Stage 1: can the claimant show a prima facie case? If no, the claim fails. If yes, the burden shifts to the respondent. Stage 2: is the respondent's explanation sufficient to show that it did not discriminate?

37. The claimant defines her race for the purpose of the proceedings as being a Russian national or not being a UK or an EU national. It appears to the tribunal that the real basis of the claimant's claims is that she was discriminated against due to the application of the Home Office Immigration Rules by the respondent. The claimant would not have been subject to the application of the Immigration Rules had she been a UK or EU national. The tribunal section 9 of the EQA states that race includes colour, nationality or ethnic or national origins. It is established that discrimination on the basis of immigration status will not amount to race discrimination. In *Taiwo v Olaigbe and another; Onu v Akwiwu and another [2016] UKSC 31*, the Supreme Court held that two Nigerian employees, whose employers felt able to treat them badly because of their status as vulnerable domestic migrant workers, did not suffer direct race discrimination. Although immigration status is a function of nationality, identified by the claimant in the circumstances, it is not so closely associated with nationality as to be indissociable from it. The court held that Parliament could have chosen to include immigration status in the list of protected characteristics in the EqA 2010, but had not done so.

38. The claimant has asked us to draw inferences of discrimination from:

a. Mr Childs stated position in respect of Brexit. We have carefully considered the email wording. This email expressly deals with the anti-immigration rhetoric that accompanied much of the Brexit debate and seeks to distance Mr Childs from it. It offers support to EU workers and reassures them of their position within the workforce. We conclude that no reasonable anti-immigration message can be taken from this email or in Mr Childs case, his position on Brexit.

b. The respondent's employment of a large number of non-EU workers and an allegation that the claimant as a non-EU worker and her non-EU colleagues were unable to raise issues with Mr Childs as they were afraid. We have considered the claimant's allegations carefully. The claimant worked hard within her role and her personal performance was good. This performance was recognised openly by the respondent. There was no evidence of any inability within the respondent's workforce to raise issues. The claimant has a law degree from Russia and a Masters from Durham University. The claimant throughout her correspondence with the respondent has been forthright. There was nothing within the documentation to support the claimant's allegations that she was in any way afraid of or intimidated by Mr Childs. There was no evidence of any desire by the respondent to treat non EU workers less favourably than others. We repeat our findings in respect of the reasons for the claimant's dismissal. No inference of discrimination is drawn by the tribunal by the numbers of foreign nationals employed by the respondent.

39. Mr Childs provided us with detailed information in relation to his understanding of the Immigration Rules. Mr Childs was familiar with the Immigration Rules having held a sponsorship licence and recently undergone and successfully passed a Home Office spot inspection We were not referred by the claimant to any alternative provisions other than the claimant says that she did not believe the £30,000 salary requirement applied to her and we were invited to Google the Immigration Rules as they applied to the claimant's Visa. It was explained to the parties that the tribunal was applying the Equality Act 2010, not the Immigration Rules. The tribunal is concerned with Mr Childs' understanding of the Immigration Rules at the time he made his decision and it was for the parties to present evidence to the employment tribunal rather than the employment tribunal to seek or Google that evidence independently. We find on the balance of probability that it was Mr Childs genuine belief that for the claimant to retain her Visa that she required a salary of at least £30,000. Further, the role that she occupied would need to meet the skills shortage test, that required the respondent advertise but be unable to fill the role by those normally resident in the UK.

40. The Respondent accepts that it selected the claimant for redundancy, failed to offer her alternative roles and dismissed the claimant. We turn to the first question of the claimant's selection for redundancy. The tribunal has considered the material circumstances of the real or hypothetical comparator and concludes that any comparator would be a British person who also worked in the SEO area. There is a real comparator available to the tribunal being Mr Leo Cerda, a British national. Mr Cerda worked in the SEO area and was also selected for redundancy. In taking the entirety of the circumstances into account, and repeating our findings made above in relation to the reason for the claimant's dismissal, the employment tribunal is unable to identify any prima facie case of discrimination. If we are wrong, we conclude that the respondent has demonstrated a non-discriminatory reason for the selection of the claimant's role for redundancy. Mr Leo Cerda and the claimant were both selected for redundancy as they worked within the respondent's SEO offering. The claimant's claim for direct race discrimination on this basis must fail.

41. We now turn to examine the respondent's actions in dealing with potential alternative opportunities for the claimant.
    a. We conclude that Mr Childs has shown on the balance of probability that the role digital project manager was a draft job description that was at no stage 'live'. This was a potential wish list and not a real job vacancy available for any individual including the claimant at the time of the termination of her employment.
    b. We conclude on the balance of probability that the claimant was not considered for the content manager role filled by Jonella as the existence of Jonella indicates that the skills shortage test could not be met for this role and the salary offered would not be sufficient to allow the claimant to retain her Visa.
    c. We note the content manager role occupied by Becca. This was not a vacant position in July 2018. There is no obligation to 'bump' a relatively new starter from an alternative position to make space for the claimant. In any event, the claimant could not have undertaken this role for the same reason as set out above, being the existence of an employee within this role suggests that it could not meet the skills shortage test and the salary does not meet the minimum required by the claimant for her Visa.

42. In relation to the correct comparator for the alternative roles, we conclude that the comparator is a hypothetical comparator who must, to lawfully work under the Immigration Rules, earn a salary of at least £30,000 and any role offered must meet the skills shortage test.

43. In taking the entirety of the evidence into account we conclude that the claimant has not shown any prima facie case of direct discrimination. If we are wrong, we conclude that the respondent has shown on the balance of probability non-discriminatory reasons as set out above for the claimant not to be offered the various alleged alternative roles. In light of the above findings, we conclude that the claimant's claims for direct discrimination are unsuccessful and dismissed.

Notice

44. The claimant was given one weeks' notice of the termination of her employment. The claimant claims that her correct notice period was one months' notice. The respondent says that the notice period is clearly set out in writing in the contract of employment signed by the claimant on 22/02/2018 reflecting a notice entitlement of one week.

45. The terms of a contract are the rights and obligations that bind the parties to the contract. They can be express, implied or incorporated from other sources. The basic principles of contract law are that there must be: an intention to create legal relations, offer and acceptance, consideration between the parties and certainty. Mr Childs was open in his evidence in that the claimant's bespoke agreement in respect of notice was forgotten by the respondent when it was changing all employees' terms and conditions. It was not the respondent's intention to change the claimant's notice period. In light of the starting point, we conclude on the balance of probability that the claimant had a discussion with the HR person as she has described and received reassurance prior to signing the document that there was to be no

change to her existing notice period. This was at odds with what is stated on the face of the documentation provided. When a dispute arises in the employment context, the starting point for ascertaining the intention of the parties is usually the written contract, in this case one weeks' notice. However, the tribunal considers it necessary to look beyond the written document to the dealings between the parties and their subjective beliefs about what obligations they have entered into. This appears to the tribunal to be a situation whereby the written document signed by the parties does not reflect the true intention of the parties. We conclude on the balance of probability that there was no intention or belief by either party at the time this contract was amended that the claimant's notice period would be reduced. In the circumstances the employment tribunal concludes that the proper interpretation of the claimant's contract of employment entitles her to one months' notice. The claimant's claim for breach of contract succeeds.

46. For the sake of completeness, we note the incorrect end date of employment recorded by the Home Office within their correspondence. We consider this is a matter that should be addressed by the claimant with the Home Office and does not give rise to any claim within these proceedings against the respondent.

47. The employment tribunal heard evidence on liability only. As stated above it is hoped that the parties will be able to agree remedy in the circumstances without the need for a further hearing. To assist the party we note that the claimant was paid for one weeks' notice. The claimant was entitled to one months' notice. The appropriate remedy amount will be the claimant's normal monthly basic salary, less one week's pay. These figures should be calculated on a net basis.

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Employment Judge Skehan

Date: 13 April 2020

Sent to the parties on: 21 April 2020

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For the Tribunal Office

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