



EMPLOYMENT TRIBUNALS

Claimant: Mr T Braasch

Respondent: Nest Seekers Europe Limited

Heard at: London Central (by video) **On:** 26 February 2021

Before: Employment Judge Brown

Appearances

For the claimant: In person

For the respondent: Did not attend and was not represented

JUDGMENT

1. Under rule 21 the Claimant's claims for unpaid wages, unpaid notice pay and unpaid holiday pay succeed.
2. The Respondent shall pay the Claimant £3,262.50 gross, or £2,500 net, unpaid wages for November 2018.
3. The Respondent shall pay the Claimant £9,787.50 gross, or £7,500 net, notice pay.
4. The Respondent shall pay the Claimant £1,392.60 gross, or £1,068.49 net, holiday pay.
5. The total payment the respondent shall pay the claimant is £11,392.60 gross, or £11,068.49 net of tax.

REASONS

- (1) The hearing today was conducted by CVP remote videolink as the Tribunal is unable to hold in person hearings at present. The respondent did not attend. I was satisfied that the respondent had been sent joining instructions, as the claimant was sent the same instructions and I saw that the respondent's email address had been correctly entered on the emailed instructions. I therefore decide to proceed in the respondent's absence. The claimant was content for

the hearing to proceed by CVP videolink and he was able to participate satisfactorily.

- (2) By a claim form presented on 1 March 2019, the claimant brought complaints of unlawful deductions from wages, unpaid notice pay and unpaid accrued holiday pay against the respondent. The claimant claims that he was employed by the respondent, as operations director, from 1 November 2017 to 30 November 2018. The respondent defended the claim, saying that the claimant was not an employee and that his contract for services was terminated due to 'misrepresentation or negligence'. It denied all the claimant's claims.
- (3) The response was dated 2 February 2020, 11 months after the claim was issued. I had issued a r21 judgment in default on 12 November 2020, having been satisfied that it was appropriate to do so.
- (4) At today's hearing, I read witness statements from the claimant and from Mr McPeake, the Managing Director of the respondent. The respondent had sent the statement to the Tribunal, even though it did not attend the hearing.
- (5) I heard evidence from the claimant.
- (6) Having considered all the evidence, I made the following findings of fact.
- (7) The claimant started to work for the respondent company as operations director in November 2017.
- (8) The respondent company instructed a lawyer to draw up a contract of employment for the claimant in January 2018, which was backdated to December 2017. The claimant produced a copy of the contract. The contract was stated to be between the claimant on the one hand and the respondent on the other.
- (9) The contract contained numerous clauses referring to the claimant as an employee of the company and which were otherwise consistent with a contract of employment. For example, in the definitions section, the contract stated, ""Employment" means your employment by the Company as governed by this Agreement".
- (10) Further, clause 3 of the contract stated, "TERM OF EMPLOYMENT 3.1 The Employment under the terms and conditions set out in this Agreement commenced on the Start Date. Your period of continuous employment began on the Commencement Date. No other period of employment counts towards your period of continuous service with the Company."
- (11) The contract contained a schedule of specific terms and conditions. This stated that the claimant's basic net salary was £30,000 per annum. It stated that the notice period required to terminate "the employment" was 3 months. The schedule provided that the claimant was entitled to 28 days' holiday each year.

- (12) The respondent undertook to sign the contract but did not do so and the claimant continued to work for the respondent, pursuant to the terms of the contract. He received payslips showing that he was paid £2,500 per month net, which was consistent with his contractual £30,000 per annum salary. The payslips recorded that the claimant's gross pay was £3,262.50 per month.
- (13) The claimant received an overview of all employees, which included his name.
- (14) The claimant worked diligently in the execution of his duties which included: implementation of the correct company structure; recruitment & onboarding of Agents, Brokers and Administrative staff; creating marketing material; speaking to news outlets for advertising; arranging insurance and compliance with tax and regulatory requirements; establishing sales and lettings contracts, terms and conditions and pricing; business development; sourcing agencies for potential buy-out; representing the company at conventions, meetings and events, domestically and internationally.
- (15) The claimant's official title "Operations Director " appeared on the respondent's website.
- (16) In November 2018, the claimant stopped receiving salary. On 28 November 2018 the respondent's accountant in New York confirmed that he had not sent payment for the claimant that month.
- (17) The claimant then approached Eddie Shapiro, the company's managing director, who offered him 2 options, working as a independent contractor or leaving the firm immediately. The claimant disagreed. Mr. Shapiro responded that the claimant was not an employee and that he was not going to pay him anymore.
- (18) On Mr. Shapiro's instruction, another individual attended the respondent's office at the end of November 2018, took away the claimant's access pass, escorted the claimant from the office and told the claimant not to return. The claimant understood that he had been dismissed.
- (19) The claimant was not paid any notice pay, nor any accrued holiday pay, on termination of his employment. The claimant told me, and I accepted, that he had 13 days' accrued but untaken holiday at the termination of his employment.

Decision

- (20) I decided that the claimant was clearly an employee of the company and worked pursuant to the terms of a written contract of employment, albeit that this was never signed.
- (21) Pursuant to his contract, the claimant was entitled to be paid £30,000 net per annum, or £39,100 per year gross. He was therefore entitled to be paid £3,262.50 gross per month, or £2,500 net.

- (22) Pursuant to his contract, he was entitled to 3 months' notice to terminate his contract. Pursuant to the Working Time Regulations, the claimant was entitled to be paid for accrued, but untaken, holiday pay at the termination of his employment. The claimant had the right not to suffer unlawful deductions from wages. He was also entitled, as an employee, to bring a claim for breach of contract on termination of his employment.
- (23) The respondent failed to pay the claimant a month's pay for November 2018. In doing so, it made unlawful deductions from his wages. I ordered the respondent to pay the claimant £3,262.50 gross, or £2,500 net, for these unpaid wages.
- (24) The respondent failed to pay the claimant notice pay on termination of his employment, in breach of the claimant's contract. The claimant was entitled to 3 months' notice. I ordered the respondent to pay the claimant £ 9,787.50 gross, or £7,500 net, notice pay, as damages for breach of contract.
- (25) In breach of the Working Time Regulations, the respondent failed to pay the claimant for 13 days' accrued but untaken holiday pay at the termination of his employment. I ordered the respondent to pay the claimant £1,392.60 gross, or £1,068.49 net, for these 13 days' holiday pay.
- (26) The total payment the respondent shall pay the claimant is £11,392.60 gross, or £11,068.49 net of tax.

Employment Judge Brown

26 February 2021

Judgment and reasons sent to the parties on:

1 March 2021

For the Tribunal: