



EMPLOYMENT TRIBUNALS

Claimant: Mr B Salford

Respondent: William Dyer Electrical (UK) Ltd

Heard at: Manchester

On: 3 October 2018

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr W Dyer, Managing Director

JUDGMENT

1. The complaint of breach of contract brought by the claimant in case number 2413342/2018 in relation to notice of termination succeeds. The respondent is ordered to pay the claimant the net sum of **£246.17** as damages for breach of contract.

2. The employer's contract claim brought by the respondent in case number 2414549/2018 is dismissed.

REASONS

Introduction

1. By a claim form presented on 9 July 2018 the claimant claimed breach of contract in relation to failure to give him a week's notice of the termination of his employment as an electrician on 29 March 2018.

2. By its response form of 19 July 2018 the respondent resisted that claim on the basis that the claimant was working on a fixed term contract due to expire on that date, and in any event had been told a week in advance that his employment would be coming to an end.

3. In addition the respondent raised an employer's contract claim. The sum of £233.83 had been paid into the claimant's bank account in June 2018 in error: it was money intended for a different employee. The claimant had refused to return it.

Employer's Contract Claim

4. I dismissed the employer's contract claim because the Tribunal had no jurisdiction to consider it. Under article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994, a claim of that kind can be brought before an Employment Tribunal only if the claim arises or is outstanding on the termination of the employment of the employee. This was a claim which was neither arising nor outstanding on termination in March 2018 since it only arose more than two months later.

5. The rest of these reasons is concerned with the claimant's claim for notice pay.

Notice Pay Claim

6. I had the benefit of some documents provided by the respondent attached to the response form, together with oral evidence on oath from the claimant and oral evidence on affirmation from Mr Dyer.

The Facts

7. The following facts were not in dispute. The claimant was interviewed by Mr Dyer on 25 September 2017. He was told that there would be a probationary period. In the days that followed he signed some documents by digital signature and emailed them back. He started work on 2 October 2017. His employment ended on 29 March 2018.

8. There were, however, two crucial factual disputes which I will address in turn.

Signed Contract?

9. Mr Dyer produced a document headed "Statement of Employment Particulars" which was dated 2 October 2017 and bore the electronic signature of the claimant. That document contained the following clauses:

“(3) Your employment with William Dyer Electrical (UK) Ltd began on 2 October 2017 and will terminate on 29 March 2018.

(4) Your employment is subject to satisfactory completion of a six month probationary period and the receipt of copies of your relevant qualifications and references satisfactory to the Company.”

10. Mr Dyer said that the statement of employment particulars had been emailed to the claimant for signature with the other documents and that the claimant had electronically signed it and returned it.

11. The claimant said he had never seen this document and had not signed it. He said his digital signature must have been copied and pasted from the documents which he did sign electronically, namely an employee details form and a copy of the employee handbook. His case was that he was told verbally that he was on a three month probationary period but never made aware that it was a fixed term contract.

12. Having heard evidence from both parties I preferred the evidence of the claimant for the following reasons:

- (a) Mr Dyer had not produced the covering email sending the claimant this document to sign it, or the email from the claimant in return;
- (b) Clause 3 and clause 4 were inconsistent. Although 29 March 2018 was the last working day (Maundy Thursday) before the six month anniversary of appointment, Clause 4 clearly envisaged employment continuing after the six month period if performance was satisfactory. That supported an inference that clause 3 had been written after the event so as to justify termination.

13. I therefore found on the balance of probabilities that the claimant had not been given this document at the time and therefore that he had not been informed that his employment would end on 29 March 2018.

Mr Hindle's Evidence

14. Mr Dyer also relied on the proposition that a week or so before his meeting with the claimant on 29 March, the claimant was informed by the Contracts Manager, David Hindle, that his employment would be coming to an end. Mr Hindle was not called to give evidence in person to my hearing, although a signed witness statement from him dated 22 May 2018 appeared in the papers. His witness statement said he spoke to the claimant in the week commencing 19 March 2018.

15. In his oral evidence the claimant said that he had not been told by Mr Hindle that his employment was ending. All he was told is that he would have to see Mr Dyer for a review meeting. He did not know that his employment was ending until he saw Mr Dyer.

16. The claimant gave his oral evidence in a credible and straightforward way, and it outweighed the written evidence from Mr Hindle. I did not have the opportunity to ask Mr Hindle any questions. I therefore preferred the claimant's evidence and found as a fact that he was not told a week before that his employment was ending. He did not know that until 29 March 2018.

The Law

17. Under section 86 of the Employment Rights Act 1996 the claimant was entitled to a week's notice of termination of his employment once he had been continuously employed for a month. This formed part of his contractual terms (whether written or not), and if the respondent breached that term of the contract the claimant would be entitled to compensation to put him in the same position as if he had been given that notice.

Decision

18. I was satisfied that the claimant was not told that his employment was ending until 29 March 2018. He had not been notified that he was on a fixed term contract and nor did Mr Hindle give him any notice of dismissal. The respondent was therefore in breach of contract and the claimant was entitled to his net pay for the week's notice he should have received.

19. The claim form said his net weekly pay was £480, and the response form accepted this figure. However, the claimant had already received £233.83 from the respondent and it was appropriate to treat this as reducing the amount due to him. The net damages payable to him for his week's notice pay are therefore £246.17. The claimant is entitled to retain the £233.83 paid to him in error.

Employment Judge Franey

3 October 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 October 2018

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