



EMPLOYMENT TRIBUNALS

Claimant: Mr C Rankin

Respondents: (R1) Mr J Longfellow
t/a Science Communicators EM CIC
(R2) Science Communicators East Midlands CIC

Heard at: Nottingham **On:** Thursday 23 May 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: No Appearance
Respondents: Mr J Longfellow

JUDGMENT

1. The judgment dated 5 February 2019 and sent to the parties on 6 February 2019 is hereby revoked.
2. The Claimant was dismissed in breach of contract in respect of notice and the second Respondent is ordered to pay damages to the Claimant in the sum of £1,236.00.
3. The second Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay the Claimant the net sum of £229.60.
4. The second Respondent has failed to pay the Claimant's holiday entitlement and is ordered to pay the Claimant the sum of £456.37.
5. The claim of unfair dismissal fails and is dismissed.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 30 October 2017. He named one Respondent to the proceedings, namely Mr J Longfellow. He said that he had been employed by Mr Longfellow from 5 October 2015 until 1 September 2017 as a Senior Presenter/Lab Manager.

2. He said that his gross earnings were £1,416.00 per month which equates to £326.77 per week. He said that his normal take home pay was £1,236.00 per month which equates to £285.23 per week.

3. He claimed: -

- Unfair dismissal
- Notice pay
- Holiday pay
- Other payment of expenses and overtime pay

4. This claim was consolidated with other claims of: -

- Mary Roddy
- Nikola Belshaw
- Lucy Briggs
- Emma Parker

5. They had issued claims against Mr J Longfellow trading as Science Communicators EM CIC.

6. Mr Longfellow failed to present any response.

7. The Employment Tribunal wrote to Mr Rankin on 19 February 2018 saying that he had named Mr Longfellow but that his claim form suggested that a company was involved and that the wrong name could make it difficult for him to enforce any decision.

8. The Employment Tribunal administration staff undertook a company search and found details of a company known as Science Communicators EM CIC which had not been served with these proceedings. That company was then joined as a second Respondent and sent notice of these proceedings on 28 July 2018.

9. No response was received and my colleague Regional Employment Judge Swann issued a judgment on 5 February 2019 that the claims succeeded and the remedy to which the Claimant was entitled would be determined at a remedy hearing which would take place on 19 March 2019.

10. That remedy hearing had to be adjourned because of a lack of judicial resources and was eventually listed for today's date.

11. In the meantime, the other Claimants provided details of their losses and a judgment was issued by me in respect of those cases against Science Communicators EM CIC dated 19 December 2017. No judgment was issued against Mr Longfellow personally in respect of those cases and there has been no application made by those Claimants to vary or revoke those judgments.

12. Mr Longfellow wrote to the Tribunal on 1 April 2019 saying the letter regarding the notice of remedy hearing date 27 March 2019 was the first letter he had received regarding the business he used to manage. He explained that Science Communicators EM CIC had ceased trading in August 2017.

He explained that Mr Rankin had been employed by that company which is a company limited by guarantee which had had to close due to bankruptcy at the end of August 2017. He said that he had not personally employed Mr Rankin.

13. Regional Employment Judge Swann then converted the remedy hearing to this reconsideration hearing.

The Hearing Today

14. The Claimant did not appear and Mr Longfellow represented himself and had with him his witness Mr Atwall. They presented me with a bundle of documents together with a witness statement from Mr Atwell and Mr Longfellow's representations.

My Findings of Fact

15. I am satisfied that all the Claimants in the multiple case, namely Mr Rankin, Mrs Briggs, Mrs Parker, Ms Belshaw and Mrs Roddy were all employed by Science Communicators EM CIC. This is evidenced by the contracts of employment I have seen for Mary Roddy and other employees of this company at pages 3-11.

16. I have also seen the P45 that was issued to each of the Claimants in the multiple case (pages 12-16). Their employer's pay reference is shown as 582/LA52906. Page 20 of the bundle is a print from the HMRC website which shows the PAYE account reference of the second Respondent. I have also seen a print from the NEST which is the Government sponsored pension provider for pensions auto enrolment website for services for SC EMCIC which shows all the Claimants were employees of the second Respondent (pages 21-2).

17. It is clear from this evidence that all the Claimants including Mr Rankin were employed by the second Respondent and not Mr Longfellow personally.

18. I accept Mr Longfellow's explanation that he had not received any earlier communications from the Tribunal. He was not aware of these proceedings until the letter from the Tribunal dated 27 March 2019 informing him of the remedy hearing.

The Law

19. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide under Rule 70: -

"A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("of the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

My Conclusion

20. As Mr Rankin and the other Claimants in the multi were clearly employed by Science Communicators EM CIC it is in the interests of justice that not only should I reconsider the judgment but I should revoke the judgment against Mr Longfellow. Whilst he was a Director of the second Respondent he did not employ any of the Claimants personally.

Judgment for Mr Rankin

21. With the assistance of Mr Longfellow, I was able to satisfy myself as to Mr Rankin's entitlement against the second Respondent and I was able to issue a judgment in his favour in respect of the sums due to him. Whilst that company does not have any assets and as I understand it there is a proposal to strike off the company there is no reason why these sums cannot be recovered in part at least from the Secretary of State. The Claimants in this case could make an application for payments under Section 166 of the Employment Rights Act 1996. This is because they are not able to recover the sums from their employer because on the basis of the evidence that I have seen that employer (the second Respondent) has no assets.

Notice Pay

22. I have seen a copy of the contract of Mary Roddy and Mr Longfellow tells me that all these employees were entitled to one month's notice as a minimum irrespective of their length of service. On this basis Mr Rankin is entitled to one month's notice. As his net pay was £1,236.00 per month the amount he is entitled to is that sum and I have given him judgment in respect of that sum against the second Respondent.

Holiday Pay

23. Under the terms of the contract the holiday year runs between 1 January and 31 December. The contract says that employees are entitled to 28 days holiday each holiday year inclusive of the usual public holidays. Mr Rankin was dismissed on 31 August 2017 and his pro rata entitlement to that date is 19 days. He had taken 5 days' holiday, plus 6 bank holidays and his net holiday entitlement is 8 days.

24. As he worked a 5-day week and his net pay per week was £285.23 his entitlement is 1.6 times £285.23 which equals £456.37.

Wages

25. Mr Longfellow accepts that Mr Rankin is owed travel expenses of £180.00 for his travel to Lincoln for 5 days and £49.60 for his travel to Fiskerton Village Hall. I have seen no evidence to support Mr Rankin's contention that he is entitled to any other pay and therefore make an order that there has been an unlawful deduction of wages in the sum of £229.60. I make a judgment in respect of that sum also.

Unfair Dismissal Claim

26. As I explained at the start the Claimant accepts that he commenced his employment on 5 October 2015 and he was dismissed on 1 September 2017. Section 108 of the Employment Rights Act 1996 states that Section 94 i.e. the right to claim unfair dismissal “does not apply to the dismissal of an employee unless she has been continuously employed for a period of not less than 2 years ending with the effective date of termination”. The effective date of termination is 7 September 2017 i.e. one week after he was told of his dismissal. He does not therefore have sufficient service to claim unfair dismissal and that claim therefore fails and is dismissed.

Employment Judge Hutchinson

Date 26 June 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE