

# Employee resigning in breach of contract held to notice period without pay

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The High Court granted an injunction against an employee trying to walk away from a long notice period and non-compete

restrictions. It held that the employment relationship was still in existence even though the employee had not been paid.

Mr Rodgers had been a broker at Sunrise Brokers LLP since May 2009. In October 2011, Sunrise asked Mr Rodgers to set up a precious metals desk and Mr Rodgers signed a new contract of employment which provided: (i) that the contract could not be terminated for the first 3 years and thereafter could be terminated on 12 months' notice; (ii) that Mr Rodgers could be placed on garden leave and continue to receive salary and benefits; and (iii) that there were extensive post-employment non-compete restrictions on Mr Rodgers.

In March 2014, Mr Rodgers told one of the directors at Sunrise that he wanted to leave. He was told to return to work until the director responsible for him was back but did not do this and left Sunrise shortly afterwards. He attended a short meeting with Sunrise in April 2014 and did not return after this. HR recorded this as an unauthorised absence and Sunrise stopped paying Mr Rodgers.

Sunrise's solicitors wrote to Mr Rodgers and said that they had not accepted his breach of contract, namely his refusal to work, as bringing the contract to an immediate end and that he was still an employee and therefore not allowed to work for anyone else. Had Sunrise accepted the breach, they would not have been able to hold Mr Rodgers to his notice period. Mr Rodgers' solicitors responded saying that Mr Rodgers had resigned with immediate effect and that his early resignation had been accepted by Sunrise as evidenced by their stopping paying him and he would be relocating to the US to begin a new role. Sunrise responded saying that he was required to attend work and that they would pay his salary if he did.

Mr Rodgers' solicitors then claimed that even if his immediate resignation had been ineffective, the non-payment of Mr Rodgers' salary was a breach of contract by Sunrise which Mr Rodgers accepted as bringing the contract to an end.

The High Court held that Sunrise had not accepted Mr Rodgers' breach of contract and that it had a good reason for not doing so, i.e. preventing Mr Rodgers from working for a competitor. It also held that in the circumstances, non-payment of salary did not amount to a breach of contract as Mr Rodgers' right to payment was dependent on his willingness to work. The High Court granted an injunction requiring Mr Rodgers to observe the terms of his contract until 16 October 2014 and during this time not to work for a competitor. The effect was that Mr Rodgers would either have to be willing to work for Sunrise during this period, in which case he would be paid, or not work either for Sunrise or anyone else and be unpaid.

This case shows how an employer can achieve the holy grail of keeping an employee out of the market without having to pay for it. However, the key to this outcome was the employer's insistence that the employee come to work. Many employers will take the view that once an employee has announced an intention to compete they do not want the employee carrying out his/her duties. If the employer orders the employee not to work, the employer must pay the employee. The principle of "no work, no pay" only applies where the employer wants the employee to work and the employee refuses.

*Sunrise Brokers LLP v Rodgers [2014] EWHC 2633*

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