



# EMPLOYMENT TRIBUNALS

**Claimant:** Russell Whitlow  
**Respondent:** Sytner Group Limited

**Heard at:** Reading Employment Tribunal by CVP      **On:** 15 January 2021  
**Before:** Employment Judge Lang (sitting alone)

## Appearances

For the claimant: in person  
For the respondent: Mr G Miller (legal executive)

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

## JUDGMENT

The complaint of breach of contract is not well founded and is dismissed.

## REASONS

1. By a claim form dated 14 April 2020 following a period of early conciliation on 24 March 2020 to 30 March 2020, the claimant brought a complaint of breach of contract arising from the termination of his employment with the respondent on 27 February 2020.

### The issues

2. Did the claimant breach the contract of employment by resigning without notice which was accepted by the respondent to bring the contract to an end on 27 February 2020? (in other words, was there an agreement to cut short the three month notice period, relieving the claimant of the obligation to work and relieving the respondent of the obligation to pay him?) or did the respondent breach the contract of employment by cutting short the three month notice period unilaterally?

## The Hearing

3. The hearing took place by CVP. I heard evidence from the claimant and evidence on behalf of the respondent from Timothy Sett (Head of Business) and Jessica Billing (now Head of HR but Divisional HR Manager at the time of termination). I had an agreed bundle of documents consisting of 95 pages.

## Findings of Fact

4. I make the following findings of fact. I consider that the following account is, on the balance of probabilities, likely to be what actually happened at the relevant time. In summary, I prefer the respondent's account of events. I have also set out the claimant's account and explained below why I consider that the respondent's account is to be preferred.
5. The claimant was employed by the respondent from May 2019 until his resignation effective on 27 February 2020. He was employed at the respondent's Newbury Mercedes-Benz dealership as After Sales Manager. He was required to give 3 months notice if he decided to resign.
6. In essence this claim turns on the contents of a discussion between the claimant and the Head of Business for the dealership, Timothy Sett, on 27 February 2020.
7. The background was that in February 2020 an investigation commenced after the dealership accountant discovered a discrepancy in the invoicing of works for a particular customer. The allegation was that the claimant had invoiced work for the customer before it was completed which the Respondent regarded as a serious breach of its procedures.
8. The claimant took a holiday from 10 to 17 February 2020 and returned to the United States where he has a home. The claimant has an American family and was renting out his own house in New York to a tenant. He was renting a property in Theale near Reading for his use while he was in the UK.
9. While he was on holiday in the United States he met with a prospective employer on 12 February 2020. The claimant e-mailed the prospective employer on 14 February to say that he was looking forward to joining the team and on the same day the prospective employer responded to say that he too was looking forward to it and that the claimant should e-mail him when he had a date to start work.
10. On his return to the UK the claimant was invited to an investigation meeting on 19 February 2020 regarding the invoicing allegation. He accepted in the investigation meeting that he was in breach of the respondent's policy and said, "I have pulled the trigger on this".
11. After this meeting he approached Mr Sett and said that he would resign. Mr Sett told him that there was no reason for him to resign as the investigation was still being carried out.
12. On 25 February 2020 the claimant was issued with a letter inviting him to a

disciplinary hearing on 27 February to deal with the allegations. The letter said that one possible outcome of the meeting could be his dismissal.

13. On 26 February the claimant requested a meeting with Mr Sett to discuss the disciplinary hearing. He said that he didn't want to go ahead with the hearing, he wanted to know what his options were and Mr Sett told him that he could either not turn up for the meeting in which case the hearing would continue in his absence or he could resign from his employment prior to the scheduled meeting. The claimant said he would discuss the position with his wife.

14. The following day the disciplinary hearing was scheduled for 2.30 pm and the claimant arrived at work at about 10.00am. He went to see Mr Sett and gave him a resignation letter. His resignation letter stated:

“I am writing to inform you of my decision to resign from my position as Head of Aftersales at Mercedes-Benz of Newbury. Personal circumstances have dictated that my family and I must return to the USA. My last day of work can be mutually agreed between both parties. I thank you for your understanding”.

15. The claimant said that he did not want to attend the disciplinary hearing that afternoon and it was agreed between him and Mr Sett that his employment would terminate immediately. The claimant told Mr Sett that he had an opportunity to work for a friend in America and he had been presented with the opportunity during his trip to America earlier in the month.

16. Mr Sett spoke to the Divisional HR Manager, Jessica Billing, who was present at the Newbury dealership to provide support at the disciplinary hearing. He told Ms Billing that the claimant had asked to resign with immediate effect as he did not want to go ahead with the disciplinary hearing, that Mr Sett had agreed to accept the resignation with immediate effect and that they had agreed that the last day of employment would be 27 February 2020.

17. Ms Billing went to see the claimant to wish him well and discussed his return to the USA with him. The claimant left all his company property including his laptop and mobile phone in the office, returned the keys to his company vehicle and provided the appropriate passwords.

18. Ms Billing sent an e-mail to a colleague that morning confirming that the claimant had resigned with immediate effect and that his last day of employment was 27 February 2020. She asked an administrator to generate a resignation acceptance letter. The letter was produced and was then signed by Mr Sett and sent to the claimant. However, Miss Billing's colleague, Michelle Mirfin noticed an error with the letter and arranged for a further letter to be sent. This further letter was not received by the claimant and Mr Sett cannot recall having signed it.

19. The letter that was sent to the claimant stated:

“I write to acknowledge receipt and acceptance of your letter dated 27<sup>th</sup> February 2020 advising me of your resignation from our employment. As discussed and mutually agreed, you are not required to work your notice period and I would therefore confirm that your last date of employment with the Company will be 27<sup>th</sup> February 2020. Your

holiday entitlement for 2020 is two days and you have taken five days. Therefore an amount equivalent to three days will be deducted from your final pay in accordance with your terms and conditions of employment. Your final pay day with the Company will be 24<sup>th</sup> March 2020. Any remaining bonus payments will be paid into your bank account in the normal manner on 24<sup>th</sup> April 2020. You will receive your P45 shortly after this date. I would like to take this opportunity to wish you well for the future”.

20. The claimant did not receive any payment from the respondent on 24 March 2020 and telephoned Mr Sett. He said that he was expecting his notice pay. Mr Sett said he would look into it but said that the claimant had resigned immediately. He said that he would call him back. He spoke to Ms Billing. He called the claimant back saying that as he had resigned with immediate effect he was not entitled to notice pay.
21. The claimant's account was that the disciplinary hearing played no part whatsoever in his decision to resign. He had been perfectly prepared to attend the hearing that afternoon. He said that Mr Sett's appointment as General Manager had left him without the ability to be promoted to that position and during his trip to America he had accepted a position with another automotive dealer. He said that he had approached Mr Sett on a number of occasions to tender his resignation but Mr Sett had told him to think about his decision. He eventually handed his letter of resignation to Mr Sett on 27<sup>th</sup> February who invited Jessica Billing to join them. Mr Sett told Jessica Billing that the claimant has tendered his resignation with immediate effect. The disciplinary hearing was not discussed. He said that he had not agreed to resign with immediate effect and he expected to be required to work his notice and his prospective employer also expected that. Further, the claimant needed to give three months' notice to the tenant in his New York property and needed to give two months' notice on his UK property.
22. I find the claimant's account that the imminent disciplinary hearing played no part in his resignation decision and was not discussed in the meeting with Mr Sett to be unlikely. The claimant had accepted that he was the one who was responsible for the invoicing issue and he had "pulled the trigger". He had been told that one outcome of the hearing could be his dismissal without notice. It is simply not credible that the hearing due to take place that very afternoon would not have been discussed with Mr Sett. Had he indicated to Mr Sett that he wanted to give 3 months' notice and continue to work during his notice period then the respondent would have wanted to proceed with the hearing that afternoon. The likely cause of his immediate departure was that claimant told Mr Sett that he did not want to attend the hearing and wanted to be allowed to leave with immediate effect. The letter of resignation makes no reference to the 3 months' notice he was required to give by his contract. I think it likely that the claimant attended that day with the intention of avoiding the disciplinary hearing by resigning with immediate effect. I also note that Ms Billings email to her colleague at 10.28 am that day is consistent with the respondent's account.
23. The respondent contributed to the confusion by failing to require the claimant to submit an alternative resignation letter unequivocally setting out his desire to be allowed to leave with immediate effect. Further they failed to acknowledge the resignation with immediate effect in a clear and unequivocal way. Nevertheless, I

find Mr Sett's account of the crucial meeting to be more likely to be correct and I accept his evidence in this regard.

## **The Law**

24. The relevant statutory provision which gives the Employment Tribunal jurisdiction to hear breach of contract complaints is the Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Article 3 states –

“Proceedings may be brought before an industrial tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies; and
- (c) the claim arises or is outstanding on the termination of the employee's employment.”

## **Conclusions**

25. This is a case where my conclusions flow from my findings of fact. It is apparent from my findings of fact that I prefer the respondent's version of events and therefore, having regard to the issues set out at the beginning of this Judgment, I conclude that agreement was reached between the parties to cut short the notice period which relieved the claimant of the obligation to work and attend the disciplinary hearing and also relieved the respondent of the obligation to pay the claimant for the notice period.
26. It follows that the complaint of breach of contract is not well founded and is dismissed.

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**Employment Judge Lang**

Date: 21 January 2021

Sent to the parties on:

1 February 2021

For the Tribunal:

S. Bhudia