EMPLOYMENT TRIBUNALS

Claimant: Mr David Gratton

Respondent: Colman Greaves Fabrications Limited

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rules 37 and 21

The respondent having stated in its response that it agrees that some of the sums in the claimant's claims have not been paid,

And the respondent not having responded to the Tribunal's request on 19 November 2018 to provide full particulars of the grounds upon which it claims to be entitled to withhold the sums which it accepts are otherwise due to the claimant,

And the respondent having failed to reply by 19 March 2019 to the Tribunal's proposal dated 11 March 2019 to strike out the response

it is the judgment of the Tribunal that:

1. The name of the respondent be amended to Colman Greaves Fabrications Limited . The response is struck out pursuant to rule 37(1)(a) on the grounds that it has no reasonable prospect of success, and rule 37(1)(d) that it has not been actively pursued.

2. The claimant's complaint of unauthorised deductions from wages is well-founded and the respondent shall pay to the claimant the total sum of **£884.00**, in respect of 38 hours work at £14 p/h and 12 hours work done at £21 p/h, plus 4 subsistence payments of £25. This is a gross amount and the respondent shall be responsible for any income tax and employee's national insurance relating to it.

3. The claimant was dismissed without notice, and is entitled to one week's notice pay, as damages for breach of contract.

38 hours x £14 p/h **£532.00**

This is a gross sum, and the respondent should deduct and account for tax and national insurance (if any) due upon it.

4. The claimant's complaint of failure to pay to the claimant an amount due to the claimant under regulation 14 (2) or regulation 16 (1) of the Working Time Regulations 1998 is agreed to the extent of 1.8 days, respondent shall pay to the claimant the sum of **£191.52** in respect of the admitted accrued holiday (holiday pay) . This is a gross sum, and the respondent should deduct and account for tax and national insurance (if any) due upon it.

5. The respondent's contention that it is entitled to withhold sums due to the claimant has no reasonable prospects of success, and as no counterclaim is made , there is no reason why judgment in the claimant's favour should not be given.

6. In the event that the claimant wishes to pursue his claims for the unadmitted parts of his claims, he is to notify the Tribunal within 14 days, stating what the balance of the sums claimed is, and how the same is calculated.

REASONS

1. By a claim form presented on 13 July 2018 the claimant claimed unfair dismissal, arrears of pay, notice pay and holiday pay. His unfair dismissal claim was struck out on 17 August 2018 (sent to the parties on 21 August 2018) as he lacks the requisite two years service. The respondent was named as Colman Greaves Fabrications, and the address given on the claim form was Miles Street in Oldham, where the papers were sent.

2. No response was received within the prescribed time limit, and the claimant was invited to provide details for a rule 21 judgment, which he did by letter of 19 September 2018. A hearing was listed for 1 October 2018.

3. It was noticed, however, that there was a limited company , with a different registered office , which probably was the employer of the claimant. The claim was thus re-served on that company and at its registered office. The hearing was therefore postponed,

4. Once re-served, a response was received from the respondent, within the time limit set by the Tribunal. In that response, the respondent (who had seen the breakdown of sums claimed provided by the claimant) in box 6.1, whilst stating that it intended to defend the claims, then went on to set out what sums it did not dispute. This was not every amount claimed by the claimant, but it did not dispute that he was owed arrears of pay, notice pay, and some holiday pay, in total some £1607.52.

5. The respondent continued , however, on this page of the ET3 document , saying this:

"Colman Greaves deductible. On the final day of employment, and in subsequent email and postal communications with Mr Gratton, he was advised that his final payments would be held back until all company property was returned to site, as is the company policy. To date Mr Gratton has not complied with this, therefore we rightly request that the following deductions be made from his claim and final payment:-"

6. The form, however, ends there, although it seems possible that further text was meant to be inserted in the box provided. Accordingly, the Tribunal wrote to the respondent on 19 November 2018, pointing out that there was missing text, and asking for the full contents to be sent to the Tribunal.

7. No reply to that email has ever been received. A further hearing was listed for 6 March 2019.

8. On 1 February 2019 the claimant alerted the Tribunal to a winding up petition that was to be heard in the Birmingham Court on 11 February 2019, and asking if his hearing could be brought forward.

9. As there appeared to be a potential compulsory liquidation, the Tribunal by letter of 14 February 2019 postponed the hearing of 6 March 2019. The claimant objected to this by email of 14 February 2019.

10. Enquiries of Companies House revealed that no winding up order was made at the hearing in Birmingham on 11 February 2019. That, however, was as of 26 February 2019 , the records had not been updated to show that the respondent was in compulsory liquidation. The Tribunal accordingly directed that the position be reviewed on 8 March 2019, and if no order had been made, the claims could be re-listed.

11. No winding up order has been made, so the respondent is not currently in compulsory liquidation. The claimant understandably wanted the hearing of 6 March 2019 to go ahead. Employment Judge Holmes reviewed the file and made more enquiries as to the status of the respondent. It is not in compulsory liquidation, the hearing of the petition to wind it up being adjourned. A new hearing date of 25 March 2019 has been listed for the hearing of the petition. There is thus no current reason why the claims cannot proceed.

12. The Employment Judge reviewed the file, and the response. The respondent does not dispute much of what the claimant is claiming, though it calculates his entitlements to be less than in his calculations. Leaving aside pension contributions, which either have or have not been paid to NEST, many elements of the claimant's claims are not disputed, the respondent apparently relying upon, as justification for not paying what is admitted to be due, the claimant's alleged failure to return company property upon termination of his employment.

13. Unfortunately, whilst it appears that the response was intended to itemise this property, and its alleged values, the respondent did not successfully do so. The Tribunal pointed this out to the respondent in an email of 19 November 2018 , but the respondent has failed to provide this information. It seems highly likely, in any event, that there would still be a balance due to the claimant.

14. The Employment Judge considered the merits of this potential defence. It appeared that the respondent is seeking to claim that it was entitled to withhold payments from the claimant's final pay because it had a set off for the property he allegedly failed to return. For that defence to succeed, the respondent would have to show (s.13(1)(a) of the Employment Rights Act 1996) that some relevant provision of the claimant's contract authorised such a deduction to be made, or (s.13(1)(b) of the Act) that the claimant had previously signified in writing his agreement to the making of the deductions.

15. It seems to him that unless the respondent can show any such term, or written authorisation, it has no reasonable prospects of responding to the claims, save as to any disputed sums by way of calculation. Further, in failing to answer the Tribunal's email of 19 November 2018, it appears the response is not being actively pursued.

16. Employment Judge Holmes therefore proposed to strike out the response pursuant to rule 37(1)(a) and/or 37(1)(d) unless the respondent by **19 March 2019** showed cause why the Tribunal should not do so, or requested a hearing. The respondent did not do so, and consequently, the response is struck out, and judgment entered for the above undisputed sums.

EMPLOYMENT JUDGE HOLMES

DATED : 20 MARCH 2019

JUDGMENT SENT TO THE PARTIES ON
22 March 2019
AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2413445/2018**

Name of case(s): **Mr D Gratton** v **Colman Greaves Fabrications Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **22 March 2019**

"the calculation day" is: **23 March 2019**

"the stipulated rate of interest" is: **8%**

MR J HANSON
For the Employment Tribunal Office