



EMPLOYMENT TRIBUNALS

Claimant: Mr B Kahts

Respondent: Magenta Service Management Solutions Limited

Heard at: Exeter

On: Wednesday 14 March
2018

Before: Employment Judge Matthews

Representation:

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT

1. The Claimant was dismissed by the Respondent by way of redundancy as defined in section 139 of the Employment Rights Act 1996.
2. The Claimant is entitled to a redundancy payment of £4,156.50 from the Respondent.
3. The Claimant's claim under section 23 of the Employment Rights Act 1996 that the Respondent has failed to pay wages due to the Claimant is well founded.
4. The Respondent is ordered to pay to the Claimant £11,000 in that respect.
5. The Claimant's claim under regulation 30(1) of the Working Time Regulations 1998 that the respondent has failed to pay the Claimant an amount due under regulation 14(2) of those regulations (holiday pay) is well founded.
6. The Respondent is ordered to pay to the Claimant £761.52 in that respect.
7. The Claimant's breach of contract claim under article 6 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (notice pay) succeeds.

8. The respondent is ordered to pay to the Claimant £5,076.96 in that respect.
9. The respondent is ordered to pay to the Claimant an amount equal to two weeks' pay under section 38 of the Employment Act 2002 as a consequence of the failure by the Respondent to comply with sections 1 and 4 of the Employment Rights Act 1996 prior to the commencement of these proceedings. The amount to be paid by the Respondent to the Claimant in this respect is £978.
10. Any amount which the Respondent lawfully deducts from the amounts specified in paragraphs 4 and 6 above by way of income tax, national insurance contributions or otherwise shall be treated to that extent as in payment of the orders in those paragraphs. In the absence of evidence to substantiate the lawfulness and amount of such a deduction, the gross amounts specified shall be due under this Judgment to the Claimant.
11. The total amount ordered to be paid, subject to deductions, is £21,972.98.

Schedule of calculations

Week's gross pay: £634.62

Month's gross pay: £2,750

Period of continuous employment commenced: 1 September 2009

Employment ended: 30 September 2017

Birthday: 4 January 1975

Applicable statutory cap on a week's pay: £489

Redundancy payment

7 (years' service) x £489 = £3,423

1 (years' service) x 1.5 (age multiplier) x £489 = £733.50

Total: £4,156.50

Wages

4 (months) x £2,750 = £11,000

Holiday pay

6 (days) x £126.92 = £761.52

Notice pay

8 (weeks) x £634.62 = £5,076.96

Section 38 award

2 (weeks) x £489 = £978

REASONS

INTRODUCTION

1. These written reasons are provided at the request of Mr Kahts.
2. By a claim form lodged with the Employment Tribunals on 19 October 2017 Mr Bruce Kahts made claims against the Respondent Company for wages, a redundancy payment, holiday pay and notice pay. The Company disputes some elements of the factual background.
3. No-one attended for the Company and it was not represented. The Notice of Hearing dated 16 December 2017 appears to have been properly served. Indeed, papers before me confirm that Mr Steve Benson, of the Company, knew of the Hearing. There was evidence of e-mail exchanges between the parties as late as the day before the Hearing (that is 13 March 2018). No indication of why there was no attendance by or representation of the Company had been received by the Tribunal. In the circumstances I decided to proceed with the Hearing.
4. I heard from Mr Kahts who produced a written statement and a bundle of documents of 74 pages. References in this Judgment to page numbers are to page numbers in that bundle unless otherwise specified.

FACTS

5. Mr Kahts worked for the Company as a Software Engineer. His period of continuous employment had started on 1 September 2009 with a company called Solutech.net Limited. On 6 December 2013 Mr Kahts' contract of employment was transferred to Vivantio Limited. There is a statement of the terms and conditions of employment and accompanying contract of employment at pages 56-73. Clause 21 of the contract of employment entitled Mr Kahts to a weeks' notice of termination of employment for each complete year of service up to a maximum of 12.

6. On 25 February 2017 Mr Kahts' contract of employment transferred from Vivantio Limited to the Company. The paperwork dealing with this is at 51-55. The Company had not complied with the requirement under section 4 of the Employment Rights Act 1996 to notify Mr Kahts of this change prior to the commencement of these proceedings.
7. Mr Kahts was paid his salary by the Company for the months of March, April and May. Thereafter Mr Kahts received no pay from the Company. On 29 August 2017 Mr Kahts wrote to Mr Steve Benson of the Company about this (40).
8. Mr Benson replied on 29 August 2017 (37-38). Mr Benson explained that the Company was short of funds and offered Mr Kahts some options. None of these appealed to Mr Kahts.
9. On or around 12 September 2017 Mr Benson sent Mr Kahts a "Separation Agreement" (29-36). The agreement recognised Mr Kahts' continued service since 1 September 2009. It proposed a termination date for Mr Kahts' employment of 12 September 2017 by reason of redundancy.
10. Although Mr Benson had signed the "Separation Agreement" Mr Kahts did not as its' terms were not acceptable to him.
11. Instead Mr Kahts contacted ACAS. The Acas officer spoke to both sides and sent out a draft COT3 (23-24). The essential terms were that Mr Kahts would receive 4 months pay for June, July, August and September, 8 weeks' notice pay, holiday pay accrued until the end of September and a redundancy payment. Although not specified, the implied end date for Mr Kahts' employment was 30 September 2017.
12. The COT3 was not accepted by the Company and Mr Kahts subsequently commenced these proceedings.
13. I can see from the papers before me that the Company's position is that there were some verbal agreements between the parties that might bear on these findings of fact. Not only are they not supported by the evidence before me, but none, as far as I can see, alter the essential factual framework.

APPLICABLE LAW

14. This is to be found in the statutory provisions referred to in the Judgment.

CONCLUSIONS

15. I am faced with two possibilities. One is that Mr Kahts remains an employee of the Company to this day. The other is that the employment relationship has ended.
16. In my view the employment relationship has ended as a matter of fact. The Company proposed this should happen on 12 September 2017, but Mr Kahts rejected that. Although the subsequent draft COT3 was not signed on behalf of the Company, it reflected Mr Kahts' intention that his last day of employment should be 30 September 2017. At the latest, the employment relationship ended on 30 September 2017.
17. The reason for the ending of the employment relationship was the Company's intention to make Mr Kahts redundant. By reference to section 139(1)(b)(i) of the Employment Relations Act 1996, the papers clearly demonstrate that the Company's requirements for Mr Kahts to carry out work of the particular kind he was doing had diminished, if not ceased.
18. Mr Kahts is, therefore, entitled to a redundancy payment calculated as shown in the Schedule of Calculations.
19. Mr Kahts is owed wages, again calculated as shown in the Schedule of Calculations.
20. As far as holiday pay is concerned, Mr Kahts was entitled to 19.5 days holiday in the period in question. Mr Kahts took 14 days of these and is now entitled to 6 days holiday pay as shown in the Schedule of Calculations.
21. Mr Kahts is also entitled to notice pay calculated in accordance with the Schedule of Calculations.
22. I award two weeks' pay in respect of the Company's failure to notify Mr Kahts of the change of employer consequent on the transfer of his contract of employment on 25 February 2017.

Employment Judge Matthews

Date: 22 March 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE