Case No: 1600522/2019
1600523/2019
1600524/2019

EMPLOYMENT TRIBUNALS

Claimants: (1) Mr M Narzoles
(2) Mr R Pajimolin
(3) Mr B Tabang

Respondent: Voltcom Group Limited

Heard at: Cardiff **On:** 30 September 2019

Before: Employment Judge S Jenkins

Representation
Claimants: Mr M Narzoles
Respondent: No appearance or representation

JUDGMENT

1. The Claimants' claims of unfair dismissal, unauthorised deductions from wages, breach of contract and direct race discrimination succeed.

2. The Respondent is ordered to pay the Claimants the following gross sums respectively:

   Mr M Narzoles - £42,196.28
   Mr R Pajimolin - £42,196.28
   Mr B Tabang - £42,671.28

REASONS

Background

1. The hearing was a remedy hearing, letters having been sent to the parties on 13 June 2019, noting that no response had not been submitted and that judgment could therefore be issued. A notice of hearing was sent to the parties on 14 June 2019, noting that the hearing would take place to determine remedy.

2. I heard evidence from Mr Narzoles and Mr Pajimolin, assisted in part by a

Tagalog interpreter, Mrs N Leighton. They were able to provide evidence of their positions and also those of Mr Tabang, who was unable to be present due to illness. I considered what Mr Narzoles and Mr Pajimolin told me whilst under oath and I also considered the various documents which they had brought with them, notably their contracts of employment, certain statements made for the purposes of an internal appeal, and communications with the Embassy of the Philippines.

3. The Claimants had brought claims for unfair dismissal, breach of contract, various forms of unauthorised deductions from wages, and race discrimination. Their original claims had in fact been brought in June 2015, following the termination of their employment in May 2015. At that time, fees were required to be paid in order to commence employment tribunal proceedings and, as the relevant fees were not paid, the claims were rejected. Following the Supreme Court decision in the Unison case in July 2017 however, claims such as these, which had been rejected due to a failure to pay the relevant fee, were able to be reinstated. That led to the claims being recommenced in April 2019.

4. Due to uncertainty over the precise respondent, the Claimants had included various modifications of the company's name in their claim forms, namely; Voltcom Group Limited, Voltcom Limited, and Voltcom Construction Limited. The Claimants confirmed however that they considered that their employer had been Voltcom Group Limited and their contracts supported that. I therefore considered it appropriate to proceed on the basis that the only respondent was Voltcom Group Limited.

5. The claims were served by the Tribunal on the various Voltcom companies at the address given for them in Llantrisant, but no response has been received. I was conscious that I still needed to be satisfied that the claims had been made out and then, if so, I had to be satisfied as to how much compensation I should award. I therefore made the following findings of fact.

Findings

6. The Claimants, all of whom are Filipino nationals, whose dates of birth are, respectively, 10 November 1979, 14 June 1977, and 13 February 1966, were engaged by the Respondent to work as overhead linesmen in relation to a contract the Respondent had to work for Balfour Beatty on the dismantling of overhead power lines.

7. Mr Narzoles was recruited in August 2012, and Mr Pajimolin and Mr Tabang were recruited in October 2012. The employment of all three ended on 12 May 2015 following their dismissal, which, from the documents, could be discerned as being on the grounds of misconduct due to their not having been wearing seat belts whilst driving a multi-terrain vehicle.

8. From the documents I could see that the Claimants maintained that that dismissal was unfair, notably due to a lack of training, the inability to wear seat belts due to the loading of the vehicle, and the lack of consistency of treatment as many other employees also drove the vehicle without wearing seat belts. The Claimants were dismissed without any form of notice

payment and the contracts of employment issued to them noted that their notice entitlement was one week, increasing in line with the statutory requirement, which meant that after two years' service, which had been achieved by all of the three Claimants, they were entitled to two weeks' notice.

9. The contracts also contained a clause allowing the company to move to short time working and/or to lay off employees; the particular clause noted that the employees would only be entitled to payment for hours worked and that the company would comply with any statutory entitlements. I observe in that respect however, that where employees are laid off, the statutory requirement to pay guarantee payments only extends to five days in any three-month period.

10. In relation to the claims relating to underpayments, Mr Narzoles indicated that he had not been paid for the first three months of his employment in 2012, notwithstanding that he was available to work. The position of all three Claimants was that they had been told by the Respondent, in September 2014, that they were to be laid off, although there was some suggestion that they were to have been provided with alternative work shortly thereafter, which did not in fact transpire for some time. The Claimants did not receive any payment at this stage, and all three in fact returned to the Philippines between November 2014 and January 2015. They were then contacted by the Respondent, informing them that there was work available for them and they returned to the UK at the start of February 2015. However, no work was provided to them, and consequently no payments were made to them, until they actually started work in March 2015. They then worked until their dismissal in May 2015.

11. Although it was possible that their employment might have continued, the indications from the documents were that the Claimants were initially to be employed on contracts for an approximate three-year period, which was due to expire, subject to possible review, in October 2015.

12. The Claimants were all paid the same salary, £30,015.00 per annum. With regard to overtime, Mr Narzoles and Mr Pajimolin stated that, whilst working in March and April 2015, the Claimants had worked significant amounts of overtime, and in the absence of challenge I accepted their evidence. The contracts indicated that the Claimants would work eight hours per day, but the evidence of the Claimants was that they would work 12 hours each day and would also work 12-hour shifts on Saturdays and Sundays. The Claimants felt that there would be premium rates applicable to their working overtime at weekends, but I noted that the contracts stated that overtime would be based, pro rata, on their salary. I therefore considered that their entitlement to overtime was only to payment at single rate in respect of their additional hours. I did find, however, that for the eight-week period covering their work in March and April 2015, they worked 44 hours overtime in each week.

13. With regard to the claim of race discrimination, the Claimants indicated that they had been discriminated against in comparison to British employees on two main grounds. The first was that they were required to continue to work

notwithstanding illness, whereas British employees, in contrast, were allowed sickness absence and paid sick pay. The Claimants confirmed that they were always told that if they did not work, they would be sent back to the Philippines and that, notwithstanding that they did raise this issue, they were told to "shut [their] mouths".

14. The second ground was that they were obliged to continue working at height in adverse weather conditions, whereas British workers were allowed to return to the ground in unsafe conditions. The workers involved worked in gangs, some of which were entirely Filipino, and some of which involved a mix of British and Filipino workers. If unsafe working conditions arose due to bad weather, then where a gang was made up of a mix of workers they were allowed to stop working. By contrast, where gangs were made up exclusively of Filipino workers they were obliged to continue working, again with the threat that they would be sent back to the Philippines if they did not.

15. Mr Narzoles and Mr Pajimolin confirmed that they felt, and confirmed that Mr Tabang had also felt, very upset by their treatment. They felt afraid for their jobs and feared for their families and felt that the pressure put on them, in contrast to British employees, led to the accident which led to their dismissal.

<u>Conclusions</u>

16. I was satisfied, from the evidence put before me, that all the claims of the Claimants had been made out.

17. From the Claimants' oral evidence and the documents, I did not see that their dismissal could be said to have been fair, applying the terms of section 98 of the Employment Rights Act 1996 and the relevant case law, notably that of <u>British Home Stores v Burchell</u> [1978] IRLR 39 and <u>Iceland Frozen Foods v Jones</u> [1983] ICR17, or that a summary dismissal, i.e. without notice, had been justified.

18. With regard to the claims of unauthorised deductions from wages, I was satisfied that there had been underpayments of wages in respect of all three Claimants as outlined at paragraphs 10 and 12 above. However, I was not satisfied that it would be appropriate to order any compensation to be paid in respect of the non-payment to Mr Narzoles at the start of his employment from August 2012. Claims of unauthorised deductions from wages need to be brought within three months of the deduction or the last in a series of deductions. I was satisfied that the non-payments from November 2014 to March 2015, and the subsequent non-payment of overtime for April and May 2015, amounted to a series of deductions, relating to the Claimant's last period of work within the UK. However, I was not satisfied that the non-payment in respect of the early part of Mr Narzoles' employment, when he was in the Philippines in 2012, formed part of any series of deductions and therefore that his claim in respect of that period had not been brought within the required period of time.

19. I was also satisfied that the treatment of the Claimants by the Respondent, as set out at paragraphs 13 and 14 above, amounted to less favourable treatment of them on the ground of their race.

17. In the circumstances, I considered it appropriate to award the following gross sums in relation to the Claimants' claims. They are almost identical in case of all three Claimants, save that, due to Mr Tabang's slightly higher age, his unfair dismissal basic award is slightly higher. The calculations are based on the Claimants' gross annual salary of £30,015.00, leading to a monthly gross salary of £2,501.25, a weekly gross salary of £577.21, and an hourly rate of £14.43.

    (i) Unauthorised deductions from wages for the period October 2014 to February 2015 - £12,506.25 (5 x £2501.25).

    (ii) Unauthorised deductions from wages in respect of overtime for eight weeks in March and April 2015 - £5,079.36 (44 x £14.43 × 8).

    (iii) Unfair dismissal basic award - £950.00 (2 x £475) for Mr Narzoles and Mr Pajimolin, and £1,425.00 (1.5 x 2 x £475) for Mr Tabang.

    (iv) Unfair dismissal compensatory award, covering the period up to October 2015 - £12,506.25 (£2,501.25 x 5). I did not consider it appropriate to make any award for loss of statutory rights due to the time that had elapsed since the dismissals.

    (v) Notice - £1,154.42 (2 x £577.21).

    (vi) With regard to race discrimination, compensatory losses were already covered by the unfair dismissal compensatory award and therefore no further sums were ordered. With regard to injury to feelings, I was satisfied that the behaviour of the Respondent towards the Claimants was severe, but without falling into the upper "Vento" band. In the circumstances, I considered that it would be appropriate to make an award for injury for injury to feelings in relation to each of the Claimants in the sum of £10,000.00.

18. In total, the total sums of gross compensation to be paid to each of Mr Narzoles and Mr Pajimolin was £42,196.28, and the total sum of compensation to be paid to Mr Tabang was £42,671.28.

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Employment Judge S Jenkins

______18 October 2019 _________________
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

...........20 October 2019..

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FOR THE TRIBUNAL OFFICE