



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr David Scanlon

**Respondent:** Young Engineers Ltd (in liquidation)

**Heard at:** On: 3 November 2017

**Before:** Employment Judge Kolanko

## **Representation**

**Claimant:** in person

**Respondent:** Mr R Bhatt of counsel

# RESERVED JUDGMENT

1. The respondent has made an unauthorised deduction from the claimant's wages.
2. The respondent is ordered to pay to the claimant £3,525.00.

# REASONS

## **The Nature of Claims and Issues**

1. The claimant brings a complaint of unlawful deduction of wages. He alleges that he is owed payment for working 158.5 days at a contractual rate of £150 per day, totalling £23,775 for work relating to a database construction from January 2016.
2. The respondent acknowledges payment is due but asserts that the claimant is only entitled to £3,525. The respondent further contends that the dispute must be seen in the context that the claimant did not complete the data base work.

## **Evidence and Basic Facts found by the tribunal**

3. The tribunal heard evidence from the claimant, and received into evidence on behalf of the respondent statements from Mr Rod Edwards Chief Executive Officer of the respondent up to 9 December 2016, and Mrs Heather Williams Chief Executive Officer of the respondent from that date. In view of the

absence of the respondent's witnesses, and the inability of the claimant question them, the claimant was informed that the tribunal would attach such weight to these statements as was considered appropriate.

4. The tribunal was provided with a bundle comprising of 302 pages. Although the tribunal's attention was drawn to a substantial number of documents in the bundle some documents were not drawn to the tribunal's attention.
5. The determination of this issue has been challenging by reason of the absence of the respondent's witnesses, who provided witness statements, although much of the relevant discussions can be discerned from email correspondence within the bundle, although a lot of email correspondence appears to have been lost in the course of the company's liquidation. Further the claimant's statement does not fully address the contractual terms agreed between the parties with regard to remuneration.
6. Having heard the evidence of the claimant, and considered the written statements, and having looked at documents introduced into evidence, I find the following basic outline facts in relation to the period of the claimant's employment which is the subject of these proceedings:-
  - 6.1. On 8 June 2015 the claimant was employed by the respondent as a website developer. It is common ground between the parties that the claimant was engaged on a zero hours contract, and indeed his contract (bundle page 126) stated that his salary would be on the basis of £150 daily rate "*calculated against approved time recording.*" Although the contract references hours, it appears clear that the days worked at the rate of £150 per day "*will be agreed between you and the chief executive, who is also your line manager.*"
  - 6.2. I was informed that the claimant commenced working on the completion of a website that had previously been undertaken by another contractor. It appears that once this work was completed, the claimant was engaged primarily in setting up a database, as well as general maintenance of the website. The claimant confirmed that payments were predicated upon agreement of days to be worked, although he suggested this was often agreed retrospectively which was not advanced in the claimant's statement or in his claim form, and upon which I did not have the respondent's response.
  - 6.3. It appears that the claimant was paid for 17 days work in relation to these matters in September 2015, and a further 6 days on 8 December 2015, agreement having been reached with Mr Edwards the then chief executive.
  - 6.4. On 16 December 2015 Joanne Mitchell (Competitions Manager) who was reliant upon the new data base and website to undertake her work, emailed the claimant copying in Mr Edwards (bundle page 49) in which she indicated that the claimant appreciated the database was a major component of the website and at it was key to the respondent's

operations “*please can you provide Rod and myself with a full update of your work to date your intended plan for taking the project forward.*”

- 6.5. In response Mr Edwards emailed Miss Mitchell and the claimant (bundle page 51) he indicated to Miss Mitchell that he expected the claimant would continue on the project and bring it to completion and would be paid appropriately. He then addressed the claimant:-

“With your MoD commercial hat on, you will be appreciate [sic] that we can’t keep supporting a “time and materials” contract with no agreed timelines. Now that we have a clear agreed specification, we should be treating this more like a fixed-price contract with you as our prime contractor.....

I was disappointed to see Joe’s note. I had hoped that following the recent discussions we had a much clearer way ahead. Hopefully we can get this show back on the road again soon?...”

- 6.6. Following Mr Edwards email the claimant appears to have indicated that another 14.4 days was required to complete the database. This appears to have been fully understood by Mr Edwards who in an email to the claimant on 18 December 2015 (bundle page 57) noted:-

“I note your 14.4 days estimate, not including the requirements work.

Obviously I would like to keep you financially lubricated, whilst not being completely exposed on an uncapped unspecified T & M basis.

..... I’m suggesting we review progress on Thursday 14<sup>th</sup> by which time we should have a reasonable view-then agree a sum to be deposited into your bank account the following week.

Does this make sense?

Rod ”

- 6.7. The claimant in evidence referred to a document (bundle page 118), which he described as an updated specification for the database project, which was prepared in January 2016, and which under the heading “**Timing**” stated “*total hours estimated 100 .5 (14.4 days) without group work with Young Engineers staff to clarify detailed requirements, column headings in reports et cetera.*”
- 6.8. On 23 February 2016 Miss Mitchell emailed the claimant indicating the need to move the database on and bring it to operational status within the next week “*I’ve discussed this with Rod and we accept that this may take a further day or 2 of your time, please advise if this is not the case.*” It appears her clear that the job had not been completed and certainly not within the 14.4 days initially envisaged.
- 6.9. On 13 April 2006 Mr Edwards emailed to the claimant (bundle page 65) requesting an update “*as you will recall, the last time we reviewed progress you assured us that the project would be complete “the*

*following Wednesday”, i.e. in early March.”* Enquiring as to when he will be able to complete the handover of the project.

- 6.10. It appears that on 27 April 2016 the claimant had a meeting with Mr Edwards in which Mr Edwards expressed his dissatisfaction with the lack of progress, and it was agreed that no further payment would be made. The respondent contends that no more money was payable and that the work had to be completed as originally promised. The claimant contends that he was continuing to work and would be paid for the work undertaken on completion of the project. I address this dispute in my conclusions.
- 6.11. It appears that notwithstanding the lack of progress, and the apparent refusal to make any further payments, Mr Edwards on 8 July agreed to the claimant undertaking a further 10 days work on the project.
- 6.12. On 28 September 2016 Joanne Mitchell emailed the claimant regarding the database, expressing her frustration and disappointment at the lack of progress (bundle page 86) *“the project is now well over a year old and is 9 months beyond the completion date.”* She requested that the claimant contact Mr Edwards within the next 24 hours in order to resolve matters. On the same day the claimant emailed Mr Edwards (bundle page 88) expressing his frustration but noting *“it is worth mentioning that I’m not beholden to anyone regarding completing this work. I have been working on goodwill and on my side it’s running out.”* The claimant indicated that it had been difficult working with Miss Mitchell over the previous 6 months and understood this was a nasty situation for Mr Edwards. He concluded by indicating he was taking a couple days to think about matters and had an interview the following week.
- 6.13. Mr Edwards responded the same day by email to the claimant (bundle page 88) indicating that he had missed all his deadlines and that it was not surprising therefore that Miss Mitchell had reached the end of her tether, and concluded by raising concerns over his commitment. The following day Mr Edwards wrote a follow-up email to the claimant (bundle page 91) taking issue with the claimant’s comments, and concluded by stating:-
- “My suggestion is that you take days out you need next week, concentrate on your interview. Good luck with it. Return ready to pick this up on 7 October, concentrate, focus and crack on, then perhaps we can have project completed, pay you some extra, and move on with our lives!”
- 6.14. The evidence I heard in respect of events thereafter was quite unsatisfactory. Heather Williams took over as chief executive in November 2016. It appears that there were discussions between Mrs Williams and the claimant with regard to completion of the database, and following a deadline of 27 January 2017 being missed, she asked the claimant to stop working on the project on 1 February 2017 pending a further meeting. It appears that at a meeting on 10 February 2017, the claimant resigned forthwith, and presented Mrs Williams with his claim

to be paid 141.5 days in respect of alleged backpay. The claimant in evidence was asked as to explain the difference between this number of days, and the 158.5 days claimed within these proceedings. He indicated that the remaining hours were referable to additional work on web development and maintenance. It is proper to record that in a summary prepared by the claimant (bundle page 224) on 9 February 2017 under a heading summary of web development work he claimed 141.5 hours "*total of days spent working for Young Engineers.*" In another document prepared by the claimant (bundle page 155) it is a diary printout reciting weeks worked from 1 February 2016 to 6 February 2017 totalling 162.5 days.

### **Submissions**

7. Mr Bhatt on behalf of the respondent had prepared an opening note of the respondent's case in which he submitted that the claimant's contract was based upon a daily rate to be agreed between the claimant and the chief executive, and at there was no entitlement to be paid for days which were not authorised. He referred to the correspondence where Mr Edwards indicated that matters could not proceed upon a time and materials basis and that there needed to be some certainty as to the overall cost. He referred to the fact that agreement had been reached for a further 14.4 days which was subsequently paid to the claimant and subsequent agreement for a further 10 days that was also paid to the claimant. He submitted that in the light of the failure to complete work by a number of extended deadlines the claimant was informed that no further payments would be made, and certainly any further payments not be made until the project had been completed. He relied upon the fact that the claimant did not dispute that there was agreement reached on 27 April 2016 that no further payments would be made until completion of the project, and yet the claimant was still seeking to recover payments for days allegedly worked, irrespective of deadlines not being met. He relied upon the claimant's comments in his email of 28 September that he was working on goodwill as acknowledgement of this agreed state of affairs. He further relied upon the claimant's acknowledgement that payment was only payable for days agreed with the chief executive and that there was no evidence that there was a general agreement to carry on working irrespective of deadlines promised but not being reached.
8. Finally he reminded the tribunal that in the claimant's statement and claim form, the claimant concentrated on project database work, but that the claimant now sought to assert before the tribunal that his claim was in respect of website maintenance and other work as well. He invited the tribunal to conclude that the respondent's analysis (bundle page 162-163) is an authoritative breakdown of days agreed to be worked by the chief executive, and the days paid by the respondent which results in an entitlement to the claimant of £3,525.
9. Mr Scanlon responded to Mr Bhatt's opening note. The thrust of his case was that the work took longer than expected, and that therefore he was entitled to be compensated for the additional time he spent. He relied upon the fact that he was providing no more than estimates and not quotations. Of note in relation to the meeting on 27 April in his closing submissions he indicated

contrary to what had been said by him in evidence “*I do not remember agreeing specifically that I would not be paid for any subsequent work I agreed as per my agreement in January 2016 that payment of all work including that outside the project would be paid at the end of the project.*”

10. He submitted that there was no evidence to say that he would not be paid and no evidence of any change in the contract, this entitling him to the monies claimed.

**Conclusions**

11. I have highlighted at the outset the difficulties encountered in resolving the issues in this case. Central to this dispute is what took place at the meeting between the claimant and Mr Edwards on 27 April 2016. It is clear from the correspondence that I have been shown that Mr Edwards was becoming frustrated with the failure of the claimant to complete the project as promised within various timeframes. The preceding correspondence reveals that he was not prepared to give carte blanche to the claimant to expend as many days as he wished in completing the project. I note that the claimant had been paid for the agreed extension of days put forward by the claimant. It would, I judge have missed the point which Mr Edwards was seeking to avoid if, as contended by the claimant, he was allowed to expend as many further days as he wished on the project but that payment would simply be delayed until the end of the project. Mr Edwards I discern was prepared at the end of the project consider some payment to the claimant, how that was to be calculated is not at all clear, but was certainly not on the basis of a daily rate for future working days that Mr Edwards had not and was not intending to agree to.

12. On this disputed issue I prefer the case presented by the respondent. I also prefer the respondent’s assessment of sums due in contrast to the claimant’s bald recital of days worked, which is not supported by any corroborative evidence. I agree with Mr Bhatt’s observations that the claimant appears to have changed his case from a claim for monies expended in working on the database as recited in his claim form and statement, to a wider claim for other work as well.

13. For the above reasons I determine that the claimant is entitled unpaid wages in the sum of £3,525.00.

Employment Judge Kolanko

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Date 8 November 2017

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS