

10



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Chaplin  
**Respondent:** Capitalusm Limited  
**Heard at:** East London Hearing Centre  
**On:** 4 March 2019  
**Before:** Employment Judge Hyde (sitting alone)

## Representation

**Claimant:** In person  
**Respondent:** Neither present nor represented – no written representations received

**JUDGMENT** having been sent to the parties on 28 March 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1 Reasons are set out in writing only to the extent that it is necessary to do so in order for the parties to understand why they have won or lost, and only to the extent that is proportionate. Further all facts were found on the balance of probabilities.

2 The Respondent had applied for a postponement of the hearing but was refused one by Employment Judge Warren on 1 March 2019. No one attended the hearing on behalf of the Respondent, no representations were received from them and the Respondent was not represented. In the circumstances, the Tribunal considered that it was appropriate to proceed with the hearing and have regard to the matters set out by the Respondent in the response.

3 The Tribunal heard evidence from the Claimant and also considered a bundle of approximately 17 pages of emails between the Claimant and either Mr Paul Cannon,

owner of the Respondent, his previous manager, Ms Meghan Worthing-Davies, or other members of the Respondent's staff.

4 The Claimant presented a claim form on 26 November 2018 having engaged in the early conciliation process between 28 September and 28 October 2018. He complained that he had not been paid the sum of £3305.08 gross in respect of work done in June and July 2018 which included two weeks of parental leave. He asserted that his pay was agreed with the Respondent at £32,500 per annum gross for five days a week.

5 He also described in his claim form that it had been agreed that during April 2018 he would work in a different capacity from that of Head of NGO engagement (a marketing role) which he reduced to four days a week from April onwards. His claim to this Tribunal was only in respect of pay in that role.

6 The Respondent's case which the Claimant foreshadowed in his claim form was that there had been a conversation with the Claimant in April or May 2018 by which Mr Paul Cannon informed the Claimant that he would no longer be working for the Respondent after the end of May 2018.

7 The Tribunal examined this also by reference to the contemporaneous emails which the Claimant produced. In the Claimant's claim he stated that he understood Mr Cannon to have informed him on 12 July 2018 that he should not expect payment for this period on the grounds that his contract had been terminated verbally in an earlier conversation between the two of them at which there were no witnesses. The Claimant's case was that there had been a meeting which had taken place, he believed in May 2018, but the Claimant had not been given notice of the termination of his employment then. He recollected a discussion solely about the uncertain cash position of the business. However, in the Respondent's response Mr Cannon stated that the conversation had happened in April 2018.

8 The Tribunal had email correspondence endorsed by Mr Cannon from early May 2018 in which a proposal for the future running of the business was set out but which also confirmed that as of 3 May 2018, Mr Cannon considered that the next steps for the Respondent included, among other things, that the Claimant and the other apparent owner of the organisation referred to as "Dragos" would be working on strategy; and that the Claimant would be involved in other activity for the Respondent going forward. The Tribunal was satisfied that at all stages the Respondent through Mr Cannon preferred to conclude his business orally. However, the Tribunal had regard to the emails produced by the Claimant which tended to confirm his contentions. Further, there was an email chain of 19 November 2017 by which Mr Cannon confirmed that both he and his partner Dragos were happy with the terms outlined by the Claimant which specifically included two weeks' paid paternity leave in June/July 2018.

9 Further in an email from the Claimant to Mr Cannon and others, he identified certain steps that were his priority for January 2018 which included, among other matters, employment contracts for both himself and the chief operating officer, Ms Davies. It appeared to the Tribunal most likely that the understanding was that the Claimant was taken on as an employee although this was never committed to writing. I was satisfied that he certainly worked as an integral part of the Respondent's business and under the direction of Ms Davies. Thus, for example, when he needed to take a day off in June 2018

to take his motorbike test, he obtained the consent of Ms Davies beforehand.

10 The Tribunal was also satisfied that the arrangement was that he would be paid at the rate already identified above but that because of the senior nature of his role he might well work outside of those hours but that the Respondent would not be paying anything additional for such work. The Tribunal also was satisfied that he submitted invoices from about January 2018 but that this was because there was no pay roll set up and he considered it was important to ensure there was an audit trail in relation to money he received. In this context, it was also relevant that in the email sent from the Claimant to Mr Cannon, 'Dragos' and Mr Sethi of 29 December 2017, under the subheading "legal" which almost explicitly related to contracts of some sort, he made the distinction that the company would need to set up contracts for services with two other people as compared to the position relating to himself and the COO in respect of whom employment contracts were to be drawn up.

11 In all the circumstances, the Tribunal was satisfied that he was indeed an employee albeit that he took upon himself the submission of the invoices and was paid gross.

12 The further element was about the receipt of EQi's. It appeared clear that the Claimant was prepared to invest in the Respondent's business to the extent of half of his salary by taking this as EQi's. In the event, it appears that they were not worth anything but the claim before the Tribunal related only to the cash element of the underpayment. The Tribunal took this element of payment into account also in assessing whether the Claimant was an employee or an investor and therefore working on as an independent contractor. It appeared to the Tribunal that this did not undermine the Claimant's status as an employee.

13 For further confirmation that the Claimant was not operating as an investor as such as a partner of Mr Cannon was the correspondence in May 2018 about how the company was going forward. Mr Cannon described a meeting with Dragos, who the claimant described as Mr Cannon's partner and with Megs who was the Chief Operating Officer. The Claimant was not said to have been a party to that meeting indeed Mr Cannon himself described those three people as the "key players in the team".

14 I was also satisfied on the balance of probabilities that the Claimant was correct when he said he was not notified that he was to stop working at the end of May 2018 by way of a conversation either earlier that month or in April 2018 because he had evidence of ongoing work that he was being directed to do with Meghan Worthing-Davies throughout June until the start of his paternity leave. This was by way of WhatsApp messages from Ms Davies to himself.

15 I was finally satisfied that he terminated the employment after the conversation with Mr Cannon on 12 July 2018 when it was clear that Mr Cannon was not anticipating that there would be any further payment for anything that he did. In the event, the Claimant formally terminated his employment by way of a letter written towards the end of September 2018 but there was no suggestion that he had presented himself for work before that or had done any further work in the capacity of Head of NGO engagement which he was entitled to be paid for.

16 The Claimant also had prepared a chronology which he treated as his witness statement and the Tribunal marked that C1. The 17-page bundle was marked [C2].

Employment Judge Hyde

30 September 2019