



EMPLOYMENT TRIBUNALS

Claimant: Mr J Couch

Respondent: Terence Stone (Developments) Limited (1)
Terence Stone (Construction) Limited (2)

Heard at: Exeter **On:** 18 January 2019

Before: Employment Judge Maxwell

Representation

Claimant: in person accompanied Ms Hogarth-Williams (sister)

Respondent: no appearance

JUDGMENT

1. The claimant's claim against the first respondent is dismissed.
2. The claimant's claim against the second respondent is well-founded and succeeds:
 - 2.1. he is entitled to £2,000 for unlawful deductions;
 - 2.2. he is entitled to £4,000 for breach of contract;
 - 2.3. the total sum due is, therefore, £6,000.

REASONS

Claim

3. On 14 October 2018, the claimant presented a claim to the Tribunal seeking 2 months' unpaid wages. He gave his dates of employment as "01/09/1918" to "31/10/1918". From the claim form narrative, it appeared these dates were typographical errors and ought to have been 1 September 2018 to 31 October 2018; in evidence the claimant confirmed he had intended to put the year as 2018.
4. The facts alleged by the claimant in his claim form were that his employment contract due to begin on 1 September 2018 was not honoured, and instead he was told: on 30 August 2018 the start of his employment would be delayed by 1 week; on 5 September the start of his employment would be delayed by a further week; on 13 September his employment would start on 15 September; on 2 October his employment would start on an unspecified date in the future.
5. I construed the claimant's claim as:
 - 5.1. unlawful deductions for the period to 2 October 2018;
 - 5.2. breach of contract with respect to notice pay.

Procedural History

6. On 6 December 2018, a copy of the claim was re-sent to two named respondents, Terrence Stone (Developments) Limited and Terrence Stone (Construction) Limited, both at Michael House, Castle Street, Exeter, EX4 3LQ.
7. No response having been received, notice was sent to the respondents on 9 January 2019, advising that they would only be entitled to participate in the proceedings to the extent permitted by the Employment Judge hearing the claimant's claim.
8. An email was received by the Tribunal on 14 January 2019 as follows:

I am a director of Terence Stone Construction Ltd.

I met Jeff Couch last year when he was recommended for a job at Bridgewater which would be coming forward subject to planning permission.

Mr Couch was living in ibiza but was returning to the U.K. & was visiting family in Taunton.

Having met my partners in Cheltenham in the Summer we considered Mr Couch for a 12 week trial at our site at Stonehouse Gloucestershire (which we actually started January 7th this year).

Mr Couch needed help with a Bank Credit Card & called From the Nat West demanding confirmation of employment yet asking for it not to be mentioned it was only a trial job.

I explained that Stanley Mill Stroud Ltd would not do that.

I spoke with Mrs Ann Stone who is secretary of TSC Ltd & asked if she would assist which she reluctantly did.

This is the only contact TSC Ltd has ever had with Mr Couch who is aware he has never been offered a job with that company as the company has not traded for 12 years.

Mr Terence Stone is 90 & Mrs Stone is 76.

For some reason which I do not understand & mistakenly the correspondence has been sent to the company office in Exeter.

All matters regarding Mr Couch should have been sent to me at the above email address which Mr Couch has.

There is no point in a hearing taking place on 18/01/2019 as the company has no contract with Mr Couch but if you wish to do so please send me the full information as director of Stanley Mill Stroud Ltd & I will be happy to deal with this.

Kind Regards

Nicholas Sinclair

9. The email from Mr Sinclair does not say that the claimant's claim form was not received at the respondent's registered office, nor provide any reason why a response was not presented. Beyond asserting there is "no point" in the hearing taking place today because "the company has no contract with Mr Couch", no adjournment is requested. Nor, for the avoidance of doubt is any sufficient basis for an adjournment or a reconsideration of the limitation on the respondent's participation advanced.

Evidence

10. The claimant gave oral evidence and provided a bundle of documents, the larger part of which comprised text messages he exchanged with Mr Sinclair.

Facts

11. The claimant met with Mr Sinclair on 15 February 2018. They had been put in touch with each other by a mutual acquaintance. The claimant flew over from Ibiza (where he was living at the time) and they met at a hotel in Cheltenham. The claimant showed Mr Sinclair a portfolio of his work. Mr Sinclair explained the project proposed, namely the renovation of an old mill. Mr Sinclair agreed that his company would employ the claimant from 1 September 2018 at the rate of £4,000 pcm net (i.e. the claimant would be paid a sum that would leave him with £4,000 pcm after deduction of PAYE and NI). The contract was oral, nothing was put in writing at that time.
12. The claimant set about moving back to the UK and he understood that Mr Sinclair would be making progress with the project in other respects; namely, financial, contractual and legal matters.

13. Between March and June 2018, the claimant and Mr Sinclair exchanged text messages by way of brief updates.
14. On 31 July 2018, a lengthy site meeting took place, attended by the claimant, Mr Sinclair and the latter's daughter.
15. On 16 August 2018, a further meeting took place, this time with the claimant, Mr Sinclair and others ("Pak" and "Neil") who the claimant understood to be directors of the Company. Detailed project documentation was given to the claimant and he began to familiarise himself with that.
16. Unfortunately, matters did not proceed as expected. On 30 August 2018, Mr Sinclair sent a text message saying:

[...] please postpone by one week the one person who has to sign off is on holiday until Monday [...]

17. The claimant replied:

So will my contract with you still start at the beginning of September - sure we can use the week to go over the plans [...]

18. Mr Sinclair responded

Sorry Jeff it wouldn't be the right thing to do leave it the week please

19. On 5 September 2018, Mr Sinclair sent a text saying they would need to:

[...] start the following Monday. Sorry mate pain in the Ass!

20. On 13 and 14 September 2018, the claimant and Mr Sinclair spoke on the telephone and also engaged in an exchange of lengthy text messages. The claimant and Mr Sinclair disagreed about various matters, including: whether the "job" had been subject to "approval of Neil and Pak"; whether the claimant had returned to the UK for this particular job or so that he might look for a job; and what had been agreed about travel or accommodation expenses.

21. On 15 September 2018, the claimant and Mr Sinclair reached an agreement:

[C] Ok so to be clear - the start date is this Monday 17th of September - 4000 net pcm and 1000 travel costs for 3 months?

**[NS] The start is Monday 17th but you won't be there.
Probably for two weeks but maybe one if we're lucky.
£4000 per month
NO travel costs until you have a contract.**

22. I construe the exchange between the parties culminating on 15 September as varying the agreement they had reached in February and providing:

- 22.1. the claimant's employment would start on 17 September 2018, although he would not be required on the site at that time;
- 22.2. he would be paid £4,000 net per month;
- 22.3. he would not receive travel costs until a written contract was prepared and work began on site.
23. Towards the end of September 2018, the claimant was endeavouring to set up a UK bank account and obtain a credit card. He needed a letter from his employer for this purpose and asked Mr Sinclair to provide that.
24. The respondent wrote to the claimant a letter of 27 September 2018. The letter is on headed notepaper. The company name is given as "Terence Stone (Construction) Limited. The registered office is give as "Michael House, Castle Street, Exeter". The letter provided:

For the Attention of HSBC

Dear Sirs,

We would confirm that Mr. Jeff Couch commenced work with Terence Stone Construction Limited on 15th September, 2018 as site manager.

His salary is £5,000 per month net.

Yours sincerely

E.A. Stone

Company Secretary

25. Notwithstanding the claimant provided his bank details to the respondent, he was not paid anything for the month of September 2018.
26. During a phone call on 2 October 2018, Mr Sinclair told the claimant he would not be paid anything until work actually started. The claimant took from this that Mr Sinclair did not intend to abide by the contract between them and he was terminating that.
27. During the hearing today, the claimant suggested that he now believed the contract between himself and the second respondent was continuing still. When asked to explain why he had given an end date for his employment in the ET1 and claimed only 2 months wages, he said the claim form: contained "dry" questions; had "limited" the information he could provide; and caused him to make a mistake. Whilst I had generally found the claimant's evidence to be straight-forward and satisfactory, I rejected this latter aspect as being unreliable and self-serving.

Conclusion

Correct Respondent

28. The claimant was employed by the second respondent. I am satisfied by the claimant's evidence in this regard, which is supported by the letter on the second respondent's headed notepaper of 27 September 2018.
29. Although it had originally been agreed the claimant would start employment on 1 September 2018, by mutual agreement this was varied to 17 September 2018.
30. Mr Sinclair's 2 October 2018 comments by telephone plainly communicated that he, on behalf of the second respondent, did not intend to be bound by the contract. I find the claimant accepted that repudiatory breach as terminating the contract, in particular because: (i) this is supported by the information he put in the form ET1; (ii) because he did not attempt any further performance; (iii) because he did not correspond with the respondent inviting further performance or querying the lack of performance.
31. Whilst there was no express agreement as to the claimant's notice period, there was an implied term he would receive reasonable notice. Given the seniority of his position and the fact that most of the discussion regarding pay was based on monthly figures, I am satisfied that one month's notice was the reasonable period he was entitled to.

Unlawful Deductions

32. The claimant was paid nothing for the period 17 September to 2 October 2018, and in this received less than was properly payable within section 13 of the Employment Rights Act 1996, whereas he should have received £2,000 and his claim succeeds to that extent.

Breach of Contract

33. The claimant was dismissed, in breach of contract, without the notice period to which he was entitled. The damages flowing from this are one month's pay in the sum of £4,000.

Grossing Up

34. The claimant had agreed with the respondent to receive net sums and so the effects of tax and NI on this award in the claimant's hands must be considered.
35. The claimant confirmed that he has received no earned income since returning to the UK and does not anticipate earning anything before the end of the tax year. An award of £6,000 will, therefore, fall within the claimant's personal allowance and the need for grossing-up does not arise.

Employment Judge Maxwell

Date: 18 January 2019