



EMPLOYMENT TRIBUNALS

Claimant

Mr Leslie Marshall

v

Respondent

Beyond Escape Ltd

PRELIMINARY HEARING

Heard at: Leeds

On: 31 May 2019

Before:

Employment Judge T R Smith

Appearance:

For the Claimant: In person

For the Respondent: No attendance

JUDGMENT

1. The Respondent do pay to the Claimant, after accounting for any employer tax or national insurance, the net sum of £681.74 representing one weeks' net wages as damages for breach of contract.
2. The Respondent do pay to the Claimant, after accounting for any employer tax or national insurance, the net sum of £1620.00 representing the net sum of an unlawful deduction from wages from 1 – 17 January 2019.
3. The Respondent do pay to the Claimant, after accounting for any employer tax or national insurance, the sum of £545.39 net representing four days accrued but unpaid holiday.

REASONS

1. When this case was called on the Respondent was not in attendance.
2. The Tribunal had received email from Mr Jason Brunton, who described himself as the "owner" of the Respondent dated 10 May 2019 indicating that he would be unable to attend on 31 May 2019 as he would be overseas.
3. The Tribunal wrote to Mr Brunton on 20 May 2019 asking for evidence of the booking of the overseas trip.
4. No evidence was supplied.

5. Mr Brunton indicated in an email dated 20 May 2019 that he was not asking for the hearing to be postponed, only for the Tribunal to note that he would not be in attendance.
6. In the circumstances the Tribunal considered the Respondent was aware of the hearing and had chosen to voluntarily absent its self.
7. In determining this matter the Tribunal had regard to Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. In particular the Tribunal took into account the information contained in the Respondent's response.
8. In essence the Respondent contended that the Claimant had not been sacked but there had been a mutual agreement to terminate the employment. It was said that the Respondent's office was closed between 17 December and Monday 7 January and the Claimant did not work during that period of time. It was denied that the Respondent owed money to the Claimant from 1 – 9 January 2019 because he was not at work.
9. The Tribunal heard evidence from the Claimant.
10. The Tribunal made the following findings of fact.
11. The Claimant joined the Respondent on 22 August 2018.
12. The Claimant was issued with a statement of written particulars.
13. The relevant provisions for the purposes of this hearing were as follows: -
 - (a) The Claimant was subject to a sixmonth probationary period during which either party could terminate on one weeks' notice.
 - (b) The Claimant was to be paid on 31st of each month
 - (c) The Claimant was entitled to a salary of £55,000 gross per annum payable by 12 monthly payments.
 - (d) The Claimant was entitled to 33 days holiday inclusive of statutory bank holidays in each holiday year.
 - (e) The Respondent's holiday year ran from 1 January to 31 December.
 - (f) The Claimant was permitted to carry over a maximum of 5 days from one holiday year to the following holiday year.
14. The Respondent is a company which builds lodges and chalets which are then let as holiday homes or sold for investment.
15. On Thursday 17 January 2019 the Claimant was informed by a WhatsApp message that his employment was terminated. The Tribunal had before it that WhatsApp message. The message referred to a person known as "Fiona" being instructed to raise the Claimant's P45. The reason for termination was a need to reduce overheads. The WhatsApp message included the following sentence:- "in the meantime assume that you'll need to make alternative arrangements for income as discussed at our meeting the company is offloading liability including Sarah, you and others".
16. The Tribunal is satisfied that there was no mutual agreement by the Claimant to leave his employment with the Respondent. He was dismissed. Looking at the totality of the WhatsApp messages placed before the Tribunal the Tribunal is reinforced in that conclusion.

17. The Claimant was last paid up to and including 31 December.
18. Whilst the Claimant may not have taken any holiday in the holiday year 2018/2019 he was only entitled to carry 5 days forward into 2019/2020. He took one day's holiday, being the statutory holiday of New Years' day. He therefore was entitled, as at termination to 4 days holiday. The Tribunal concluded that the Claimant was entitled to the following: -
 - (a) Four days accrued holiday which produces a net figure £545.39
 - (b) One weeks' pay as money in lieu of notice in accordance with the Claimant's contract which produced a net figure of £681.74
 - (c) Payment from 1 – 17 January inclusive which produces a net payment of £1620.00.
19. Whilst the Tribunal has noted the Respondent's contention that the Claimant was not working between 1 – 17 January the Tribunal was persuaded that the Claimant was doing some work. It was the responsibility of the Respondent to ensure that work was provided to the Claimant and his responsibility to take the work. There is no suggestion that the Claimant was not ready, willing and able to work. He is therefore entitled to be paid from 1 – 17 January. It was for the above reasons the Tribunal made the award set out above.

Employment Judge T R Smith

Date: 13 June 2019

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