



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

Mr L Guerrero Bravo

Claimant

And

Ethical Caffeine Ltd (t/a The Columbian Coffee Company)

Respondent

ON: 22 May 2019

Appearances:

For the Claimant: In Person

Spanish Interpreter: Mr Ajub Junbaz

For the Respondent: Mr S Joshi, Solicitor

JUDGMENT

All claims fail and are dismissed.

REASONS

1. By a claim form presented on 7 February 2018, the Claimant claimed arrears of pay, notice pay and failure to provide a contract of employment.
2. I heard evidence from the Claimant through a Spanish Interpreter, whose services I am grateful for. I also heard from Mr Eduardo Florez, the owner of the Respondent Company. The Respondent provided a bundle of documents.

Findings and Conclusions

3. The Respondent is a social enterprise whose aim is to support coffee growing communities in Colombia. It operates a coffee stall at Borough Market, London, selling ethically produced coffee.
4. The Claimant was recruited by the Respondent to work on the coffee stall. There is a dispute about the start date of employment. The Claimant says that he commenced on 11 September 2017, whilst the Respondent says it was the 12 September. I prefer the Respondent's evidence for 2 reasons: Firstly, the Claimant agreed that on his first day of work, he undertook training at the Mr Florez's house. Mr Florez contends that the training took place on 12 September 2017 and when this was put to the Claimant, he said that he could not remember the date. Secondly, there is an email at pages 24-24A from the Claimant to the Respondent dated 17 August 2017 in which he tells the Respondent that he should be able to start work on Tuesday, 12 September. That is consistent with the Respondent's evidence and there is no subsequent email varying this date. On that basis, I consider the Respondent's evidence to be the more reliable and find that the Claimant commenced his employment on 12 September 2017. It is agreed between the parties that the employment terminated on 22 September 2017.
5. There was no written contract of employment so the arrangement between the Claimant and the Respondent was based on an oral contract. It is common ground that the rate of pay agreed was £11.50 per hour. In terms of the hours of work, the Claimant contends that there was an agreement that he would work 40 hours per week. The Respondent denies this and contends that hours were variable. Again, I prefer the Respondent's evidence as this is borne out by the hours set out in its counter schedule, which have been taken from the works diary. They show that there was no particular pattern to the hours worked. I therefore find that there was no minimum number of hours that the Claimant was required to work or entitled to be paid for per week.
6. Turning to the claim for arrears of pay, the Claimant says in his claim form that he worked a total of 93.5 hours during his employment – 53.5 between 11-17 September and 40 hours between 18-24 September. The Respondent's case is that he worked 73.5 hours. It is for the Claimant to prove his case and he has not provided any evidence to support what he says. On the other hand, the Respondent has provided a contemporaneous record of the Claimant's hours. That record does contain an inaccuracy, in that the hours relating to the training received on the 12 September were not recorded. The fact that Mr Florez volunteered this evidence goes to his overall credibility as a witness. When the Claimant was cross examined about the hours that he had worked on the various dates of his employment, he repeatedly said that he could not remember. He was therefore unable to effectively challenge the Respondent's evidence on this. Given the contemporaneous record of the Respondent and the absence of any rebuttal evidence from the Claimant, I accept the Respondent's evidence as to the Claimant's hours.
7. On 22 September 2017, the Claimant commenced work at 11am but his employment was terminated by Mr Florez on that day and he left at 1.30pm. Mr Florez's told the tribunal that he terminated the Claimant's employment because he was dissatisfied with his performance.

8. The Claimant was scheduled to work until 7pm on the day of dismissal and I therefore considered whether he was entitled to be paid for the whole day on the basis that he appeared to be ready, willing and able to do so. However, given that there was no contractual right to minimum hours, I find that his only entitlement was to be paid for the actual hours worked, which was 2½ hours.
9. Between 12 - 22 September 2017, the Claimant worked 73.5 hours. He was therefore entitled to wages from the Respondent totalling £845.25. The Claimant was actually paid £851, £5.75 more than he was entitled to. He has therefore received his full entitlement, and more. His claim for arrears of pay therefore fails.
10. The Claimant contends that on termination of his employment, Mr Florez agreed to pay him his full wages until found another job. He says that he found new employment 2 weeks after his dismissal and is therefore entitled to 2 weeks' notice pay. Mr Florez denies that such an offer was made. He said that all he offered the Claimant was 2 days' pay as a goodwill gesture, which he subsequently withdrew.
11. Given that the Respondent was getting rid of the Claimant for poor performance, and given the short period of employment, it seems highly improbable that Mr Florez would have exposed the business to unlimited liability by making such an open-ended and unquantifiable offer, particularly as it is a charity. I therefore prefer the Respondent's evidence and find that no such offer was made. As far as the 2-day ex gratia offer is concerned, that had no legal force and so the Respondent was entitled to withdraw it.
12. Finally, the Claimant complains that he was not given a written contract of employment. The requirement under section 1 of the Employment Rights Act 1996 for an employer to provide a written statement of employment particulars must be complied with within 2 months of the employment commencing. As the Claimant's employment only lasted for 11 days, there has been no breach of the provision by the Respondent. This complaint therefore fails.

Judgment

13. My overall judgment is that all claims fail and are dismissed.

Employment Judge Balogun
Date: 22 May 2019

