



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr Kevin Jago

Respondent
AND Ultimate Contract Furniture Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter

ON

31 May 2019

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr B Male, Director

JUDGMENT

The judgment of the Tribunal is that the Claimant succeeds in his claim for breach of contract and the Respondent is ordered to pay the Claimant the gross sum of £4,790.76.

REASONS

1. In this case the claimant Mr Kevin Roy Jago brings monetary claims for breach of contract and unlawful deduction from wages against his ex-employer Ultimate Contract Furniture Limited. The respondent denies the claims.
2. I have heard from the claimant. I have heard from Mr Brian Male a Director of the respondent on behalf of the respondent.
3. There was a degree of conflict on the evidence. I have heard the various witnesses give their evidence and observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent company is an upholstery business which was established on 1 January 2015. The claimant Mr Kevin Jago commenced employment with the respondent in August 2015 as an upholsterer. He commenced employment on a 40 hour week and was paid £10 per hour. The relationship continued on this basis without any problems.

5. Unfortunately, in about December 2017 the respondent lost a main contract with the national chain Prezzo which had been 90% of its business. The respondent had no option but to reduce its workforce, and a number of its employees left of their own accord.
6. I have seen a contract of employment issued by the respondent in the name of the claimant referring to his start date of 1 August 2015. There is no evidence that it has been agreed and signed by the claimant. There is a provision in his contract with regard to Lay Off/Short Time Working, which provides: "the Company reserves the right to lay off employees or to introduce short-term working should this be required by a downturn in work or other needs of the business."
7. The claimant's version of events which gives rise to this dispute is as follows. With effect from late summer 2018 the respondent imposed a reduction in the claimant's hours. He sought advice from ACAS, and challenged the respondent's ability to do this. The respondent then produced the written contract of employment referred to above, which the claimant says he had never seen before, and certainly has not signed. The claimant was only offered reduced hours for the next few months, and eventually he resigned his employment with effect from 8 February 2019. He says that the failure by the respondent to pay him his full 40 hours per week was a continuing breach of contract, and he claims payment for the amounts deducted and not paid. He says that effectively he had little choice but to accept the reduced hours as imposed by the respondent, because he had mortgage repayments to make and could not afford to leave and be unemployed, and did not wish to leave without a redundancy payment. He says that he did not agree to the arrangements but worked on under sufferance until he had no choice but to leave to find alternative employment. The claimant also produced a letter dated 9 January 2019 to the respondent complaining about the reduction in his working hours and asking to be made redundant to pursue other job opportunities.
8. The respondent has a competing version of events, but one in which it is effectively agreed that the claimant did work reduced hours. Following the loss of the Prezzo contract and discussions with its various employees, the respondent asserts that it agreed with the claimant that he would remain employed by the respondent on a part-time flexible basis working up to two or three days a week. This was to afford the claimant the opportunity to set up his own business and it was agreed in principle by early 2018. There were further discussions between the parties about the agreed hours of work in both March 2018 and July 2018, and the claimant continued to work on a flexible and part-time basis. This arrangement was mutually beneficial, because the claimant was able to use the respondent's premises and tools to commence his own business. There was a misunderstanding in December 2018 when the claimant declined to take any work from the respondent because of an alternative contract, which then fell through. The respondent was unable to agree an immediate return as requested by the claimant. On return to work in January 2019 the claimant left a note to the effect that he wished to be made redundant. The respondent declined his request. On 8 February 2019 the claimant then left a letter Mr Male's desk stating that he was resigning with immediate effect. The respondent therefore accepts that it did not pay the claimant for a 40 hour week in full from July 2018 onwards, but asserts that this was with the express agreement of the claimant and was not therefore in breach of contract.
9. The amounts claimed by the claimant are as follows, being the amount each month by which he was underpaid in breach of contract: July 2018 four weeks £852.92; August 2018 five weeks £701.80; September 2018 four weeks £791.96; October 2018 four weeks £791.96; November 2018 five weeks £961.72; December 2018 four weeks £533.80; January 2019 four weeks £156.60; February 2019 four weeks £779.50; and March 2019 five weeks £320.00
10. These cases are always difficult where there is a stark conflict of evidence between the parties and disagreement between them as to what was agreed. However, I accept the claimant's evidence that he was not issued with a statement of terms and conditions of employment on the commencement of his employment, and I have seen no signed contract of employment between the respondent and the claimant. On balance I find that the respondent was therefore in breach of its legal requirement under section 1 of the

Employment Rights Act 1996 to issue the claimant with a statement of his initial employment particulars. Section 4 of that Act also requires that there should be a written statement of any changes to the initial terms if any is agreed and made. In circumstances where the respondent has not complied with its legal obligations in this respect, for these reasons I prefer the claimant's version of events. I therefore find that the claimant did not agree to a reduction in his normal working week and that the respondent failed to pay the claimant the full amount to which he was entitled and that this was in breach of contract.

11. Having established the above facts, I now apply the law.
12. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
13. The sums claimed by the claimant are set out above. However, I decline to award the claimant any loss for February and March 2019 because the claimant agrees he resigned in early February 2019. I do however award the loss claimed by the claimant from July 2018 to January 2019 inclusive which comes to a total of £4,790.76.
14. The respondent is therefore ordered to pay the claimant damages for breach of contract in the sum of £4790.76.

Employment Judge N J Roper

Dated: 31 May 2019

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