



EMPLOYMENT TRIBUNALS

Claimant: Mr T Chaparira
Respondent: CT4N Nottingham Community Transport
Heard at: Nottingham
On: 5 February 2019
Before: Employment Judge Ahmed (sitting alone)

Representatives

Claimant: In Person
Respondent: Mr C Wouldhave, Human Resources Officer

JUDGMENT

The judgment of the Tribunal is that the claim of an unlawful deduction of wages is dismissed.

REASONS

1. This is a claim for an unlawful deduction of wages by Mr Chaparira who was employed by the Respondent as a Bus Driver from 20 March 2017 to 2 March 2018.
2. In these proceedings the Claimant gave evidence on his own behalf. He has represented himself throughout the proceedings. Somewhat ironically as a former bus driver he arrived late to the hearing on the first occasion which was only listed for an hour and as the Respondent did not produce a key witness, Mr Gareth May, the hearing was adjourned. The adjournment was used an opportunity to identify the issues and make case management orders.
3. The Respondent is a relatively small company with approximately 149 employees. The Claimant was issued with a contract of employment which sets out his terms and conditions. There is also apparently a company handbook though this was not included in the bundle.
4. There is no suggestion that Mr Chaparira was anything other than a good driver, well regarded and liked by his colleagues other than perhaps that he had a tendency not to comply with office procedures and, unlike most of his colleagues, not to pay careful attention to company notices. Unfortunately, it was his failure to deal with such small but important notice that appears to have been the origin of his difficulties.

5. In or around September 2017 there was a change to the company's procedures as to booking annual leave. Until then staff used an app to book leave. The app was found to be unreliable. Accordingly, the Respondent placed a notice, which it subsequently confirmed in e-mails to all team leaders and no doubt cascaded to staff, that until advised to the contrary the app was not to be used. Instead to book annual leave a paper request had to be made. The relevant notice was re-issued on 20 October 2017. Mr Chaparira says that he was away when the notice was issued but I am satisfied that is not correct because he was working on 19 September when it was issued.

6. Mr Chapirira had a pre-arranged court appointment for 1 December 2017. He must have known about the appointment well in advance because court hearings are generally not sprung upon parties at very short notice save in exceptional circumstances. There was nothing exceptional it seems about this court appointment or at least it has not been suggested that it was. It is likely that Mr Chaparira would therefore have known about the appointment and had plenty of time to book leave. Nevertheless, he left it until 23 November, with just a little over a week to go, to try and book leave and he did so by using the app. Unsurprisingly, the request was promptly refused the following day on the grounds that it had not been made in the proper format.

7. On 28 November, some two working days before the date of the court appointment, the Claimant resubmitted his request this time properly in paper form. It was refused again this time because there were no slots available and it could not be accommodated. It is not clear why Mr Chaparira left it for five days before resubmitting his request when the first one had been rejected.

8. On the day of the court appearance, Mr Chaparira was now in a difficult situation as he needed to go to court but he did not have time off booked. He had court hearings before so seeking time off was not something new. Mr May, the Operations Manager and the person he would normally ask to accommodate him, was not available. He approached one of the team leaders to ask if he could re-arrange his day so that his appointment could be accommodated. He said the time for the court appearance was 2.40pm and that it would only be for 20 minutes or so. It was agreed to cover his 2.45 – 3.35 pm shift on that basis. As it was he was out much longer than 20 minutes. When he eventually got back he met by Mr May.

9. Mr May did not know of the Claimant's arrangements with the team leaders and his discussion with the Claimant never really got very far. Mr May made it clear that he was not happy about what he saw as time away for regular court appearances and he told the Claimant in very clear terms that he would not be paid for the afternoon shift. There was no question of disciplinary action merely that the Claimant would not get paid for the shift. Mr Chaparira left the office. His parting words to Mr May were, "stuff your fucking job". Mr May's evidence was that he did not regard that as a resignation though arguably he could have done. He expected Mr Chapirira to return to work the next day.

10. Mr Chaparira did not in fact come to work the following day. There were attempts to contact him on the mobile phone number the Respondent had for him. Mr Chaparira says that he had a discussion with Mr May earlier about changing his number or his phone not working. I am satisfied there was no such discussion. If the phone was not working it would not have been possible to leave messages. The Claimant's evidence on this was unsatisfactory, changing from the phone not working to a change of number. I am satisfied Mr May genuinely attempted to contact the Claimant on several occasions without success and left

messages for the Claimant to ring back which Mr Chaparira ignored because he was angry. It is unlikely Mr May would have deliberately tried calling what he knew to be the wrong number or call a phone he knew to be out of action.

11. In any event the Claimant did not make any contact with the Respondent despite several messages. Having waited for what he regarded as a reasonable period, Mr May prepared a letter to the Claimant on 13 December inviting him for a disciplinary meeting on 18 December.

12. As it happened there was a chance meeting with the Claimant on 13 December before the letter went out. There was a discussion as to what had happened. The meeting was cordial. There were mutual apologies, the Claimant apologising for his behaviour and Mr May apologising for the misunderstanding that he did not know Mr Chaparira had spoken to someone about covering his shift on the day. Both agreed that Mr Chapirira would return to work but there was no discussion as to the pay (or rather the absence of any pay) between 2 and 13 December. The Claimant's employment subsequently ended for reasons unconnected with these events.

13. The Claimant's claim is for wages he feels he is entitled to between 2 and 13 December. He believes that he was suspended on pay and that he is entitled to be paid for the days he would have worked between 2 and 13 December.

14. There are two issues in these proceedings. The first is whether the Claimant was suspended on 1 December or was he merely absent without authority. Secondly, if he was suspended was that suspension on pay?

15. The Claimant's position is that he was suspended and that suspension is always with pay. He has cited previous examples of instances where suspension has been with pay. He does not know of any case where an employee has been suspended without pay.

16. The most compelling evidence in my view is Mr May's contemporaneous e-mail of 1 December timed at 15:48 to his colleagues Mr Clark and Mr Wouldhave. In it he says:

"I have sent Takunda [The Claimant] home after he failed to show for his duty at 14:50. I know he was at court today but I find it unacceptable that Takunda expects us to pay while he attends court. I also find it unacceptable that Takunda assumes that he is able to take time off and return to work when he feels like. I tried to contact Tk several times and his phone kept coming up as unavailable. I told Tk that he would have the change to discuss his court appearances during an incident review meeting. I informed Tk that he would be clocked out at the time he left to go to court and his duty was now covered."

17. This e-mail is significant because it makes no reference to any suspension (with or without pay) and it is significant because as at 1 December there was clearly no issue about whether the Claimant was being suspended or not. Mr May would not therefore have known that this issue was likely to be of any significance at the time so it is noteworthy that Mr May makes no reference to any suspension.

18. The next piece of relevant evidence is Mr Wouldhave's letter of 13 December. That again makes no reference to any suspension but rather tellingly refers to 'unauthorised absence'. This letter was also written at a point when there was no issue as to whether the Claimant's absence was unauthorised absence or suspension. It is only when the Claimant writes on 11 January, some 4 or 5 weeks after the events in question, that the allegation of suspension without pay pending investigation is raised by him for the first time.

19. Having heard the evidence, I prefer the Respondent's account that there was no suspension but rather that the Claimant was absent without authority for these reasons. Firstly, the Respondent's procedures are that a suspension must be authorised by someone senior, certainly above the level of Mr May. There was no authority to suspend. If Mr May was going to suspend he would have obtained authorisation. Secondly all suspensions are invariably confirmed in writing which was not the case here. It is the Respondent's consistent practice to confirm suspension in writing. Thirdly, it would have made no sense for the Respondent to tell the Claimant he was being suspended pending an investigation as there was nothing to investigate. Mr May had already decided on 1 December, rightly or wrongly, that the Claimant was to be sent home without pay for the afternoon shift. There was nothing further to investigate.

20. I am therefore satisfied that Claimant was not suspended but rather he was absent without authorisation. He was angry at not being paid for the whole of the afternoon shift and left in anger. He then avoided attempts to contact him until it was agreed he could return to work.

21. Mr Chaparira in his closing submission refers to Clause 12 as support of his contention that suspension is always with pay but unfortunately Mr Chaparira has misread it because Clause 12 is not about suspension but about pay during periods of notice. It has nothing to do with suspension.

22. The claim is therefore dismissed.

Employment Judge Ahmed

Date: 28 March 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE