



EMPLOYMENT TRIBUNALS

Claimant: Mr P Connor

Respondent: Equifax Ltd

Heard at: Leeds

On: 11 September 2019

Before: Employment Judge Bright (sitting alone)

Representation

Claimant: In person

Respondent: Mr G Miller (legal executive)

JUDGMENT

The claim for unauthorised deductions from wages and/or damages for breach of contract fails and is dismissed.

REASONS

The claim

1. Mr Connor claimed unauthorized deductions from wages and/or damages for breach of contract. He says that he accepted a position with the respondent ("Equifax") on the basis of an oral agreement with Equifax's agent, a recruitment agency called Sevensteps. He says that the agreement with Sevensteps was that he would be doing two weeks' paid on-call work per month and that his annual remuneration would therefore be significantly higher than his basic salary. He says the failure to provide that work and/or pay him those additional on-call wages was an unauthorized deduction from his wages and/or a breach of his contract of employment for which he is entitled to compensation and/or damages. Equifax says it was not contractually obliged to provide on-call work or, in the absence of on-call rota work, any payment for it.

The issues

2. We agreed that the issues for me to decide were:

- 2.1. Did Equifax make unauthorized deductions from Mr Connor's wages in accordance with section 13 of the Employment Rights Act 1996, and if so how much was deducted?
- 2.2. Specifically, was Mr Connor contractually entitled to payment for two weeks' on-call work/inclusion on an on-call rota each month?
- 2.3. If not, did he anyway carry out on-call work for which he was contractually entitled to additional remuneration?

Evidence

3. Mr Connor gave oral evidence in chief and Equifax called Mrs Brodie, it's Human Resources Business Partner, who gave evidence from a witness statement. Equifax supplied a file of documents of 61 pages ("the bundle"), to which Mr Connor added further email documents by consent at pages 62 - 77 at the start of the hearing. Page numbers in these reasons are pages numbers in that bundle.

Submissions

4. Parties both made oral submissions which I have considered with care but do not recite here.

Facts

5. I made the following findings of fact, on the evidence before me. Where there was a dispute as to the facts, I resolved it on the balance of probabilities.
6. This case involved a very unfortunate set of circumstances. In short, Equifax recruited Mr Connor through the recruitment agency, Sevensteps. Mr Connor says that he accepted the job on the basis of an oral agreement with Sevensteps' representative at his interview, that he would be doing two weeks' paid on-call work per month and that his annual remuneration would therefore be significantly higher than his basic salary. I accepted his evidence that this was what he understood from the interview. There was no-one from Sevensteps at the hearing to give evidence and Mrs Brodie was not privy to that conversation. It seems unlikely that Equifax would have guaranteed on-call work when, I accepted from Mrs Brodie, it was not using on-call rotas at that time. However, it seems that Sevensteps may have communicated something different to Mr Connor.
7. I accepted Mr Connor's evidence that, on the basis of his understanding of the agreement, he accepted the job. However, it is not disputed that the offer of employment made to him was contingent on him signing a written contract of employment. The offer letter at page 25 makes that clear. Mr Connor acknowledged in his evidence that the necessary preliminary checks could not be made and he would not be able to take up the job until he had signed the written contract.
8. It is not disputed that the written contract, which was sent to Mr Connor by Sevensteps after his interview, records (page 28):

Hours of Work

...

...You will, however, be expected to work such hours as may be reasonably be expected from the requirements of your position [sic] and you may be required to work such additional hours at such other times as are reasonably necessary for the proper performance of your duties. Generally in these instances no overtime payments will be made.

...

On Call/Out of Hours

It is a contractual requirement that, if required, you participate in an on call/call out rota and as such are available to undertake additional work outside your normal working hours as necessary, including evenings, bank holidays and weekends. Should you be required to participate in an on call/call out rota, you will be notified in advance and would be eligible for payment as detailed in the out of hours policy.

...

Entire agreement

This agreement and any document referred to in it constitutes the whole agreement between the parties (and in the case of the Company, as agent for any Group Companies) and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them.

9. The written contract therefore clearly requires Mr Connor to participate in a rota, if required (my emphasis). It does not guarantee that there will be a rota nor that Mr Connor will receive on-call work, nor payment for on-call work when not participating in a rota. The written contract also makes it clear that Mr Connor would be expected to work such hours as the job reasonably required for no extra pay.
10. I accepted Mr Connor's evidence that, on receipt of the written contract, he objected to the wording because it gave the wrong start date and did not reflect the agreed terms. From the email correspondence from October 2018, (page 65) it is clear that Mr Connor expected the written contract to reflect his oral agreement with Sevensteps. I accepted Mr Connor's evidence that he was told to sign the contract, so that the necessary preliminary checks could be carried out and he could start work, and that the issue of on-call terms would be sorted out.
11. Mr Connor did not dispute that he signed the written contract. He continued to query the terms of the contract however and, ultimately, he resigned in part because of what he saw as Equifax's failure to honour his agreement with Sevensteps.
12. It is not disputed that, during his employment, Mr Connor worked outside his normal hours on occasion and responded to emergencies, but was not required to participate in an on-call rota.

The law

13. For the formation of a contract, there needs to be an offer, acceptance of the offer, an intention to create legal relations and consideration (something of value which passes between the parties). A contract can be oral, written or a combination of both. Where a written contract is ambiguous, a court or tribunal may be asked to construe the contract (i.e. work out what it means). Where there is an 'entire agreement' clause in a contract, any oral negotiations do not generally form part of the contract of employment. The written contract forms the whole bargain or agreement between the parties.

Determination of the issues

14. Mr Connor is asking me to find that the written contract he signed does not reflect the true agreement between him and Equifax. In effect, he is asking me to look behind the entire agreement clause, to find that the contractual terms were really those agreed with Sevenstep. While there are certain very narrow circumstances set out in case law in which it might be appropriate to look behind the entire agreement clause, I consider that this is not one of them.
15. Although Mr Connor indicated his acceptance of the offer as he understood it from his interview with Sevenstep, the offer letter clearly indicated that the job offer from Equifax was as set out in the written contract. Further, that contract contained the 'entire agreement' clause, making it amply clear that any variation to the written terms previously agreed did not form part of the offer from Equifax. Mr Connor read the contract and he clearly knew what it contained and understood it, because he complained about it. He did not have to sign the written contract. There was no suggestion that he was under duress. Nevertheless he signed the contract and, I find, by doing so he accepted the terms as set out in that written contract. Even if he had not appreciated the full significance of the entire agreement clause or the terms regarding on-call/out of hours work, he took a risk in signing it. I find that, Mr Connor having signed and thus accepted the contractual terms and started work for Equifax, he became bound by those terms.
16. I find that the contract is clear that Mr Connor was not entitled to on-call payments, except as provided for in the clause on page 28. Equifax was not contractually obliged to provide a rota for Mr Connor to participate in and, absent participation in a rota, he was not entitled to additional on-call payments. Any work he carried out extra to his normal hours was within the clause providing for 'such additional hours as ...reasonably necessary for the proper performance of ... duties'.
17. As Mr Connor did not participate in any on-call rotas during his employment, he therefore had no entitlement to additional remuneration. On-call payments were not properly payable to him under his contract in these circumstances and Equifax, in failing to make on-call payments or provide the opportunity to participate in on-call rotas, has not therefore made unauthorised deductions from Mr Connor's wages nor acted in breach of his contract of employment. The claim fails and is dismissed.

18.I consider that these proceedings should be a salutary lesson for Equifax to ensure that a recruitment agency fully understands the contractual terms on offer and to address any contractual disputes which arise at the earliest opportunity.

Employment Judge Bright

Date: 19 September 2019