



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr G Hextall

v

Greans (West Haddon) Ltd

Heard at: Cambridge Employment Tribunal (CVP)

On: 23rd November 2020

Before: Employment Judge King

Appearances

For the Claimant: In person

For the Respondent: Failed to attend

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was (V) conducted via video. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 100 pages, the contents of which I have recorded. The judgment made is as set out below.

JUDGMENT

1. The respondent made unlawful deductions from the claimant's wages in the sum of £3,778.06 (gross).
2. The respondent failed to pay the claimant his accrued and outstanding holiday pay in the sum of £1,424.00 (gross).
3. The respondent failed to pay the claimant's notice pay having dismissed him in breach of contract, for which the claimant is awarded damages of £450.46 (gross)
4. The claimant is awarded interest on the above sums in the total amount of £1,424.75.

5. The respondent failed to provide the claimant with a written statement of his terms and conditions of employment as required by s1 Employment Rights Act 1996 and in order to pay the claimant the lower (2 weeks) rate of compensation in the sum of £900.92.

The total due from the respondent to the claimant is therefore £7,978.18.

REASONS

1. This matter came before me today for a final full merits hearing. The claimant had made an application to amend his claim to add another respondent namely Mr James Robertson director of the respondent in advance of this hearing. In addition, he had submitted another claim on 2nd November 2020 against both respondents which included claims already brought within the first claim (3329113/2017).
2. Before deciding the application to amend I had regard to the written submissions of Mr James Robertson (the respondent the claimant wanted to add to the claim) sent the working day before the hearing and not copied to the claimant as he was required to do. These were provided to the claimant by the Tribunal and discussed at the hearing. The claimant had provided a bundle which ran to 100 pages and included his witness statement and that of his partner Ms Vint. The claimant and his partner gave oral evidence and referred to documents in that bundle. I had regard to the response submitted on behalf of the respondent but they have provided no evidence to counter the claimant's evidence.
3. In addition, I noted that this claim had a chequered history having previously been listed for a preliminary hearing in June 2020 at which the respondent failed to attend and that the Tribunal was required to intervene following the respondent's failure to comply with orders of the tribunal. Further, these proceedings had been stayed to enable the County Court claims and the Crown Court proceedings both initiated by the respondent against the claimant to run their course. These proceedings were all dismissed against the claimant and the evidence from the respondent in the county court proceedings formed part of the bundle before me today.
4. I advised the claimant that I would look at both claims and that the November 2020 claim was significantly out of time and overlapped with the 2017 claim. It was in accordance with the overriding objective that both claims be dealt with today and I determined that the 2020 claim was such

that the tribunal would have no jurisdiction to hear that claim as it was brought way outside the ordinary three month limitation and given the passage of time and the nature of that claim it cannot be said that it was not reasonably practicable to present the claim within the ordinary time limit (or any extension by virtue of the ACAS EC procedure). I informed the claimant that accordingly the second claim would be dismissed. A separate judgment will be issued in that regard.

5. With regard to the 2017 claim this was brought against the company respondent and the claimant was asking that the sole director Mr Robertson be added as personally liable in respect of the 2017 claim. I explained to the claimant that what he was asking me to do was to effectively pierce the corporate veil and go behind the limited company. I could understand why the claimant would want to do this given matters which that have arisen over the past three years and the way he feels that Mr Robertson has conducted himself. Indeed, to the claimant this matter feels very personal that that the respondent is conducting matters personally yet is hiding behind the limited company.
6. I can only add Mr Robertson if there is a legal basis for me to do so. The claim was started in 2017 against only the company respondent and is in respect of wages claims that only the employer can be liable for. There are no discrimination claims or other claims where an individual other than the employer can usually be liable. There was no doubt in the claimant's mind in 2017 who his employer was. The ACAS EC certificate is against the company respondent only, the claim brought against only the company respondent. Even back in June 2020 when the matter was last before the Tribunal the respondent was only the company.
7. Whilst the respondent failed to issue a contract of employment, Mr Robertson was a director of the company and could have been said to have been acting on behalf of the company. The claimant argues that Mr Robertson's actions feel personal and that he was not acting in the best interests of the company in respect of the other proceedings but that is not a matter for this Tribunal. The claimant on the rare occasion he got a payslip confirmed that this was from the company and his wages came from the company. Whether or not the company had assets and this Tribunal's judgment will be satisfied are not legitimate reasons to pierce the corporate veil.
8. There is no doubt in this case that the company is the correct respondent and was at all relevant times the claimant's employer not Mr Robertson personally and as such the application to add the respondent is refused. Even if there were legitimate grounds to add the respondent this would not be in furtherance of the overriding objective in this case as it would cause

further delay. I explained to the claimant that the Tribunal is under pressure in the current climate and if a second respondent was added this would delay the final hearing into 2021 to enable the respondent to file a defence and participate personally in the proceedings. This of itself, given the significant delay in bringing the application would be grounds to refuse the application even if there was a legal basis for it. As such the application was refused and the claim proceeded in Mr Robertson's absence in any event. I was satisfied that Mr Robertson knew of the hearing as his response to the application to add him personally was sent in response to the email from the Tribunal sending the link to this hearing.

9. The respondent has a history of failing to comply with orders and attend hearing and it was not in accordance with the overriding objective to postpone today's hearing. Further, the written submissions sent by Mr Robertson asked the tribunal to consider his written grounds for opposing the application and were suggestive that he was making a written submission rather than appearing in person.
10. I heard evidence from the claimant and I was referred to documentation. I accepted the claimant's evidence and that of his partner. The respondent had not provided any evidence to dispute the allegations and sums owed. The respondent had in the preparation of its documentation for the County Court claim accepted that it has deducted sums from the claimant and said that they were evidence of rental sums paid for accommodation. It claims further sums were due but these claims were dismissed by the County Court as being without merit. There was no rental agreement in place and no agreement to pay rent. The statement made in the County Court is contrary to the respondent's own statement before the Crown Court that no such payments for rent were made. Both statements (given when there was a requirement to state the truth) cannot both be true. The respondent has by its own admission deducted £3,618.06 from the claimant's salary over the period of employment. The claimant confirmed that he did not seek the full amount as £512.00 of this was a miscalculation in respect of the holiday pay so should be deducted from this sum to ensure the claimant did not double recover. I therefore accepted the claimant's evidence that he had had £3,106.06 deducted from his wages unlawfully. There was no written agreement to permit the respondent to deduct any such sums.
11. The claimant gave evidence of the holiday pay accrued but untaken at 178 hours of holiday owed at £8 per hour which I accepted and evidence that he had worked 84 hours up to dismissal that was unpaid. These sums of £1,424.00 (gross) in respect of holiday pay and £672.00 (gross) in respect of unpaid wages are also due.

12. The claimant provided the letter of dismissal and confirmed that after he asked for his contract and tenancy agreement the respondent changed the reason for dismissal from redundancy with one week's notice to gross misconduct. Whilst the respondent accused the claimant of theft to which he was found not guilty I am conscious the burden of proof in criminal matters differs from that of the Tribunal so the fact that the theft charges were dismissed is not conclusive for the purposes of a gross misconduct case. I am satisfied having heard evidence from the claimant that he was dismissed with notice and that he was lawfully entitled to the same and that this has not been paid.
13. The claimant confirmed his hours were variable and confirmed his hours for the previous 12 weeks. This enabled a calculation of a week's pay to be carried out. This was also under the statutory cap on a week's pay applicable at the relevant time. This meant that the claimant had worked an average of 56.31 hours per week in the relevant period which gave the claimant a weekly gross pay of £450.46. This sum is due to the claimant in respect of his wrongful dismissal as he was due one weeks notice
14. The respondent has failed to provide a written statement of the claimant's terms and conditions of employment contrary to s1 of the Employment Rights Act 1996. The claimant's evidence which I accept was that the respondent was a small employer and as such the sum awarded to the claimant in respect of this failure is the lower amount of 2 weeks pay rather than 4 weeks. The week's pay figure he earned rather than the higher statutory cap is applied here giving the claimant the sum of £900.92 in respect of this head of claim.
15. The sums (with the exception of the failure to provide a contract which attracts no interest) have been outstanding since the pay day of 29th September 2017 and attract interest. This is in the sum of £1.24 per day which equates to £1,424.75 of interest for the 1150 days that this sum has been outstanding.
16. Accordingly, the claimant's claims succeed in the sums set out in the Judgment above.

Case Number: 3329113/2017 (V)

Employment Judge King

Date: ...23rd November 2020

Sent to the parties on: .4/12/2020.....
T Henry-Yeo

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For the Tribunal Office