



EMPLOYMENT TRIBUNALS

Claimant

Mr G Fernando v

Respondent

Trico Shipping Limited

Heard at: Cambridge (CVP)
Before: Employment Judge R Wood

On: 17 June 2022

Appearances

For the Claimant: In Person

For the Respondent: Mr Kularatne (director of the company)

JUDGMENT

1. The claim for notice pay is allowed in part.
2. The respondent is ordered to pay to the claimant the sum of £436.17. This is a figure which is net of tax.

REASONS

1. The Claimant was engaged by the respondent as a manager. I find that he had been previously employed by Trico Freight UK Ltd, which ceased to trade. It is the respondent's contention that the claimant was employment by it in August 2019, and that he was given notice one month's notice of termination of his employment on 1st October 2019. Accordingly, it is argued that the claimant's employment with the respondent came to an end on 31st October 2019. There is no issue that the claimant was entitled to one month's notice of termination of employment. The respondent says he was paid in full for his work up to that date. The claimant states that he was not given notice of termination of his employment until 31st October 2019, and that's he was entitled to be paid one month's wages in lieu of notice from that date.
2. I heard from the claimant and Mr Kularatne, director of the respondent company. Regrettably, neither had complied with the directions issued by the tribunal. Neither had produced a witness statement. Mr Kularatne had provided a bundle, comprising 7 documents, but which was not paginated. The claimant provided a zip file which I was unable to open. He was unable

to send me copies of the any of the documents in an accessible format during the hearing. I therefore made my decision without them. In my view, it would have been disproportionate to have adjourned in the light of the modest nature of the matters outstanding. The claimant's level of adherence to the directions was extremely disappointing.

3. The respondent provided two important documents. One appeared to be a termination letter dated 1st October 2019, which was addressed to the claimant. It was signed by Mr Kularatne, and by another member of staff acting as a witness. She had signed it and dated her signature 7th October 2019. Mr Kularatne said he had not been present when the letter had been handed to the claimant, although he had been told by the witness that this had been done. He assumed that it had been handed over on 7th October 2019. The claimant denied ever seeing this letter prior to it been provided by the respondent quite recently, and in the course of these proceedings.
4. Mr Kularatne provided another document which was dated 16th October 2019. He explained that's this was the result of the claimant approaching him and asking to be allowed to remain with the company for a further period of time so as to be able to find alternative work. The letter is, in effect, a refusal to extend the notice period, according to Mr Kularatne's testimony. The claimant denies receiving this letter.
5. It is the claimant's case that he was sent an email on 31st October 2019, which first put him on notice that his employment with the respondent was to be terminated. However, because of the problems outlined above, I did not have a copy of the email. The claimant was unable to scan and email a copy to me during the hearing. Mr Kularatne denied sending such an email.
6. This is a claim for breach of contract brought by the claimant. The burden of proof is upon him to satisfy me on a balance of probabilities that there has been a failure to pay his notice pay entitlement. Mr Kularatne was able to adduce two documents which supported his submissions i.e. that notice had been given on 7th October 2019. By contrast, the claimant could provide no documentary evidence to support his contention. I therefore prefer Mr Kularatne's testimony, although in truth neither struck me as particularly good witnesses. If a claimant fails to comply with directions for the production of documents and witness statement evidence, then he can hardly be surprised if he struggles to prove his claim.
7. However, pursuant to my findings, the claimant was given notice on 7th October. I find that the claimant was dismissed on 31st October 2020 having been provided with his contractual notice entitlement up to that date. He therefore remains entitled to 7 days of notice pay. Doing the best I can, this means that the claimant is entitled to be paid the sum of £436.16 (taking the respondent's figure for net monthly pay in the response: which I believe was not in issue).
8. The claimant did not pursue any other causes of action at the hearing. For the sake of completeness, any other claims are dismissed.

Case Number: 3301833/2020

Employment Judge R Wood

18th September 2022

Sent to the parties on:

20 September 2022

L TAYLOR-HIBBERD