



EMPLOYMENT TRIBUNALS

Claimant: Mr Fathi Joe Zaoui

Respondent: The Bulls Head Inn (Inkberrow) Ltd

Heard at: Birmingham Employment Tribunal

On: 18/07/2019

Before: Employment Judge Butler

Representation

Claimant: Unrepresented

Respondent: Unrepresented

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The Claimant was not wrongfully dismissed. His claim for wrongful dismissal is dismissed.
2. The Claimant was subject to an unlawful deduction from wages, contrary to the provisions of section 13 of the Employment Rights Act 1996. The Respondent is ordered to pay the Claimant the sum of £653.85.
3. By consent, the Respondent is ordered to pay the Claimant the sum of £144.23 in respect of 1.5 days holiday pay.
4. The total amount that the Respondent is ordered to pay the Claimant is £798.08.
5. Matters concerning the Claimant's P45 fall outside of the jurisdiction of the Employment Tribunal, and so this claim is dismissed.
6. It is declared that the Claimant was not provided with an itemized pay statement, contrary to section 8 of the Employment Rights Act 1996.

Application for Adjournment

7. The Respondent was expected to be represented by Counsel. However, due to unforeseen circumstances on the morning of the hearing (my understanding was that a family member of Counsel was involved in an accident) the Respondent's Counsel was unable to attend. Counsel's Chambers informed the Tribunal that no one else was available to represent the Respondent at such short notice.
8. The Respondent initially made an application to adjourn the hearing. It was submitted that Counsel had with them the trial bundle, which contained all the relevant documentation.
9. The test for granting an adjournment was explained.
10. The Respondent confirmed that the documents on which they would be relying, had either already been sent into the Tribunal and to the Claimant and/or they had them with them.
11. As all documents were available, the Respondent withdrew their application to adjourn.

Introduction

12. The claim form ("ET1") was received on 29/11/2018. The ET1 referred to a complaint surrounding pay and for a dismissal for no reason. Considering that the Claimant was unrepresented, a pragmatic approach was adopted. These broad complaints were taken to include all of the specific allegations listed above.
13. The Claimant, at a late stage of the proceedings, sought to introduce a claim for financial losses that he had incurred for travelling to see his employer in advance of commencing employment. The Respondent gave indication that they would oppose an application to amend the claim form at such short notice. However, it was explained to the Claimant that this is a matter that falls outside of the jurisdiction of the Employment Tribunal. The Claimant withdrew this application.
14. The Respondent brought with them a copy of relevant emails, and their witness statements. The Claimant emailed into the Tribunal a copy of all of his evidence but did not provide a hard copy of this. Copies of these were produced for use in the hearing. This delayed the start of the hearing.
15. The Claimant gave evidence on his own behalf. There were no other witnesses for the Claimant.
16. The Respondent case was presented by Mr Novacki, who is the owner and Director of the Respondent. Mr Novacki gave evidence for the Respondent. Mrs Novacki, who is co-owner of the Respondent, also gave evidence.

17. In reaching my decision I took account of the evidence contained within the Court file, evidence provided to me in advance of the hearing by both the Claimant and Respondent, as well as the oral evidence from the Claimant and Respondent witnesses.

Issues

18. In this case, the Claimant complains of being wrongfully dismissed, not having received the correct wage for the period he was employed by the Respondent, unlawful deductions from wages, not having received wage slips or his P45 and not having received holiday pay.

19. The following issues were to be determined:

- Has the Claimant been dismissed in breach of his contract?
- Has the Claimant received the pay which he was owed? Were any of the deductions from his pay authorised deductions?
- Has the Respondent provided an itemized pay statement?
- What is the value of the agreed unpaid holiday entitlement?

The Law

Wrongful dismissal

20. A wrongful dismissal concerns a dismissal by an employer in breach of the employee's contract of employment. This can, and often does, focus on whether an employment contract has been terminated without the necessary notice period.

21. Required notice periods are provided for through agreement in the employment contract, or through the statutory scheme contained at section 86 of the Employment Rights Act 1996 ("ERA"). Section 86 ERA provides a statutory minimum notice entitlement, which cannot be reduced by contractual agreement. This provides that after one month of continuous employment, an employee would be entitled to at least one week's notice, with increases in entitlement based on years of service. Section 86 ERA does not provide any entitlement to notice period for employment that has not yet reached one month in length.

Unlawful Deduction from wages

22. Section 13(1) ERA provides that a worker has the right not to suffer unauthorised deductions from wages. A deduction is defined a s.13.(3) ERA as being '[w]here the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker

on that occasion...’

23. Section 13(1) ERA also provides for deductions from wages that are authorised, namely where the deduction is required or authorised by a statutory provision or a relevant provision of the worker’s contract (s.13(1)(a) ERA), or the worker has previously signified in writing his or her agreement to the deduction (s.13(1)(b) ERA).
24. It was accepted by the EAT in **Cleeve Link Ltd v Bryla [2014] IRLR 86**, that ordinary contract principles apply to employment contracts.
25. The general law of contract requires individual terms of a contract to be sufficiently clear and certain for the courts to be able to give them meaning. For example, in **Polymer Products Ltd v. Pover EAT 599/80**, a term which left matters concerning new duties, relocation allowance and salary on transfer ‘all to be mutually agreed’ was held to be too vague and uncertain. This was considered to be an agreement to later agree.

Itemized Pay Slips

26. Pursuant to s.8(1) ERA, an employee has ‘the right to be given by his employer, at or before the time at which any payment of wages or salary is made, a written itemized pay statement’. Where an itemized pay statement has not been provided, the tribunal must make a declaration to that effect (s.12(3) ERA).

Holiday Pay

27. A week for the purposes of calculating a worker’s holiday entitlement is through considering the working week rather than the calendar week (**Leisure Leagues UK Ltd v Macconnachie (2002) IRLR 600**, EAT).

From the evidence to which I was referred, had sight of, and heard, I find the following material facts to be admitted or proved.

Findings of Fact

All findings of fact were made on the balance of probability.

28. The following matters were not in dispute:
 - a. The Claimant started employment for the Respondent on 21/10/2018, and his employment ended on 4/11/2018. This covered a period of two weeks.
 - b. The Claimant and Respondent agreed that there was some holiday pay owed. This was agreed between the parties in the hearing at 1.5 days holiday pay.

- c. The Claimant has not been provided with itemized pay statements covering the period of employment.
- d. There is no written document, outside of the contract, that permits the Respondent to make deductions from wages for accommodation costs.
- e. The only expression of authority to deduct payments from the Claimant's wage was that contained at paragraph 5 of the Contract of Employment. In relation to deductions for accommodation costs this is contained at paragraph 5(v) of the contract, and states that the deduction is for 'An agreed contribution towards accommodation'.
- f. The Claimant has received £500 payment for the period of time he was employed by the Respondent.

29. The following matters were in dispute between the parties:

- g. Although the Claimant did not sign the contract, alleging that he disputed some of the terms, he received the contract and knew of the terms on which he was being employed. In his oral evidence the Claimant accepted that he had received the contract before his employment started, and that that was the contract that the Respondent was seeking to employ him on.
- h. The Claimant's employment contract was terminated because of a breakdown in the relationship between the two parties. On balance, the employment relationship between the Claimant and the Respondent was not a positive one. The Claimant in his evidence accepted that the Respondent had a different way of running a kitchen to what he was used to, and that he refused to cook in ways he was being asked to, namely using the microwave. Both the Claimant and Mrs Novacki described a situation where the Claimant told Mrs Novacki to leave the kitchen. These, amongst other matters led me to reaching a finding that the relationship broke down, and this was the reason for the dismissal.
- i. The Contract which the Claimant received only provided for a notice period after the completion of a three-month period.
- j. The Claimant should have been paid a total of £1,153.85 for the two weeks that he worked for the Respondent. The Claimant's approach of using weekly pay in calculating the wage he was owed ($2/52 \times £30,000 = £1,153.85$) was preferred to the Respondent's submission that an hourly rate should be calculated and used. The Claimant's contract was for an annual amount, not an hourly rate. The Respondent's approach was considered inconsistent with the reality of the pay arrangement, given that pay under the contract was not calculated on an hourly basis.
- k. The Claimant had had £653.85 deducted from his wage.

Applying Law to Findings of Fact

30. The Claimant knew of the contractual terms that he was being employed on in advance of starting employment. He accepted them through starting work under the terms in the contract. The Claimant was bound by the terms under the contract that he had received.
31. The Claimant only worked for the Respondent for a 2-week period. His contract did not provide an entitlement to notice until the completion of 3 months service. However, this must be read considering the statutory minimum provisions contained at s.86 ERA, which provides an entitlement to one weeks' notice after the completion of one months' employment service. In these circumstances the Claimant had no entitlement to notice.
32. As the Claimant had no entitlement to a notice period, dismissing him without giving him any notice is not a dismissal in breach of his contract. Consequently, the claim for wrongful dismissal fails, and is dismissed.
33. The Claimant ought to have been paid a total of 2/52 of his £30,000 salary, having completed two weeks work, minus any authorised deductions. 2/52 of the Claimant's salary equates to £1,153.85.
34. The Respondent made deductions to the Claimant's pay for accommodation costs, seeking to use the contractual provision 5(v). However, this provision is not sufficient to authorise these deductions. The contractual term was too vague and uncertain to authorise deductions from the Claimant's wage. The Claimant only received £500 payment for the work he had done. The Claimant was subjected to an unlawful deduction of £653.85 from his wage.
35. The Tribunal declares that the Respondent failed to provide an itemized pay statement to the Claimant.
36. The Claimant would be entitled to holiday pay at the weekly rate of £576.92 (calculated by dividing the salary by number of weeks in a year, thus £30,000/52). And holiday pay at the daily rate of £96.15 (calculated by dividing the weekly rate of holiday pay by the number of days the Claimant was contracted to work per week, thus £576.92/6). As the Claimant and Respondent agreed that 1.5 days holiday pay was owed, the Respondent is ordered to pay the Claimant £144.23 (1.5 x £96.15) for unpaid holiday entitlement.

Employment Judge Butler

29/07/2019