



EMPLOYMENT TRIBUNALS

Claimant: Mr D Howell
Respondent: N:Gaged Limited
Heard at: East London Hearing Centre
On: 26 January 2018
Before: Employment Judge Russell

Representation
Claimant: In person
Respondent: Did not attend and was not represented

JUDGMENT

It is the judgment of the Employment Tribunal that:-

1. The Respondent made unauthorised deductions when it failed to pay the Claimant his salary due for the period 29 July 2017 until 22 September 2017. The Respondent shall pay to the Claimant the sum of £3,700.
2. The Claimant's contract of employment was terminated on 22 September 2017. The Claimant was entitled to two months' notice which was not given. The Respondent shall pay to the Claimant the sum of £4,220.
3. The Claimant was entitled to 10.5 days accrued but untaken holiday at a daily rate of £134.39. The Respondent shall pay to the Claimant the sum of £1,411.10.

REASONS

1. By a claim form presented on 29 September 2017, the Claimant claimed unpaid wages for August and September 2017. By a second claim form the Claimant, claimed notice and unpaid holiday arising out of a termination of his employment on 22 September 2017. The Respondent admitted that the Claimant had not received his salary for August or September 2017. The Respondent did not present an ET3 in the second claim but, in correspondence, asserted that the Tribunal lacked jurisdiction as employment had not yet terminated.

2. Yesterday evening, Mr Jaundrill contacted the Tribunal by telephone on behalf of the Respondent stating that it had gone into liquidation. This followed a series of emails in which Mr Jaundrill stated that there had been a decision at a Board meeting on 8 December 2017 to go into liquidation with immediate effect. Mr Jaundrill stated that the formal liquidation process is underway and is expected to result in the Respondent being wound up by the end of February 2018.
3. A check on Companies House showed no record of any liquidation having commenced. The Tribunal asked the Respondent to provide by return a copy of the letter appointing the liquidator and evidence of the date of liquidation. Nothing further was received.
4. Nobody attended the Tribunal today on behalf of the Respondent.
5. As there was no evidence of actual liquidation beyond the emails, and nothing to suggest that this was a compulsory liquidation in any event, I decided that it was in the interests of justice to proceed.
6. The Claimant provided me with a written statement which I have accepted as his evidence. The Claimant commenced employment with the Respondent on 5 December 2016 as Practice Manager (Development) working 35 hours per week and on a salary of £34,000 per annum. It was an express clause of his contract that he was entitled to 28 days holiday and 2 months' notice of termination.
7. It is not in dispute that the Claimant was not paid his salary on 28 August 2017. An email from Lyn Mills, Practice Manager responsible for finance, on 5 September 2017 confirmed that the sum of £2,110 had not been paid to him as it ought. I accept that the net monthly salary was £2,110.
8. On 22 September 2017, the Claimant received a letter from Mr Jaundrill informing him that with retrospective effect from 13 September 2017, his contract was "varied" in the following ways:
 - (a) his post of Practice Manager (Development) had been removed and he was now a Practice Associate (Development);
 - (b) his hours of work were reduced to a minimum of 6 per year, but further hours may be offered;
 - (c) he would no longer receive an annual salary, but a daily rate of £130 (elsewhere in the letter the sum of £154 per day is given)
 - (d) he would be employed through an umbrella agency;
 - (e) the notice period from the employer was reduced from 2 months to 1 week.
9. The Claimant objected, asserted that his contract had been breached but sought to resolve the matter internally, without prejudice to his rights. When this was not concluded to his satisfaction, the Claimant accepted the repudiatory breach of contract and presented his second claim to the Tribunal. The Claimant was still

entitled to accrued holiday which had not been taken.

10. I am satisfied that given the extensive changes which the Respondent sought unilaterally and retrospectively to impose, it acted in repudiatory breach of contract. The Claimant accepted the breach and the contract of employment terminated. In such circumstances, the Tribunal has jurisdiction to hear the second claim.
11. Therefore, the claims succeed. The Claimant is awarded **£3,700** in respect of wages to which he was entitled during the period 29 July 2017 until 22 September 2017 but which were not paid to him.
12. Pursuant to clause 12 of the contract, the Claimant was entitled to two months' notice of termination. No notice was in fact given and he is entitled to compensation for breach of contract in the sum of **£4,220**.
13. The holiday year runs from 1 January to 31 December. Calculated pro rata to the end of the notice period, the Claimant was entitled to 26 days holiday. He had taken only 15.5 days. He is therefore entitled to payment for a further 10.5 days in the sum of **£1,411.10**.

Employment Judge Russell

26 January 2018