Sunrise Brokers LLP v Rodgers: responding to an employee's breach of contract

By Paul Callegari and Emma Thomas

What happened?

In *Sunrise Brokers LLP v Rodgers*, the High Court decided that an employer could refuse to allow an employee to resign in breach of contract and instead hold him to the terms of his contract. This meant that the individual remained an employee and continued to be subject to the restrictions in his employment contract.

Mr Rodgers was a key employee of Sunrise Brokers and established Sunrise’s precious metals trading desk in October 2011. Mr Rodgers entered into a new employment contract which he could only terminate by giving 12 months' notice after September 2014. Mr Rodgers’s contract also included post-termination restrictions and a requirement for him to inform Sunrise if he received an offer of employment from elsewhere.

Following a deterioration in the parties’ relationship, Mr Rodgers signed an employment contract with one of Sunrise’s competitors to commence on 1 January 2015. Mr Rodgers then informed Sunrise on 27 March 2014 that he wanted to leave Sunrise immediately and did not tell Sunrise about his job offer. Sunrise reminded Mr Rodgers that he could not give notice before September 2014 and explained that his resignation was in breach of contract and told him to return to work. Mr Rodgers took a period of annual leave but then failed to return to work, at which point Sunrise stopped paying his salary.

When Mr Rodgers failed to return to work, Sunrise sought a declaration that Mr Rodgers was still an employee and an injunction preventing him from working elsewhere. The High Court decided that Sunrise was entitled to choose whether or not to accept Mr Rodgers's resignation in breach of contract and not to pay his salary when he did not work. The High Court also granted an injunction upholding the terms of the contract until 16 October 2014 (the date on which Sunrise had offered Mr Rodgers an early release from his contract) and preventing him from breaching his restrictive covenants until 26 January 2015.

What does this mean?

The Supreme Court has previously made it clear that where one party has committed a serious breach of an employment contract that could bring the contract to an end, the “innocent” party can either accept the breach, at which point the employment contract would terminate or, where it has good reason (e.g. to stop the employee from joining a competitor), it can ignore the breach and continue with the employment relationship.

In this case, the High Court was satisfied that Sunrise was entitled to ignore Mr Rodgers’s breach of contract as it wanted to prevent him from joining a competitor. The High Court also reiterated that an employee's willingness to work and payment of wages by the employer are, in general, mutual obligations. Sunrise was therefore entitled to stop paying Mr Rodgers when he did not work and did not breach Mr Rodgers’s employment contract by doing so.
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The High Court granted an injunction requiring Mr Rodgers to observe the terms of his contract. This had the effect of preventing Mr Rodgers from working for a competitor of Sunrise or contacting Sunrise’s clients until 16 October 2014, but without going so far as to require Mr Rodgers to actually work.

What should we do?

When an employee breaches his or her contract, either by not giving the requisite notice of termination or by refusing to work, the first reaction is often to accept the employee’s conduct as terminating the contract or for the employer to move straight to a dismissal for gross misconduct. This case shows that that initial reaction may not always be the right one, and that in some cases the employer’s interests may be better served by holding the employee to the contract. Employers must ensure that they carefully consider the situation and adopt the right response in all cases.

Employers should also consider including a provision in the contract which makes it clear that they are under no obligation to pay an employee who refuses to work, to avoid any breach of contract claims by the employee.

For further advice or assistance with this please contact Paul Callegari or Emma Thomas.

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