

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

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The Court of Appeal has upheld an injunction against an employee trying to walk away from a long notice period and

non-compete restrictions. You may remember our coverage of this case when it was heard by the High Court in the summer.

Mr Rodgers had been a broker at Sunrise Brokers LLP and his contract of employment 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 Sunrise that he wanted to leave. 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 said that they had not accepted Mr Rodgers' 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. Mr Rodgers' solicitors responded saying that Mr Rodgers' early resignation had been accepted by Sunrise as evidenced by their cessation of payment, or that in the alternative, the non-payment of wages was itself a breach of contract by Sunrise which Mr Rodgers accepted as ending the contract.

The Court of Appeal upheld the High Court's decision and held that Sunrise had not accepted Mr Rodgers' breach of contract. In the circumstances Sunrise's failure to pay a salary did not amount to breach of contract because Mr Rodgers' right to payment depended on his willingness to work. The Court of Appeal rejected Mr Rodgers' submission that the effect of the injunction was to compel him to work. It found this argument unfounded for the following reasons: (i) Mr Rodgers had a start date of January 2015 with his new employer, which suggested that Mr Rodgers could cope until then without pay; (ii) Mr Rodgers had not submitted evidence to show that the lack of payment would cause him financial hardship; (iii) Mr

Rodgers did not submit evidence to the effect that his skills would atrophy whilst idle; (iv) the length of the restraint period was caused by Mr Rodgers' decision not to return to work.

This case demonstrates that the principle of "no work, no pay" does not amount to compelling an employee to work and can apply, but only where the employer wants the employee to work and the employee refuses. Mr Rodgers' arguments on compulsion may have been more convincing had he provided better evidence.

Sunrise Brokers LLP v Rodgers [2014] EWCA Civ 1373

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