



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr A Henfield

v

The Knight Pub Company

**Heard at:** Cambridge

**On:** 16 January 2019

**Before:** Employment Judge Tynan

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Did not attend, no representation

## JUDGMENT

1. The claimant's claim that he was dismissed in breach of contract succeeds and the tribunal awards the claimant compensation for breach of contract in the sum of: **£1,380.92**

## REASONS

1. The claimant represented himself. Although the respondent did not attend, Mr Matthew Knight of the respondent submitted a statement dated 14 January 2019 and documents which I read and have taken into account in reaching my judgment.
2. The claimant commenced employment with the respondent on 21 December 2017. His terms and conditions of employment were only formalised March 2018 when, following requests from the claimant, the respondent produced a Statement of Main Terms of Employment.
3. The Statement comprises just two pages and was signed by the parties on 3 March 2018.
4. Under the heading 'Hours of Work' the Statement records,

*"Your hours of work are those required to carry out your duties to the satisfaction of the company and as necessitated by the needs of the*

*business with a minimum of 45 hours per week. You are entitled to a 30 minute unpaid break if you work over a 6 hour shift.”*

5. The days of work were not therefore recorded within the Statement of Main Terms of Employment. However, I find that the claimant discussed his days of work with Mr Knight in January 2018, when it was agreed that the claimant would not work on Mondays and Tuesdays. This was in order to give the claimant certainty and enable him to maintain contact with his children in the US. One of the claimant's children has been unwell and has had treatment for cancer.
6. The respondent's own records appended to Mr Knight's statement corroborate that the claimant did not work on Mondays and Tuesdays from the time he commenced employment through to April 2018. I accept the claimant's evidence that in order to help the respondent out, the claimant agreed to work Mondays and Tuesdays for a short period of time but that this was intended to be a temporary arrangement and, notwithstanding the apparent flexibility provided for within the Statement of Main Terms of Employment, it was by agreement.
7. In May 2018, the claimant travelled to the US in order to visit his children for a period of leave. Ahead of his return Mr Knight emailed him to say that they would need to talk about his shift pattern on his return as Mr Knight wished to swap his days off to Wednesdays and Thursdays. That email reinforces that the established working arrangement was that the claimant would have Mondays and Tuesdays off. In the event, the claimant returned to the UK to discover that he had been scheduled to work Mondays and Tuesdays. He emailed Mr Knight on 29 May stating that he would need to return to the established routine that had been discussed and agreed within his first weeks of employment. He further emphasised that any changes would need to be discussed and agreed.
8. There then followed an increasingly tense exchange of emails culminating in an email from the claimant to Mr Knight on 29 May at 22:57 hrs in which he stated,  
  
*“I will bring my formal notice of resignation with me tomorrow.”*
9. Having explored this in some detail with the claimant, I find that the claimant was thereby giving notice of resignation, albeit that he intended to formalise this the following day by lodging a formal written notice of resignation. However, Mr Knight responded to the claimant's email later that evening instructing him that he was to return his keys and informing him that he was not to attempt to re-enter his place of work for a minimum period of three months.
10. Particularly given the request that the claimant was to return his keys, I am satisfied that Mr Knight intended and that the claimant reasonably understood Mr Knight to be informing him that he was not to work his

notice. I am further satisfied that the claimant was at all times willing and able to work his notice.

11. I have seen a text exchange between the claimant and Mr Barnes dated 30 May in which, in response to Mr Barnes' question as to when he would be returning to work, the claimant stated, "*Nevarary the 1<sup>st</sup>*". Given Mr Knight's instruction in his email to the claimant on 29 May I am satisfied that the claimant's statement that he would never be returning to the respondent did not indicate that he was refusing to work his notice, rather that he considered he had been instructed by Mr Knight not to return to the respondent. That is further supported by the claimant's email to Mr Knight dated 1 June, sent at 21:30 hrs in which the claimant wrote,

*"So far as I am aware, I was on salary and I followed protocol in resigning, therefore was offering one month more of my time that I was contracted to do. If not, I would have simply have said, "Fuck You" and walked away."*

12. The position is further corroborated by the P45 prepared by, or on behalf of the respondent, which cites the claimant's last day of employment as 31 May 2018.
13. I do not accept Mr Knight's evidence that the claimant failed to attend for work on 30 and 31 May. Mr Knight could have had no expectation that the claimant would attend for work given the clear instruction in his email of 29 May. As to the absence of a formal letter of resignation, the Statement of Main Terms of Employment did not require that notice should be given in writing. It would no doubt be good practice and helpful for notice to be given in writing. In this case the respondent clearly understood, despite what Mr Knight now says, that the claimant's email of 29 May was effective notice resigning his employment.
14. Given that the claimant was willing and able at all times to work his notice, but was prevented from doing so by the respondent, I consider that the respondent was in breach of contract by preventing the claimant from working his notice and accordingly shall order it to pay compensation to the claimant of £1,380.92 being his net pay for the period of four weeks being his contractual notice period.

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Employment Judge Tynan

Date: 7 February 2019

Sent to the parties on: 12 February 2019

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For the Tribunal Office