



THE EMPLOYMENT TRIBUNAL

Claimant: Mr Sita Rama Swamy Kankanalapalli

Respondent: Loesche Energy Systems Limited

Before: Employment Judge Tueje

Sitting At: London South (By CVP)

On: 2 May 2023

Appearances:

For the Claimant: Mr Amrit Kapoor (Lay Representative)

For the Respondent: Mr Peter Collyer (Employment Consultant)

JUDGMENT

1. Mr Kankanalapalli's claim for breach of contract is not well-founded, and is dismissed.

REASONS

Introduction

1. On 23rd September 2022, the respondent made a conditional offer to Mr Kankanalapalli of a job as a project manager, starting on 1st November 2022. On 26th September 2022, Mr Kankanalapalli e-mailed the respondent saying he wished to accept the offer. On 11th October 2022 the respondent withdrew its offer.
2. Mr Kankanalapalli claims the conditions the offer was subject to were satisfied before the offer was withdrawn. Therefore, he claims there was a binding agreement between the parties, that the offer was withdrawn without appropriate notice, and this amounts to a breach of contract.

3. The respondent contests the claim. It argues the offer was not duly accepted and/or the conditions had not been satisfied by the date the offer was withdrawn. It further argues there was no agreement regarding notice, or alternatively, Mr Kankanalapalli received reasonable notice of the offer being withdrawn.

The hearing

4. I heard the claim on 22nd May 2023. Neither party prepared witness statements: the Tribunal had not given directions for preparing these. The claim form and response set out each parties' case with sufficient detail.
5. Mr Kankanalapalli, was represented by a friend, Mr Kapoor. He gave evidence under affirmation. Mr Collyer, an employment consultant at Citation, was instructed by the respondent. He called Mr Daniel Hughes, the respondent's managing director, and Ms Jenny Stevens, the respondent's head of human resources, to give evidence. Both gave evidence under affirmation. All witnesses gave oral evidence in chief and were cross examined.
6. I considered a skeleton argument prepared for the hearing by Mr Kapoor, and considered documents from a 78-page updated bundle of documents. I also considered the case of ***Wishart v National Association of Citizens Advice Bureaux [1990]***, which Mr Collyer referred to during his summing up. A copy was provided to Mr Kapoor during the hearing who confirmed 15 minutes would be sufficient to consider it. We therefore took a 20-minute break for him to read it. Mr Kapoor asked Mr Collyer and I to read ***IPC Magazines Ltd v Ebner [1998]*** during the break, and I did so.
7. The only case specifically referred to in summing up was ***Wishart***, which both Mr Kapoor and Mr Collyer referred to.
8. I retired, before giving judgment orally. By an e-mail from Mr Kapoor, sent to the Tribunal on 23rd May 2023, he requested written reasons. These are my written reasons.

Preliminary matters

9. Before the hearing, Mr Kankanalapalli told the Tribunal clerk he wished to be referred to as Swamy. I clarified this with him at the start of the hearing; he confirmed that was correct, and that is how he was addressed during the hearing. However, to be consistent in naming all participants, for the purposes of these written reasons, I will refer to the claimant as Mr Kankanalapalli.
10. Mr Kapoor confirmed the claim for specific performance put forward in Mr Kankanalapalli's Schedule of Loss was no longer being pursued.
11. Mr Kapoor also confirmed at the start of the hearing that Mr Kankanalapalli agreed the offer of employment made on 23rd September 2022 was a conditional offer.

Issues for the Tribunal

12. Before I heard any evidence, I clarified with the parties the issues in this claim. Those issues are set out at paragraphs 12.1 to 12.5 below.
 - 12.1 What were the conditions of the respondent's offer of employment.

- 12.2 Did Mr Kankanalapalli accept the respondent's offer.
- 12.3 Were the conditions of the respondent's offer satisfied so that it became an unconditional offer, resulting in a binding contract.
- 12.4 If so, when were the conditions satisfied.
- 12.5 And if the conditions were satisfied, was that before the offer was withdrawn.

Findings of fact

13. Page references relate to the 78-page updated hearing bundle, unless I state otherwise. My findings of fact are as follows.
14. The respondent company manufactures and distributes energy production machinery. It employs 12 members of staff.
15. Responding to an advertisement on LinkedIn, Mr Kankanalapalli applied to the respondent for the post of project manager. He attended two online interviews on 10th August and 2nd September 2022. Following which, he was invited to attend an in-person interview on 23rd September 2022. At his own expense, Mr Kankanalapalli flew to the UK to attend the interview. He was interviewed by Ms Stevens, the respondent's head of human resources. He was also interviewed by Mr Hughes, the respondent's managing director.
16. Later on 23rd September 2022, Ms Stevens e-mailed Mr Kankanalapalli attaching a letter offering him the job, proposing 1st November 2022 as the start date. He was asked to return a signed copy of the offer letter. She also attached a form for Mr Kankanalapalli's referee contact details, and a "NEW STARTER INFORMATION FORM".
17. The offer letter is at pages 29 to 31. The letter starts as follows:

Further to your recent interviews, I am pleased to offer you the position of Project Manager for Loesche Energy Systems Ltd. This is subject to receipt of satisfactory references, a right to work check and a successful 6-month probation period which will commence on your start date. A contract of Employment will be forwarded to you before your first day,
18. The letter also stated Mr Kankanalapalli would report to the Director of Alternative Fuels. The letter did not provide any details about the notice period required to terminate employment.
19. Mr Hughes's evidence to the Tribunal was that during the interview he mentioned notice to proceed with the contract Mr Kankanalapalli would be the project manager for was outstanding. But he did not tell Mr Kankanalapalli any job offer would be conditional on obtaining notice to proceed. Mr Kankanalapalli's evidence was that the topic of notice to proceed was not discussed during his interview.
20. The respondent's written response to the claim argues Mr Kankanalapalli's job offer was subject to a condition the respondent received notice to proceed on the contract Mr Kankanalapalli would be project manager for. Mr Collyer made the same submission when summing up. My recollection of Mr Hughes's evidence

was he mentioned this during the interview, but did not state any job offer would be conditional on receiving notice to proceed. In light of Mr Collyer's submissions, I asked Mr Hughes to clarify what his oral evidence had been. He confirmed it had been as I recalled. In other words, although he mentioned it during the interview, it was not stated to be a condition of any job offer.

21. Mr Kankanalapalli responded to the job offer on 23rd September 2022. He raised some queries, including whether relocation assistance would be provided. Aware the job would require him to spend some time in the Dominican Republic, Mr Kankanalapalli had researched short term lets, and noted there was a shortage of these properties.

22. In an e-mail sent on 26th September 2022, Ms Stevens addressed the request for relocation assistance as follows:

I can confirm we will provide £3,000 towards relocation assistance, this will be a lump sum payment paid to you after you join. We will ask you to sign a document stating this amount will be required to be paid back to LES should you resign from your position within a year of joining.

23. Addressing Mr Kankanalapalli's concern about the paucity of short term lets, Ms Stevens suggested he looked for a 12-month rental, because initially he would mainly be based in the UK.

24. Mr Kankanalapalli responded the same day confirming the terms were acceptable, that he would sign and return the relevant documents in a few days. He concluded by saying:

The 2 days time is only because I am travelling and please take it that I accepted the offer.

25. On 27th September 2022, Ms Stevens responded: "*Dear Swamy, that is excellent news and we look forward to you joining us.*"

26. Mr Kankanalapalli completed the new starter information form. The form is signed and dated 1st October 2022, and was e-mailed to the respondent on 2nd October 2022. He also attached a form containing his referee's contact details. Mr Kankanalapalli's oral evidence was that this satisfied the condition relating to references.

27. Ms Stevens acknowledged receipt of these documents on 6th October 2022. She reminded Mr Kankanalapalli to e-mail documents confirming his right to work in the UK, and explained she would need to see the originals on his first day at work. Ms Stevens confirmed in her evidence it's the respondent's policy to see original documents, which follows Home Office guidance on right to work checks. Mr Kankanalapalli e-mailed the documents the same day. His oral evidence was that e-mailing the documents was sufficient to satisfy the conditional offer because the documents e-mailed would be the same as the originals.

28. Mr Kankanalapalli never returned a signed copy of the offer letter.

29. On 7th October 2022, Ms Stevens sent Mr Kankanalapalli the following e-mail:

Hi Swamy, I left a message on your phone to give me a call when you can please.

Unfortunately there has been a slight delay on the contract NTP and therefore the role of Project Manager will not be required to start until 3rd January 2023.

Could you please confirm if this is acceptable to you and apologise for any inconvenience.

30. Mr Kankanalapalli did not expressly accept this variation. He responded stating he had already booked flights to the UK for himself and his wife. He also sought clarification on what payment he would receive for November and December when he would not be working.

31. On 11th October 2022, Ms Stevens e-mailed Mr Kankanalapalli as follows:

Dear Swamy, thank you for your patience.

As previously advised, we were under the impression that we would have a notice to proceed with the contract in the Dominican Republic this side of Christmas. Unfortunately this will not be the case.

As a result we are no longer able to offer you a contract for the position of Project Manager commencing 1st November 2022.

We are extremely disappointed that the contract has been delayed and this has had an effect on the offer.

We are able to consider a conditional offer based on the notice to proceed, however we will understand if you no longer wish to be considered.

We apologise for the inconvenience this has caused.

32. Because the respondent withdrew the offer of employment, it never sent Mr Kankanalapalli a written contract of employment. However, a copy of Mr Daniel Devid's contract of employment is in the updated hearing bundle. Mr Devid is the Director of Alternative Fuels who would have been Mr Kankanalapalli's line manager.

33. According to Mr Devid's contract, the provisions regarding notice periods were as follows:

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.

Less than one month's service – nil.

One month's service to the satisfactory completion of your probationary period – one week.

From the satisfactory completion of your probationary period but less than five years' service – three months.

34. In evidence, Mr Kankanalapalli said he expected to be offered more favourable terms than Mr Devid's; he would be executing an international project, which was a specialist role. Mr Kapoor also argued on his behalf, that it would be unreasonable to terminate his employment without three months' notice when Ms

Stevens had advised him to enter into a 12-month rental agreement.

35. Mr Hughes acknowledged there were some non-standard aspects of Mr Kankanalapalli's role, but did not regard it as particularly specialist in relation to the respondent's business.
36. I find that if matters had progressed to the stage of Mr Kankanalapalli signing a written contract of employment, his terms would not have been more favourable than Mr Devid's. That was Ms Stevens's evidence, and it is consistent with usual business practices.
37. The Tribunal received the claim form on 25th October 2022. Information regarding the claim is summarised at paragraph 2 above. The ET3 response form was submitted with a document titled Response to Claim dated 28th November 2022. The contents are summarised at paragraph 3 above.

The Law

38. An offer of employment may be a conditional offer. If so, it must make clear the offer is subject to conditions. A prospective employer may rely on the condition or conditions not being satisfied to vitiate the contract, but only if it has made clear the offer was conditional.
39. Where an offer includes a condition regarding satisfactory references, it's for the employer to decide whether it finds any references received to be satisfactory (see ***Wishart v National Association of Citizens Advice Bureaux [1990]***).
40. A contractual term may only be implied in limited circumstances. For instance, if the term is implied by law, it's implied by custom and practice, or implied due to business necessity. A term will not be implied solely on the basis that it would be reasonable to have such a term in the contract.

Conclusions

41. In light of Mr Kapoor's concession at the start of the hearing, it is now accepted by both sides that the offer of employment made on 23rd September 2022 was conditional.
42. I find that the offer was subject to the two conditions expressly stated in respondent's offer letter to Mr Kankanalapalli dated 23rd September 2022. Those conditions were firstly "*the receipt of satisfactory references*". The second condition was carrying out "*a right to work check*".
43. I do not find the offer was subject to a condition of notice to proceed. That was not mentioned in the offer letter. It therefore makes no difference whether it was mentioned during the interview as Mr Hughes claimed. It equally makes no difference if it was not mentioned during the interview as Mr Kankanalapalli states.
44. I find that Mr Kankanalapalli's e-mail sent on 26th September 2022 amounted to acceptance of the conditional offer. His e-mail expressly stated it should be read as him accepting the offer. That acceptance was not in the format initially requested by the respondent, because he did not return the signed offer letter. But the respondent acknowledged the e-mail, and the only further documents Ms Stevens requested was Mr Kankanalapalli's work permit. It was only in the ET3 response form that the respondent argued by not returning the signed offer letter, Mr Kankanalapalli had not duly accepted the offer.

45. In my judgment, neither of the two conditions the offer was subject to were satisfied. Therefore, I do not need to address the issues at paragraphs 12.4 and 12.5 above.
46. Regarding the first condition, Mr Kankanalapalli provided his referee's contact details on 2nd October 2022, but the respondent did not contact the referees, and so it didn't receive the references. The condition was receipt of satisfactory references, which is not the same as receiving the referees' contact details. Furthermore, according to **Wishart**, it's for the employer to be satisfied the references are satisfactory. This reinforces my view that it is the references, and not just the referees' contact details, that are required to satisfy this condition.
47. As to the second condition, although Mr Kankanalapalli e-mailed his work permit on 6th October 2022, the respondent did not carry out right to work checks in the manner recommended by the Home Office. In particular, the Home Office recommends employers see the original documents. An employer that fails to carry out proper checks could be penalised. This makes it reasonable for the employer to comply with the guidance, and so inspect the original documents before the checks are completed. Mr Kankanalapalli's oral evidence was that the original documents were the same as the documents he e-mailed. However, the respondent could not check that was the case without seeing the originals.
48. I also note Mr Kankanalapalli e-mailed his work permit on 6th October 2022. That was the day before the respondent learnt about the delay with notice to proceed. It was also less than one week before the offer was withdrawn.
49. Because neither condition was satisfied, when the respondent withdrew the offer on 11th October 2022, I find that it was still a conditional offer. Accordingly, there was no binding contract between the parties.
50. It means Mr Kankanalapalli's claim for a breach of contract cannot succeed. To succeed, there must have been a breach that had arisen or was outstanding when the employment or the contract of employment ended. In this case, I have found there was no binding contract of employment.
51. If I am wrong, and there was a binding contract between the parties, the express terms of that contract would have been the 23rd September 2022 offer letter. There were no express terms in the offer letter regarding the amount of notice the respondent must give to Mr Kankanalapalli.
52. I do not accept that Ms Stevens suggesting Mr Kankanalapalli enter into a 12-month rental agreement, meant it was reasonable he receives more notice than he was given.
53. I remind myself that a term may only be implied into a contract in limited circumstances, including if the term is implied by custom and practice, or by law. I also note the respondent's standard employment terms, as contained in Mr Devid's contract. By those terms, an employee with less than one month's service is not entitled to notice. This reflects section 86 of the Employment Rights Act 1996. Therefore, I find it would have been reasonable to give no notice, which is consistent with Mr Devid's terms, and so would have been the notice terms that applied if there had been a contract.
54. Accordingly, I find if there was a binding contract between the parties, it was an

implied term that, as Mr Kankanalapalli had less than one month's service, the respondent would not be required to give any notice. That is implied from the respondent's usual business practice, which in turn reflects the legislation.

Employment Judge Tueje
Date: 16 June 2023