



EMPLOYMENT TRIBUNALS

Claimant: (1) Mr Richard Moore
(2) Mr Eamonn Moore

Respondent: The Insolvency Service Finance Section

Heard at: Croydon

On: 10 July 2019

Before: Employment Judge Truscott QC

Representation

Claimant: In person
Respondent: No appearance.

JUDGMENT

1. The Employment Tribunal does not have jurisdiction to entertain these claims. The claims are dismissed.
2. Even if the Tribunal had jurisdiction, there being no evidence in favour of the claimants, the claims are dismissed.

REASONS

1. The claimants were employees of ER Moore Construction Ltd. which entered into Creditors Voluntary Liquidation on 28 January 2015.
2. As part of the arrangements to deal with the insolvency, the company contracted with UKELS (NE & M) Ltd. ("UKELS") to make arrangements to wind up the company and recover outstanding debts. They handed over all their records to UKELS who made claims on behalf of the employees to the Insolvency Service. The Insolvency Service made payments to the claimants based on the information provided by UKELS.
3. On 13 November 2015, the Secretary of State commenced investigations into UKELS and found that they had included false or misleading information on

behalf of their clients. On 4 January 2017, UKELS was wound up on the application of the Secretary of State.

4. The ET3 lodged by the Insolvency Service narrates that examination of the records of the company and the records held by HMRC showed what wages were paid to the claimants and what claims should have been paid to them. This is all set out in a detailed response in the ET3 which contains the relevant calculations. The effect of the calculations is to show that each claimant had been overpaid to the extent of £2815.86.

5. The claimants were unable to understand how the calculations had been come to and suggested in correspondence that the dividends they had received might have impacted however at the hearing they agreed that this was unlikely to be correct as the taxation of dividends is very different to PAYE.

6. Mr E Moore said that he did not receive the same payments of wages as Mr R Moore so could not understand why he had to make the same repayment.

7. The claimants were in a seriously disadvantaged position as they had no records to establish what they were saying having handed them over to UKELS.

8. The Tribunal had no facts or basis before it that would have enabled it to interfere with the claims for repayment based on the calculations set out by the Insolvency Service.

9. The claims were registered under section 170 of the Employment Rights Act 1996 which provides:

References to employment tribunals

(1) Where on an application made to the Secretary of State for a payment under section 166 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an employment tribunal—

(a) any question as to the liability of the employer to pay the employer's payment, and

(b) any question as to the amount of the sum payable in accordance with section 168.

10. The Tribunal proceeded on the basis that section 168 relates to the position where an employee claims a redundancy payment or an equivalent payment from the Secretary of State, then any question about the employer's liability to pay, or about the amount of the payment due, must be referred to an employment tribunal. The reference to "any question" in section 170(1)(b) relates back to the applications for payment referred to in section 166. It does not extend to reviewing payments demanded by the Insolvency Service in consequence of an overpayment made by it because of inaccurate submission of information provided to it.

11. For reasons of jurisdiction and also evidence, these claims are dismissed.

Case Number 2301148/2018
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Employment Judge Truscott QC
Date 15 July 2019