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# EMPLOYMENT TRIBUNALS

***Claimant***

***Respondents***

Mr M Tahir

**AND**

SWH Payroll Limited

**Heard at:** London Central

**On:** 29 August 2018

**Before:** Employment Judge Walker

**Representation**

**For the Claimant:** In person

**For the Respondent:** Did not attend

## REASONS

1. These are the reasons for judgment given on 29 August 2018.
2. The Claimant, Mr Tahir is claiming unlawful deductions of wages relating to the period in March up till the date of his employment terminating and further deductions from the date when his employment was terminated until the date when it should have ended on 13 April 2018.

**Evidence**

3. The evidence before me was the ET1, the ET3 and all documents on the file which included several attachments to the Response filed by the Respondent. The Claimant gave oral evidence and also produced a witness statement from a Mr Usman and his telephone records.

**Background**

4. Mr Tahir was employed by the Respondent according to his contract as a book keeper. His role was to act as accounts assistant and he did this from the start of his employment through until 14 March 2018, on which date he gave one months' notice. It was his intention at the time that he expected to work for one month continuing until 13 April 2018. This is clear from his own evidence and from an email which is from the client from whom he did most of the work stating that he told him he would be working for that period of time and carrying out a full handover.

5. On Monday 19 March there was a dispute between Mr Tahir and Mr Sean Hindley, who was the owner and director of the business, who was unhappy about a situation which he had entered in to with Mr Tahir's brother for the provision of office space in Lahore. However, Mr Tahir continued to work after that until, on Wednesday 21 March, when he arrived for work in the morning, he was told by Mr Hindley that he could not come to the office anymore. Mr Hindley then gave him some shoes back which he kept in the office. Mr Hindley had already taken possession back of a laptop which Mr Tahir used for his work with the intention of training another employee who had been recruited to work on it on the client that Mr Tahir had been involved with. The clear statement from Mr Hindley at that time was that Mr Tahir could not work anymore and indeed in the Respondent's Grounds of Response the date of termination is cited as 21 March 2018.

6. Thereafter the Respondent wrote a letter to Mr Tahir dated 23 March 2018, which was actually sent to him by email and was timed at 0:19am on 24 March. Although that letter purported to be a letter of dismissal it was clear from both the Grounds of Response and from the facts that the dismissal had already occurred on 21 March.

**Issues**

7. Since the Respondent did not attend this hearing, there are a number of issues I had to consider.

8. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that if a party fails to attend or be represented at the Hearing the Tribunal may dismiss the claim or proceed with the Hearing in the absence of that party. Before doing so, it will consider any information which is available to it.

9. It was clear that the Respondent had been served with the notice of this Hearing because that was sent out at the same time as the claim form and the Respondent served a Response.

10. I therefore proceeded to consider the issues and to take account of all information available to me.

11. The clear information in the Respondent's Grounds of Response was that the Claimant was dismissed for gross misconduct. The additional information provided by the Respondent included an explanation that the Claimant's employment was terminated with immediate effect after he breached and violated his contract of employment.

12. The Respondent also indicated that the Respondents were claiming through the County Courts for damages for loss of clients and damage to the company's reputation, although I understand no proceedings have been issued as yet.

13. The issues that therefore arose were as follows. There was no dispute between the parties that the Claimant was dismissed by the Respondent, albeit that dismissal took place after the Claimant had given notice to terminate the same contract. The dismissal took effect when the Claimant's notice period still had time to run. The first question that arose was, had the Respondent failed to pay the Claimant for the period up to the date of termination which, if they had, would have amounted to unlawful deduction from wages.

14. Secondly, had the Respondent failed to pay the Claimant for the balance of his notice period after the dismissal. It appears there was no doubt they had.

15. The third question was whether the Respondent had been entitled to dismiss the Claimant due to gross misconduct with immediate effect which then meant that no further payment was due.

16. There was no suggestion by the employer that they had had a contractual provision entitling them to make deductions and that any such thing was applicable. Instead the only explanation given by the Respondent was their belief that the Claimant was in breach of contract.

17. I note on my review of papers that there was a further reference to the Respondent company's own property which had not been returned. There were two types of property involved. First there was property which had been provided to the Claimant in order to perform his duties and I am satisfied as I will explain that the Claimant has returned this. The second property was property which had been in an office in Lahore which the Respondent had rented from the Claimant's brother. That is a matter between the Respondent and the brother who is a third party. It can have no legal bearing on this case and it is not a matter which would entitle the Respondent to deduct any wages from an employee in their employment.

18. Therefore, the primary issue between the parties was simply that of whether there was a breach of contract which entitled the Respondent to dismiss the Claimant due to gross misconduct.

### **The Law**

19. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages from a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract or the worker has

previously signified in writing his agreement of consent to the making of the deductions.

20. There are some deductions which are permitted, such as deductions for tax and national insurance.

21. An employer is entitled to terminate the contract of an employee who has committed a fundamental breach of contract which is so serious as to amount to a repudiatory breach. If that occurs, the Employer is not required to pay any further monies after the date of termination. If, however, an employer terminates an employee's employment where there is not such a serious breach, notice pay would be due and failure to pay can amount to a breach of contract.

### **The Respondent's case**

22. The Respondent had provided various evidence including the Claimant's contract of employment, a confidentiality agreement signed by the Claimant and emails from Helen Grimes who was a financial director of a client company and other employees. The key documents which was relevant to the Respondent's case was the email from the client, Helen Grimes. That email was dated 3 May 2018 and it set out a timeline of events. It specifically confirmed the Claimant returned from holiday on 14 March and that she had then been told that he had given notice on 15 March. It is also recorded, as I have noted, that he was working the full month notice and would ensure a full handover. He would be working up to 13 April.

23. She recorded the fact that as she notes on 20 and 21 March she was telephoned by the Respondent, Mr Hindley, to say that the Claimant was leaving immediately. She does not say why he told her that. She then indicates that after that, on 21 March, the Claimant telephoned her to discuss his leaving immediately, he did not explain his reasons. She then says he enquired how they were going to continue the book keeping work going forward and that he would be able to help via a friend who had a company. She explained that her

company was under contract to the Respondent for the book keeping services. There was no further contact.

24. The Respondent also relies on a statement from a Mr Wickramarachchi also dated 9 May 2018 which records that after the Claimant was dismissed they had received notification from one of their biggest clients saying that Mr Tahir had attempted to negotiate a deal with them which would be a breach of the client's contract. He does not say how he knew that or who told him or indeed what information he has and on the face of it, it would appear that he was told by someone else and its far from clear that he had any first-hand knowledge or that it is remotely relevant. In the circumstances that information is of no particular value.

25. There is an additional forwarded email from a Mr Usman dated 17 May 2018, who I understand was an employee who actually worked in Lahore, and he says in that email that after he started working from home on 30 April 2018 he came to know that from the Claimant that he was planning to grab the client from the Respondent by offering him a lower hourly rate. I have, however had provided to me a further witness statement which has been signed and witnessed in Pakistan by Mr Usman who says that was incorrect and indeed and it has attached to it a number of WhatsApp messages. It is clear from the WhatsApp messages that Mr Usman had no knowledge of anything and it appeared that the Respondent's manager, Mr Hindley, who was the person who later fired Mr Usman was the person who told Mr Usman that he believed the Claimant was guilty of gross misconduct.

26. Of some concern is the fact that Mr Usman says that he did not send the email which has been provided by the Respondent as his email. He recognises that it comes from his email system, but he says he had his computer system open for the Respondent's to access it and it would appear that it is his view that they have accessed it improperly by utilising his email to write an email to themselves which at no time did he personally send. In other words, he is alleging it is a sort of forgery.

27. In the light of the WhatsApp evidence and Mr Usman's witness statement, that email from Mr Usman cannot be regarded as genuine or true.

**Claimant's evidence**

28. I have taken detailed evidence from the Claimant about the events and I am satisfied that the sequence of events was in fact as follows. Having given notice on 14 March, there was then an argument on 19 March but both parties calmed down. Despite this, on the 21 March the Claimant was stopped from working by Mr Hindley and given back his shoes. By then he had given back almost all the company property except the keys which he had left at home and a laptop bag which he had also left at home. The contact with Mr Hindley when he was terminated was first thing in the morning. I have seen the Claimant's telephone records and it is clear that he did not make any mobile calls until significantly later in the morning at which time he identifies two calls which he says were made to Helen Grimes. The first call was for a very brief period as he could not get through to her at first, and then he called her later at 12:05, significantly later then is suggested by the Respondent and certainly after they had actually dismissed him. There was no investigation. There was simply a verbal dismissal on that date and the Claimant was told unequivocally that he could not return to work.

29. On 23 March the Respondent sent a letter of dismissal which as I noted was received on 24 March, but the Respondent does not rely on it in their Grounds of Response which refers to the date termination of 21 March.

30. I am satisfied on the Claimant's evidence that his contact with Helen Grimes was entirely innocent and that all he did in talking to her was to apologise for the fact that he was not able to carry on doing any work because he had been terminated.

**Conclusion**

31. In all the circumstances I am satisfied that the allegations which have been raised by the Respondent which they say were the reasons why they regarded the Claimant as being in breach of contract and circumstances which amounted to gross misconduct are incorrect and there was no breach of contract.

32. As I have already noted there is no explanation at all given for the failure to pay back salary other than the Respondent's apparent concern about the alleged breach of contract and reputation. Those circumstances do not entitle any employer to withhold past salary.

33. As regards to the breach of contract, there is no justification for the Respondent having terminated the Claimant's employment before his notice had expired in circumstances where he was ready and willing to work. In all those circumstances I find the Respondent in breach of contract as well.

34. Accordingly, I have determined that the Claimant is entitled to the gross sum of £3,321.

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Employment Judge Walker

Dated: 27 September 2018..

Judgment and Reasons sent to the parties on:

28 September 2018

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For the Tribunal Office