



# THE EMPLOYMENT TRIBUNALS

**BETWEEN**

**Mr Seungbeom Roh**

*Claimant*

**AND**

**Grandline Studio Ltd**

*Respondent*

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** London Central

**ON:** 24 September 2018

**EMPLOYMENT JUDGE:** Mr Paul Stewart

**MEMBERS:**

### *Appearances:*

**For Claimant:** Mr R Roberts of Counsel

**For Respondent:** Mr Niazi, Director and Manager

## JUDGMENT

It is hereby ordered that the Respondent do pay to the Claimant:

- a. within 14 days the sum of £6,600 representing the interim figure for the net pay that the Respondent owes the Claimant for the months of January to March 2018, a total of three months for which the gross pay at £35,000 per annum is £8,750, the Respondent being entitled to be given credit for £2,107 paid to Smith Stone Walters, UK Immigration Practice, upon providing to the Claimant's solicitors proof that such sum was paid to that firm in satisfaction of its quotation number 2659 and dated 26 April 2017; and
- b. within 28 days the balance that is due on the proper net figure for those three months (i.e. gross pay less income tax and national insurance) as certified in writing by the Respondent's accountants, Metric Accountants Ltd of 32 Tavistock Street, Covent Garden, London WC2E 7PB.

## REASONS

1. The Claimant was not paid for the months of January to March 2018.
2. The contract of employment provided for a salary of £35,000 per annum payable monthly in arrears.
3. Pay slips for the months had been produced but no money had been paid in respect of those months. The gross figure that appeared on the pay slips varied and was in all cases lower than the sum of £2,916.67 being the annual salary divided by 12. The discrepancy was claimed by Mr Niazi, a director of the company, to be caused by the application of a company policy spelling out that the claimant was only paid on the days and hours actually worked. However, that policy was not explicitly referred to in the contract of employment and, in any event, had been not been disclosed in accordance with the direction of Employment Judge Elliot sent to the parties on 6 September 2018. Neither had a copy of the policy been brought to the hearing.
4. For the month of March, Mr Niazi argued that, on 2 March 2018, the Claimant had given notice of termination as at 16 March 2018. However, on the pleadings, the Respondent had accepted that the dates of the employment as given by the Claimant in his ET1 were correct and the date upon which the Claimant had indicated that the employment ended. This was backed up by the letter which the Claimant's solicitors sent to the Respondent on 12 March 2018 in which they said:

*First, we would like to confirm that you and our client agreed to terminate the employment agreement by the end of March 2018.*
5. In response, the Respondent's solicitor replied on 20 March 2018 indicating that the Claimant's resignation – that sent at 2357 hours on Friday 2 March 2018 and asserted not to have been received until Monday 5 March 2018 – “is not accepted in its current format.” This refusal to accept the Claimant's resignation appears to me to confound the point advanced by Mr Niazi – that the Claimant had given notice of termination as at 16 March 2018. The letter goes on to argue that the Claimant was required to give 3 months' notice, an assertion based on the proposition that a Schedule entitled Restrictive Covenants apparently appended to the Contract of Employment asserted that for a “key employee” – one who had “senior managerial, executive or senior technical status within the company” – was required to give three months' notice. Nothing turns on this argument, one advanced by Mr Niazi at the hearing, because there is no counter-claim. I take the view that the acceptance by the Respondent in its ET3 that the Claimant's last day of employment was 31 March 2018 can be relied upon.
6. It was also argued by Mr Niazi that the Claimant was entitled to less than a full month's salary for March 2018 because he had fallen sick on 6 March 2018 and did not return to work for the remainder of his employment. There was a policy relating to sickness, argued Mr Niazi, that precluded the Claimant being

paid sick pay. That policy, like that relating to the policy specifying that the Claimant should only be paid for the hours he worked, as opposed to a monthly salary, was to be found in the Respondent's office. It had neither been disclosed nor brought to the Tribunal hearing. In the circumstances, I was not prepared to accept Mr Niazi's broad assertion that this unexamined policy, one referred to in the contract of employment, was worded in such a manner as to deny the Claimant full pay for the first several weeks of a period of sickness and half pay for the next several weeks of such a period, those being the type of provision ordinarily to be found in the terms relating to sick pay in contracts of employment.

7. In the absence of the Respondent's sickness policy and bearing in mind the directions given by Employment Judge Elliot on 6 September 2018, I infer that the sickness policy most likely contained such provisions as I have described with the period of full pay over the initial period of absence through sickness being for at least a period of four weeks.
8. The Claimant accepted that the contract provided for him to repay "any and all fees associated to Visa sponsorship and other related costs paid by" the Respondent in the event that he left the company, as he did, before his two year Tier 2 Visa expired. The Respondent had been invoiced by Smith Stone Walters, UK Immigration Practice, for the sum of £2,107 plus VAT. Mr Roberts for the Claimant accepted that such sum was to be credited to the Respondent provided the Respondent showed that such sum was indeed paid as the invoice suggested.
9. This point caused me to specify that the Respondent should receive credit in discharging my order for the salary to be paid to the Claimant provided it provided proof that it had paid £2,107 plus VAT to Smith Stone Walters.
10. The final issue was that, of course, the Claimant was only claiming his net wages. Mr Niazi accepted that Metric Accountants Ltd of 32 Tavistock Street, Covent Garden, London WC2E 7PB handled the Respondent's payroll. I therefore provided that the net salary for the three months for which the Claimant had not been paid should now be paid in two stages, first an interim amount of £6,600 (credit to be given for £2,017) to be paid within 14 days and the final amount to be paid with a further 14 days in line with such amount as Metric Accountants Ltd certified would be in line with a gross figure of £8,750 for the three months' work reduced by the correct incidence of income tax and national insurance contribution.

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**EMPLOYMENT JUDGE STEWART**  
**On: 24 September 2018**

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**DECISION SENT TO THE PARTIES ON**

3 October 2018

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**FOR SECRETARY OF THE TRIBUNALS**