



EMPLOYMENT TRIBUNALS

Claimant: Mr M I Boodhoo

Respondent: HSBC Bank PLC

Heard at: London Central

On: 21 June 2019

Before: Employment Judge H Grewal

Representation

Claimant: No attendance

Respondent: Ms E Wheeler, Counsel

JUDGMENT

1 The Respondent's application to strike out the claim is refused.

2 The Tribunal does not have jurisdiction to consider the complaint of unauthorised deductions from wages.

3 The complaint of breach of contract is not well-founded.

REASONS

The Claimant's non-attendance

1 On 20 June at 9.10 am the Claimant applied for an adjournment of the hearing today on the grounds of his health. He said that he had not been well for the last couple of days; he had had "*stomach upsets*" and had been under medication. The Respondent opposed the application. At 12.20 the parties were notified that an Employment Judge had refused the application because it was in the interests of justice for the hearing to take place and the Claimant had not provided any medical evidence of his inability to attend.

2 At 14.31 the Claimant sent to the Tribunal an online HMRC form that he had filled in order to obtain statutory sick pay. In that form he said that he had had vomiting and diarrhoea since 15 June 2019 and that he had last worked on 19 June 2019. I did not consider that that document changed anything. It is not medical evidence. It is simply the Claimant asserting that he is not well. The reasons for refusing the application to adjourn still applied. There was nothing that caused me to revisit that decision or to reconsider the matter.

3 Under rule 47 of the Employment Tribunals rules of Procedure 2013 if a party fails to attend the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. I chose to do the latter.

Procedural history of the claim

4 In a claim form presented on 9 October 2018 the Claimant had claimed that he was owed arrears of pay. Early Conciliation (“EC”) was commenced on 18 August 2018 and the EC certificate was granted on 10 September 2018. The only particulars that he gave of that complaint were as follows,

“unpaid hours work through the year and for attending work related even [sic] without being given time in lieu as an alternative.”

5 The Tribunal made a number of orders for the Claimant to provide particulars of his complaint. The Claimant failed to comply with those orders. However, on 30 May 2019, he provided the following particulars of his claim. He said that between October 2016 and February 2018 almost every day he had worked in excess of his contracted 7 hours a day. He claimed that over that period he had worked 975 hours over his contracted hours for which he had not been paid. He said that the payment would have been expected by the end of the months as and when they were due. The Claimant had been asked to clarify whether the claim was being brought at a breach of contract or unlawful deduction of wages claim. The Claimant did not respond to that question. I am not sure that as a litigant in person he appreciated the difference between the two types of claims. I treated him as pursuing the claims under both jurisdictions.

Respondent’s application to strike out

6 The Respondent pursued before me the applications to strike out that it had made in writing to the Tribunal. These were made on the grounds that the Tribunal had no jurisdiction to consider the claim, the Claimant’s failure to comply with the Tribunal’s orders and that the claim had no reasonable prospect of success.

7 I accepted that on the basis of the particulars provided by the Claimant the Tribunal does not have jurisdiction to consider the complaint of unauthorised deductions from wages under section 13 of the Employment Rights Act 1996 (“ERA 1996”). Such a claim must be presented to the Tribunal before the end of three months beginning with the date of payment from which the last deduction was made (section 23(2) and (3) ERA 1996). According to the Claimant the last deduction was made at the end of February 2018. The claim was already out of time when the Claimant commenced Early Conciliation. It was over four months’ out of time when the Claimant presented the claim. I am not satisfied that it was not reasonably practicable for the complaint to

have been presented in time. The Tribunal does, however, have jurisdiction to consider the breach of contract claim. The Claimant's employment terminated on 22 June 2018. The time limit for bringing a breach of contract claim runs from that date. Taking into account the extension granted by reason of Early Conciliation, that claim was presented in time.

8 I accept that the Claimant failed to comply with some of the Tribunal's earlier orders, but he did finally provide particulars of his claim, albeit in fairly general terms. I could not on the basis of the pleadings conclude that the claim had no reasonable prospect of success. I needed to hear evidence of whether the Claimant had worked in excess of his contractual hours as he had claimed and of the circumstances in which he had done so. For all the above reasons I refused the application to strike out the claim.

The Evidence

9 The following witnesses gave evidence on behalf of the Respondent – Rawle Nedd (Sales and Service Manager, Fleet Street branch at the relevant time) and Teresa Thompson (Branch Manager, Fleet Street branch at the relevant time). The Respondent also produced a bundle of documents. I also took into account the Claimant's claim form and his communications with the Employment Tribunal. Having considered all the oral and documentary evidence, I made the following findings of fact.

Findings of Fact

10 The Claimant commenced employment with the Respondent on 25 July 2016. He was dismissed on 22 June 2018. He was employed at its Fleet Street branch as a Universal Banker ("7GCB").

11 The Claimant's contract provided,

"6. Hours of Work

6.1 Your normal working hours are 35 hours each week. Your working pattern will be determined by your line manager locally... Business requirements mean that sometimes you may be required to work outside your normal working hours and/or to vary your working hours without further remuneration (unless agreed otherwise).

6.2 Please refer to the Handbook and/or the Company's HR intranet site, 'HR Direct' (as applicable to you) for further details regarding working patterns and details of eligibility for overtime."

12 The Respondent's Overtime Policy provided that GCB7 and GCB8 employees were covered by the policy. It stated,

"Managers must authorise overtime in advance, according to their staffing needs."

It also provided that overtime payments began after the employee had completed the first 15 minutes of authorised overtime.

13 Everyone at the Fleet Street branch clearly understood that the policy was that overtime was only payable if the managers specifically asked staff to work additional hours over and above their contractual hours. Once the overtime had been completed, the relevant manager would email one of the branch clerks to input the overtime into the payroll system. Once the overtime had been inputted the manager would review the payments to ensure that they corresponded with the overtime that had been authorised, and would then approve the payments. The overtime paid was also recorded on the pay slips.

14 An email in the bundle dated 5 October 2016 relating to the overtime policy showed that there had been feedback from employees and their representatives that in some cases GCB7 and GCB8 employees were being asked to work non-contractual hours without payment. It was made clear in the email that that should not happen.

15 The policy was correctly applied in the Fleet Street branch and any employee who was asked by the manager to work additional hours was remunerated for it. The Claimant was asked on occasions to work overtime and he was paid for it. There were emails in the bundle (asking for the overtime to be inputted and/or paid) and the Claimant's pay slips which supported that.

16 The Claimant regularly came into work early and left late. That was not at the request of management, it was his personal choice to do so. Quite often if he was working late, his colleagues and managers would tell him to go home. The Claimant's response would be to say things like "I want to be ahead of the game" or "there is nothing to do at home anyway."

17 The Claimant does not say in his particulars of claim that management asked him to work the additional 975 hours for which he is claiming overtime. If managers did not ask him to work those extra hours, he is not entitled to be paid for working those hours. If his case is that management asked him to work an extra 975 hours but did not ensure that he was paid for them, I do not find that to be credible. The Claimant knew of his entitlement to be paid for overtime when he was asked to do extra hours because there is evidence that he was paid for extra hours when he was asked to do them. He did not any stage prior to his dismissal raise any issue at all about working a large number of additional hours at the request of management and not being paid for them. If that had happened, it is inconceivable that the Claimant would not have raised it. I accept the evidence of his managers that it did not happen.

18 The Claimant's managers did not between October 2016 and February 2018 ask him to work 975 hours over and above his contractual hours and he is, therefore, not entitled to be paid for them. There is no breach of contract.

Employment Judge Grewal

Date 21 June 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

24 June 2019
FOR THE TRIBUNAL OFFICE