



sb

EMPLOYMENT TRIBUNALS

V

Claimant

Respondent

Ms E Benedetto

AND

IELTS Medical Ltd

PRELIMINARY HEARING

HELD AT: London Central **ON:** 15 February 2019

BEFORE: Employment Judge Russell (Sitting alone)

Representation:

For Claimant: In person
For Respondent: Miss N Nze, Director

JUDGMENT

1. The Respondent's application for a reconsideration of the Judgment and Orders of 16 January 2018 is refused.
2. The Claimant's claim for unpaid wages is upheld in the sum of £1,200 reflecting the net wages she was due up to 2 August 2018.
3. In addition to the costs order of £570 already made against the Respondent on 16 January 2019 a further preparation time costs order of £266 is made against the Respondent reflecting seven hours of the Claimant's time at £38 per hour the fact that the Respondent has, through its Director Miss Nze, acted unreasonably in failing to pay the Claimant such wages that it

accepts were due to her as at the end of July 2018 some seven months ago necessitating her complaint. The sum therefore due to the Claimant from the Respondent is £2,036 including costs of today and ordered as at 16 January.

4. The Respondent is ordered to send to the Claimant a corrected P45 and a payslip referring to her effective date of termination as at 2 August 2018 and not 28 August 2018 as initially and incorrectly stated.

5. The remainder of the Claimant's claims are dismissed and the reasons are as follows.

REASONS

1. This claim came before the Employment Tribunal on 16 January for a preliminary hearing and case management orders were given at that time in anticipation of the full hearing today. Dealing with liability and remedy. The Claimant was claiming arrears of pay and other claims relating primarily to the Respondent's failure to pay her wages for June 2018 and July 2018. There continues to be some confusion over the Respondent's address so it may be helpful to set out the chronology of events in this respect.

(1) The ET1 was served on the Respondent, initially Nonny Nze, but as from 12 November 2018 IELTS Medical Ltd was agreed as the Respondent with Miss Nze being its sole director and the Claimant's manager with an address of 17 Highgate Street, London N6 7JT

(2) The Respondent denied receiving the claim until, prompted by ACAS, it was sent to her by the Employment Tribunal by email. The Respondent wrote to the Tribunal on 9 January from 17 Highgate Street and so the same address as on the ET1 claiming the ET1 application contained errors which meant the claim had not been originally received by the Respondent, but without identifying these. I note there is no suggestion the Respondent's address as given was incorrect.

- (3) The Respondent wrote to the Tribunal again on 11 January prior to the preliminary hearing of 16 January with its ET3 in draft. A document attached to that from Language Link to the Respondent's Directors is addressed to the 17 Highgate Street, London N6 5JT however the ET3 stated that the Respondent's correct address (2.3 on the response form) should be 17 Hazelville Road, London N19 3NB. So to the extent this led to a misunderstanding, this was obviously the fault of the Respondent.
- (4) The Respondent now claims 17 Hazelville Road is not the correct address and nor is it 17 Highgate High Street, but should be 17A Highgate, High Street albeit with the same postcode.
- (5) In advising the Tribunal of this the Respondent acting through Miss Nze sent through a transcript of a telephone call with the Tribunal office of 28 December 2018, but I note that even according to this when asked to confirm the Respondent's address Miss Nze stated it was 17 Highgate, High Street not 17A. In any event it is now clear that the correct address is the Respondent at 17A Highgate, High Street and this will be used in the future to the extent that the communications are not sent to the Respondent's preferred email.

2. The discussion as to addresses is obviously relevant to the Respondent's non attendance at the preliminary hearing. They make an application for a reconsideration of the judgment made at that time including a preparation time costs order of £570. By virtue of their non attendance and failure to provide a full notice of appearance and necessitating the Claimant appearing ready to argue the case but without the Respondent being present. This request for reconsideration is denied for the following reasons.

- (1) It is clear that any material error with the address is the fault of the Respondent not the Claimant or the Employment Tribunal.
- (2) The Respondent was informed that the hearing at 16 January would not be adjourned and although it states through its Director that she was unaware of this the Respondent does accept that they were aware on or before 28 December 2018 of the hearing of 16 January

and at no time were they advised that this would be adjourned. A suggestion that the clerk had informed them that there would be an adjournment is clearly not accurate even if for some reason they have received that assumption and at no time did the Respondent provide substantive reasons or evidence as to reason for the non attendance.

- (3) The reasons given (which the Employment Tribunal found to be insufficient and led to a request for more substantive reasons) were that Miss Nze's brother was in hospital for some weeks from 11 January and she herself was on a teacher related course in London (Earls Court) from 7 January to 1 February. But this clearly is not enough to explain why she could not make a hearing for directions as listed for only 2 hours on the afternoon of 16 January nor did she send a representative on her behalf. Nothing that has been raised since causes the orders of the judgments then to be reviewed and the reconsideration was therefore denied within the early part of the hearing of 15 February.

3. Turning to the hearing today I heard evidence from the Claimant in person and Miss Nze for the Respondent. The Respondent provided a witness statement and the Claimant did not nor did the Claimant provide any documentation other than on a piecemeal basis today which did not assist. The Respondent provided (but only today) a finalised response – ET3. The Respondent accepted that money was outstanding to the Claimant by way of wages but there was a dispute to exactly how much. The Claimant's claim was confusing as to its sum but the Respondent accepted some 74 hours of work was owing as at the end of July 2018. The Claimant's claim seems to be for around some 80 hours. One of the causes for confusion was the last payslip for July 2018. Two were produced. One benefited the Claimant it was in the sum of £1,640 a net pay of £1,199.44 and the second one produced by the Respondent and in exactly the same format and style was for £1,270 gross for the same period ending 30 July, net pay of £947.84. This had never been produced before to the Claimant or Employment Tribunal. I find that the photocopy produced by the Claimant is a copy of a genuine payslip prepared

by the Respondent and the Respondent could not show the newly produced one was genuine nor explain the difference between the two. Understandably the Respondent outsources this to payroll but I find that the Claimant did at the end of July receive the payslip for the higher amount and that was therefore the amount due to her (£1,200) which represents some 82 hours of work I also find and that this was not paid to her at that time.

4. The Respondent's reason for not paying her are various. There were stated concerns as to the Claimant's conduct, there was a wish for a possible settlement but this was conditional on an apology to the Respondent and there was a desire which both parties referred to voluntarily to settle matters through ACAS but clearly limited trust on both sides. There were stated to be complaints from pupils and a possible exaggeration of hours from the Claimant but the Respondent could provide no details of this and I find that non payment was simply an excuse at the time not to pay the Claimant. And without the Employment Tribunal claim the monies would not have been paid to the Claimant. They should have been and it is most unreasonable of the employer not to have paid her.

5. I also note that they had given her a P45 with a wrong date on it being 28 August rather than 2 August which is the agreed effective date of termination which caused the Claimant some concerns with HMRC in May in a problem in terms of tax particularly when reference had been made to monies that she had received that had not actually been paid. It is not possible for me to award interest in respect of those monies being due for these past seven months but having heard from both parties on the matter of costs I find that the Respondent's conduct here is wholly unreasonable and award a preparation time order cost of £266 to the Claimant in addition to the costs that were awarded at the preliminary hearing replacing the seven hours of extra preparation time undertaken by the Claimant. As in the hearing of 16 January 2019 I apply the guidance in Yerrakalva v Barnsley Metropolitan Borough Council [2011] and looked at the whole picture in considering the conduct of the Respondent. I take into account the Respondent's concern that they are small business and they should not be penalised in this way and

it sends out what they consider to be the wrong message to other tutors but the reason for the award of cost, which is in the event a fairly nominal amount, reflects the fact that they have not paid monies that were clearly due. If they had paid what they thought was due and left the balance back to be determined and/or argued about the Claimant's other claims then perhaps no award would have been made. The reason that it has is because they owed money to the Claimant teacher at the end of summer 2018 and without a proper excuse or genuine reason have simply not paid her. They have continued to take such a stance until today. Their unreasonable conduct is striking and unacceptable and exacerbated by their lack of contrition.

6. The Claimant makes other claims, most of these the Employment Tribunal does not have jurisdiction to deal with. I will deal with each of these in turn. The first is in respect of her concerns with HMRC and the Respondent says this has now been sorted. I do however ask that the Respondent should provide the Claimant with proof of this as well as a corrected P45. The Claimant claims for compensation due to loss of energy and fatigue resulting from the Respondent's behaviour but this is not a matter on which the Employment Tribunal has jurisdiction to make an award of payment nor for missing job opportunities whilst working for the Respondent. And whilst understanding her concern under the data protection rules as to her tutor profile being left on the Respondent's website after she resigned I understand this has now been taken down and I do not think she can legitimately object to this being used whilst she was actually employed as a teacher. Finally, she claims for wrongful dismissal but this was not a claim within her ET1. But in any event she resigned on 2 August and I note that at that time the Respondent indicated she was to be paid what was due to her on 3 August. Whilst accepting that they did not actually do so the Claimant did not know that at the time and find that she did not leave because of this non payment. And for all these reasons I find that the claim for wrongful dismissal fails along with all her other claims other than the arrears of pay which are awarded for the reasons given. For completeness I should mention that as far as her travelling time costs concerned at 3 hours for travelling to Ilford I find no

evidence of any contractual arrangement that should justify payment of these and so this claim also fails.

Employment Judge Russell

Dated: 5 April 2019

Judgment and Reasons sent to the parties on:

5 April 2019

.....
For the Tribunal Office