



EMPLOYMENT TRIBUNALS

Claimant: Mr Philip Best

Respondent: Mr Daniel Russell

Heard at: Reading **On: 3 January 2019**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In Person

For the Respondent: No response entered and not attending

JUDGMENT

1. The respondent made an unlawful deduction from the claimant's wages in the sum of £1820.
2. The respondent is ordered to pay to the claimant the sum of £1400 pursuant to section 38 of the Employment Act 2002.
3. The claimant's claim for damages for breach of contract (notice pay) succeeds. The respondent is ordered to pay to the claimant £700 (2 weeks @ £350per week).

REASONS

1. On the 21 March 2018 the claimant presented a complaint against the respondent. The respondent has not filed a response to the claim.
2. In about 2014 the claimant was employed by the respondent who at the time was trading as Russell and Company Limited. The claimant was employed a bricklayer and labourer.
3. The claimant was not provided with a written contract of employment. Section 1 of the Employment Rights Act 1996 provides that: "(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment. (2) The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment." When the claimant's employment came to an end in December 2017 the claimant had not been provided with a written statement of particulars.

4. Section 38 of the Employment Act 2002 provides that in a claim before the Tribunal, including a claim for unpaid wages as in this case, the employment tribunal makes an award to the employee and when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996, the tribunal must, unless there are exceptional circumstances which would make an award or increase unjust or inequitable, increase the award by the minimum two weeks pay and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks pay instead.
5. The claimant was employed on terms whereby he was paid £70 per day. His normal working week was five days a week. The claimant's weekly pay was therefore £300 per week.
6. In about July 2017 the respondent ceased to trade as Russell and Company Limited. The claimant continued working for the respondent as a bricklayer and labourer. In the period from about October 2017 the claimant was told that the respondent was having difficulty getting payment from a client and the claimant was not paid for work that he did.
7. The claimant was not paid for working on 26 days. The claimant is therefore owed £1820 in unpaid wages.
8. In December 2017 the claimant was informed by the respondent that the site where they had been working had been cleared. The claimant states that: "In December I then received a message from Dan saying that the site had been cleared which then left me knowing that there was no more work at that time and I was not going to be paid."
9. I note that that section 95 (1) of the Employment Rights Act 1996 provides as follows: "For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if) (a)the contract under which he is employed is terminated by the employer (whether with or without notice), (b)he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or (c)the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct." I am satisfied that the conduct of the respondent in December 2017 (including not paying the claimant) was to terminate the contract on which the claimant was employed and in the circumstances the claimant dismissed.
10. The claimant has not made a complaint of unfair dismissal.
11. The claimant in his claim form refers to a redundancy payment. This is not a case where redundancy applies. In making this claim I do not consider that the claimant was just making a technical reference redundancy (as defined in section 139 of the Employment Rights act 1996) but also was

- including a claim for a payment to be made to him on the ending of his employment.
12. I have therefore treated the claimant's complaint as though it included a claim for notice pay and have amended the claimant's claim form accordingly.
 13. Section 86 of the Employment Rights Act 1996 provides: "(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more (a) is not less than one week's notice if his period of continuous employment is less than two years, (b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more. (2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week."
 14. The claimant told me that his employment commenced in 2014 and I note that in the is claim form he gave a start of employment date of 20 May 2015 in his claim form. I have treated his employment as having commenced on the 20 May 2015 and ended on 1 December 2017. The claimant has therefore been continuously employed by the respondent for two years and is therefore entitled to two-week s notice.
 15. In the circumstances I therefore conclude:
 - a. The respondent made an unlawful deduction from the claimant's wages and is ordered to pay to the claimant the sum of £1820.
 - b. The respondent is ordered to pay to the claimant the sum of £1400 pursuant to section 38 of the Employment Act 2002.
 - c. The claimant's claim for damages for breach of contract (notice pay) succeeds. The respondent is ordered to pay to the claimant £700(2 weeks @ £350per week).
 16. The respondent is therefore required to pay to the respondent the total sum of £3920.

Employment Judge Gumbiti-Zimuto

Date: 3 January 2019

Sent to the parties on: 21 January 2019

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For the Tribunals Office