



EMPLOYMENT TRIBUNALS

Claimant: Miss M. Stancheva

Respondents: Vectone Mobile Holding Limited

Heard at: London Central
Before: Employment Judge Goodman

On: 16 March 2018

Representation

Claimant: in person

Respondent: Mr. W. Brown, solicitor

RESERVED JUDGMENT

The respondent made unlawful deductions from pay and is ordered to pay the claimant's wages in the sum of £923.

REASONS

1. This is a claim for notice pay. The claimant was offered and accepted employment, but the start date was put off until the respondent said the project for which she was hired was not to start.
2. The Tribunal heard evidence from the Claimant, **Mariya Stancheva**, and the Respondent's head of HR, **Greta Guleria**, whose evidence on the negotiations was hearsay, but could give information about the company's business generally. The Respondent did not call their recruitment manager, Neha Patel, who conducted discussions with the Claimant, and there was no witness statement. She was said to be on leave. The emails between the parties were available to the Tribunal.

Findings of Fact

3. The respondent employs around 120 staff and supplies mobile telephone network in a number of countries, by arrangement with MVNO (mobile virtual network) companies in the local country.
4. They planned such an arrangement in Bulgaria. They have technical expertise in house, but required a Bulgarian speaker (as the claimant is) to engage in digital marketing of the service.
5. The claimant worked in digital communications marketing for another telecoms

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company. She was cold called about the project on 15 August 2017 by the respondent's recruitment manager, Neha Patel, who arranged that they meet for interview on 18 August. The Monday after, 21 August, Ms Patel telephoned to say she had the job and asked her to start the following week, on 28 August. The claimant said she had to give notice to her current employer, and it was agreed she would instead start on 4 September.

6. On 23 August Ms Patel emailed offering her the post of digital marketing executive at a salary of £25,000 per annum paid monthly in arrears, to start 4 September 2017. She was asked bring her passport, address proof, NI number, P45, bank details and 2 passport photos and to report a member at reception where a member of the HR team "will then complete the formalities related to contract etc". The subject heading of the email is "Offer- Subject to Contract".
7. The claimant replied the same day asking for confirmation of working hours, annual leave and any staff benefits, and that it was a "permanent full-time role". She confirmed the 4 September start date. Ms Patel replied next morning that it was permanent and full time, Monday to Friday 8.30 to 6.30 with 20 days holiday plus the 8 bank holidays. She was to report for work at 8.30 on 4 September, and Ms Patel would meet her. The claimant replied accepting the post, and gave notice to her current employer.
8. On Friday 1 September Ms Patel emailed about the start date, saying, "as we have the team starting next week" she wanted to start the Monday after, that is, 11 September. The claimant replied volunteering to come in on 4 September to deal with the paperwork, and on request sent her full name and address.
9. On 11 September the claimant attended the respondent's premises with her documents as requested and filled in some forms and gave details of her next of kin. She was told work would start later in the week.
10. By Friday 15 September there had been no news from Ms Patel about her start date, so she emailed saying: "as today is Friday and still have no news regarding the start date and contract I am writing this email. Could you let me know when the start date would be, as it wasn't this week as expected and agreed". Getting no reply, the claimant then telephoned twice, but each time she gave her name the line went dead, so she went to the office, and there was told she would start the following Wednesday, 20 September. When she attended on 20 September she was told Ms Patel was not there. She then telephoned her and was told she would start on Monday 25 September.
11. On the morning of Friday 22 September the claimant asked for confirmation she would start on Monday. Late (17.52) on Friday 22 September the claimant received an email from Ms. Patel saying: "I am really sorry to inform you that unfortunately the project has been delayed further more and I really don't want to keep you waiting as I am not sure of the date of commencement again".
12. The claimant wrote on 2 October after speaking to ACAS. She expressed her disappointment that on the strength of the offer and acceptance she had given notice and now lost 4 weeks salary. She understood she should have been given notice by the respondent and asked for payment.
13. The respondent did not reply, and she presented a claim to the Tribunal on 1 December 2018.
14. The respondent replied to the claim. There is no dispute of the facts. The principal argument is that there was no contract of employment. It is also argued that the respondent is not privy to the terms of the claimant's previous contract of employment or what she may have lost. Further, if there was a contract, the draft

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contract she would have been asked to sign provided for a probationary period of three months, and that either side could terminate without notice in the first month. Therefore the value of any claim is nil, as the contract could be ended without notice. At the start of the hearing the respondent produced a standard form contract, which the claimant had not until then seen, which includes these terms. It is said that all staff are employed on edited versions of this contract.

15. I asked the respondent whether, if it was held that the contract began, say, when the claimant attended on 11 September, or on 20 September when she was later told work would start, she was in effect suspended from work on either date. The Respondent argues that to be told not to start that day but on another day is not a suspension.
16. The Respondent agreed that a contract of employment does not require written formalities to be effective or enforceable.

Unfair Dismissal – relevant law and discussion

17. The claimant ticked the box on the claim form for unfair dismissal, but as she lacks the two year qualifying service required to bring such a claim, and in the absence of any suggestion that she was dismissed for any reason conferring day one rights, that claim is dismissed for want of jurisdiction.

Breach of Contract - Relevant Law

18. At common law an effective contract requires an offer, acceptance of that offer, consideration, and an intention to enter into legal relations. There is no doubt that there was an offer, an acceptance, and an intention to enter into legal relations as employer and employee. All essential terms were agreed, including when it was to start. This was varied before the agreed start date, by being put off to 11 September.
19. Did the claimant give consideration? To the respondent's knowledge she gave up her existing job to take up the respondent's offer. More, she attended the premises in good faith on 11 September expecting to start, and instead was sent away.
20. The respondent argues that until a written contract was signed the offer was "subject to contract", so not a contract at all. This may be the case for a contract for real property, where a letter may say this to avoid it being taken as written evidence of the contract, but such formality is not required for a contract of employment, which is valid without any documentation at all. Nothing in the email exchanges indicates any uncertainty about the offer of employment or its terms. It is true that nothing was said about notice, but that is so common that statute requires minimum periods of notice to be implied where the contract is silent. A failure to comply with the requirement to provide statutory particulars required by section 1 of the Employment Rights Act does not affect whether there is a contract.
21. In the finding of the Tribunal, there was a contract, which began when the claimant attended work as agreed on 11 September and completed formalities, though not shown a written contract. Nothing would suggest this meant there was no contract of employment, as it is common in employment not to provide a written contract, or to sign one later. She was then told to start a few days later as the team was not yet ready. She held herself ready, and continued to do so until the respondent made the position clear on 22 September. In so doing she gave consideration. She was suspended from work, though those words were not used. Unless provided in a contract or because of suspected illegality (e.g. lack

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of proof of the right to work in this country rendering an employer liable to criminal penalty if he pays) a suspended employee must be paid.

22. The respondent could have told the claimant there was no work and that the contract was at an end on 11 September, or at any date before 22 September, but did not do so. She would then have had to look for other work. Had they done so, there was no requirement to give notice, as in the absence of an agreed term as to notice she was only entitled to minimum notice under section 86 once employed for one month or more.
23. On the facts the claimant was employed under a contract of service between 11 and 22 September, and is entitled to 2 weeks' pay at £24,000 per annum, so £923.07 before tax. In the absence of information about previous or subsequent earnings in the relevant tax year I make no reduction for tax. The award is liable to tax in her hands.

Employment Judge Goodman on 19 March 2018