



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100621/2019

5

Held in Glasgow on 3 April 2019

Employment Judge: David Hoey (sitting alone)

10

Mr M Tamburrini

**Claimant
In Person**

15

Common Thread Limited

**Respondent
Represented by:
**Mr Edwards -
Advocate****

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20

The Judgment of the Employment Tribunal is that the claim is dismissed.

REASONS

25

1. The claimant had raised a claim against the respondent for unpaid wages. The claimant attended in person and the respondent was represented by counsel.

2. The respondent had raised a preliminary issue within the response form that went to the Tribunal's jurisdiction, namely that the sum sought by the claimant by way of wages was not in fact wages in terms of the Employment Rights Act 1996. The claimant understood this preliminary issue.

30

3. The hearing began by discussing what facts were capable of being agreed. The facts needed to determine the preliminary issue were not in dispute and it was not necessary to lead any further evidence. The parties were content to proceed on that basis.

4. Following discussion as to the factual position, it was clear that the preliminary issue was capable of being determined in light of the parties' agreement as to the salient facts.
5. I gave the claimant the opportunity to consider how he wished to proceed with matters and he decided that he wished to proceed with his claim and seek judicial determination of it.
6. The parties then provided their submissions in relation to the preliminary issue, it being agreed that no further evidence was necessary.
7. I issued an oral judgment dismissing the claim.
- 10 8. The respondent has sought written reasons which are now provided.

Facts

9. There were four specific facts which the parties agreed upon:
 - 15 (i) The claimant entered into a contract of employment with the respondent. That contract of employment had the power within it that allowed the respondent to suspend the claimant without pay.
 - (ii) Pursuant to that contractual power, the claimant was suspended from work, without pay, for a period of time during which he did not possess the authority to work in the role.
 - 20 (iii) It was unlawful for the respondent to continue to allow the claimant to work in the role which he held for the period during which he was suspended without pay.
 - (iv) It was accepted that no work was done by the claimant during the period of unpaid suspension.
 - 25

Law

10. Section 13(1) of the Employment Rights Act 1996 states that an employer shall not make a deduction from wages unless the deduction is required or authorised. Section 13(3) states that where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of the wages properly payable, the amount of deficiency shall be treated as a deduction. Section 23 allows an Employment Tribunal to order the respondent pay any such deficiency to the claimant.
11. In order for a valid claim to be made, a claimant requires to show that the sum sought by way of a deduction was a sum that was “properly payable” under the contract of employment. This has been interpreted to mean is a sum that is due to be paid (and not some indeterminable amount of money).
12. I provided the parties with a copy of the Employment Appeal Tribunal judgment of *Lucy v British Airways plc* UKEAT/33/08 which explored this issue.

15 **Submissions**

13. The respondent’s principal argument was that the sum claimed by the claimant was not sums which were properly payable under the contract of employment. It was accepted that it was unlawful for the claimant to work during the period in question. The claimant was suspended without pay (pursuant to his contract of employment). No work was done by the claimant and therefore no wages were properly payable.
14. The claimant did not disagree with these submissions. He accepted there were issues around his suspension, but accepted the respondent had the power to suspend him without pay and that he had done no work for the period in respect of which he sought payment.

Decision

15. I considered the arguments carefully and reviewed the relevant authorities. Having done so I issued an oral judgment stating that I had accepted counsel for the respondents’ submissions.

16. The claimant does not dispute that the respondent had the contractual power to suspend him without pay. He accepts that no work was done during the period in question. He also accepted that it was unlawful for the respondent to allow him to work in the role in which he was engaged for the period when he was suspended.

17. The sum claimed by the claimant was not therefore a sum that was properly payable under the claimant's contract of employment by way of wages as defined by section 13 of the Employment Rights Act 1996. This situation was not dissimilar to that explored by His Honour Judge Burke, in the case of *Lucy v British Airways plc* (above) at paragraph 39.

18. No wages were properly payable to the claimant during the period the claimant was suspended without pay where he was suspended pursuant to his contract of employment and where no work was done by him.

19. In all the circumstances therefore the claim is dismissed.

15

Employment Judge

D Hoey

20 **Date of Judgment**

12 April 2019

**Entered in register
and copied to parties**

14 April 2019