



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT
MR M H ARBAB

V

RESPONDENTS
SECURITY MADE EASIER UK
LTD

HELD AT: CARDIFF

ON: 31 MARCH 2017

BEFORE: EMPLOYMENT JUDGE W BEARD
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT: IN PERSON

FOR THE RESPONDENT: MR S FETTAH (DIRECTOR)

JUDGMENT

The judgment of the Tribunal is that:

1. The name of the respondent is amended to Security Made Easier UK Ltd.
2. The claimant's claim of unlawful deduction of wages pursuant to sections 13 and 23 of the Employment Rights Act 1996 is well founded.
3. The respondent is ordered to pay to the claimant the sum of £3,778.85 in compensation

REASONS

Preliminaries

1. The claimant claims that he has suffered an unlawful deduction of wages, relying upon sections 13 and 23 of the Employment Rights Act 1996. The respondent denies that it has ever had any relationship with the claimant and until involvement with ACAS prior to this claim was unaware of his existence. Therefore, the only issue between the parties is was the claimant an employee at all. Of course, it still remains for the claimant to prove that he attended work for the respondent on the occasions he claims and that the figures he puts forward as wages are correct; however the

respondent advances no positive case in this regard as it conflicts with its primary contention.

2. The claimant gave oral evidence. The respondent called Mr Fettah, the managing director of the respondent, to give oral evidence.
3. I was provided with a number of documents by each side, some of these had not been exchanged prior to the hearing so I had copies made and gave the parties time to read them. Mr Fettah provided some documents which related to his personal character, I took account of these documents. Both parties produced documents which they relied upon as statements from individuals who would not be attending the hearing. These statements were not prepared in any format which would be recognisable as a witness statement. The document produced by the claimant had redactions which showed no indication that the author had approved the redactions (e.g. by initialling). The document produced by the respondent was in e-mail form and had no signature. I considered both documents to be of little value and had no means of assessing the reliability of their contents or the credibility of their authors. I informed the parties during the hearing that I would take no account of them in my decision and would base my decision on the oral evidence and the other documentation.
4. There was material raised about the parties' discussions with ACAS. I informed the parties that these were confidential to the parties and that I would not be taking account of them as part of my deliberations.

The facts

5. The respondent is a security company; it provides security guarding services including guarding buildings. The claimant contended that he began his employment as a security guard with the respondent on 14 August 2016. The claimant said that he continued working up to 19 October 2016 but as he had not been paid at all by that stage he ceased working. He said during this period he had met Mr Fettah on two occasions. The respondent contends that the claimant did not work for the respondent at all, that he had not been inducted as would an employee of their organisation. Mr Fettah contended that he had never met the claimant.
6. The claimant has an SIA identification. The claimant gave evidence of having been introduced to the respondent company by his housing provider. He was aware that the respondent had offices in Barry, he telephoned, spoke to an individual called Mujahid, who arranged to meet the claimant at a shop near his home. Mujahid informed the claimant he was a supervisor and told the claimant he would work at one of two sites in Cardiff, one in Grangetown and one at Riverside. The claimant was told that he would be given a contract after a week, he was never provided with any documentation. The claimant showed me sheets recording the places and times when he worked. However, those documents were headed with the name of a different security company. After about a week the claimant

was told that Mujahid was no longer working for the respondent. The claimant contends he met Mr Fettah who told him that he would be working for him permanently as he was a good employee. The claimant also met Faisal Amin who told him he was a supervisor. The claimant received regular instructions as to where to work by text message initially from Mujahid and later from Faisal. The claimant had taken photographs of the places where he worked in March they showed that the respondent provided security for those premises. The claimant provided evidence of the text messages, they clearly indicate a working relationship and instructions being sought and given. The claimant had agreed to work for £7.20 per hour. The claimant contended that his net earnings related to having worked 558 hours in August, September and October combined. He contended that this amounted to £4017.60 but also set out that deductions for national insurance would mean that the net figure was £3,778.85 which was the sum he was claiming. He demonstrated that he had been in contact with the respondent on a number of occasions about being paid.

7. Mr Fettah accepted that the signs outside the workplaces the claimant claimed to work at showed the security regime in place was operated by the respondent. He accepted that on one of the places where the claimant claimed to work the respondent provided the security services but not the other. Mr Fettah claimed that the respondent had not supplied the security services for more than eighteen months. Mr Fettah could not explain why eighteen months after the conclusion of a contract those signs were still in place. Mr Fettah accepted that he was fully aware of the locations and dates where the claimant was alleging he had worked. However, the respondent produced no evidence of its records for those places and dates, nor in respect of the site at which it said the contract was terminated any documents showing this to be the case. There was an e-mail response from Mr Fettah to the claimant when the claimant was seeking wages to be paid that the claimant should contact payroll. Mr Fettah said that he did not know everyone who was working for the respondent and simply told the claimant to speak to payroll where records were kept.
8. I preferred the account given to me by the claimant. It was argued that the claimant was inventing this entire claim as a fraud. I simply could not accept that. Nothing in the claimant's evidence led me to conclude he was anything other than honest. The text messages supported the claimant's account. The existence of documents with a different company's name would not support a conclusion of fraud, one would expect the correct company name to be on any fraudulent documents produced. The respondent provided the security at both sites in my judgment, otherwise it is difficult to see why their signs would be in place. In addition to this the claimant spoke of meeting Mr Fettah and described Mr Fettah driving an Audi vehicle, Mr Fettah accepted that he drove an Audi. I was not impressed with Mr Fettah as a witness he could not explain the absence of documentation which would have been easy for the respondent to produce before the hearing. In addition to this his answer in respect of the e-mail that he sent to the claimant was not persuasive.

The Law

- 9. The Employment Rights Act (ERA)1996, insofar as it is relevant provides at section 13:
 - (1) *An employer shall not make a deduction from wages of a worker employed by him-----*
 - (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him on that occasion ---- the amount of the deficiency shall be treated ----- as a deduction*

Analysis

10. On the basis of the facts as I have found them to be the claimant was contracted to work for the respondent as a security guard. He worked in that role for 558 hours and was to be paid at the rate of £7.20 per hour. The claimant has never been paid for any of those hours worked, he ceased working in October 2016. Therefore the sums earned during the period when the claimant worked are deductions within the meaning of the Act. The claimant has indicated that he claims those sums less the National Insurance he would be required to pay. On that basis the claimant’s claim of an unlawful deduction of wages is well founded and the respondent is ordered to pay to the claimant the sum of £3,778.85 in compensation.

Judgment posted to the parties on

7 April 2017

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For Secretary of the Tribunals

EMPLOYMENT JUDGE W BEARD

Dated: 6 April 2017