



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Respondent

AND

**Mr A Kerridge (1)
Mrs H Kerridge (2)**

Miss Jane Blenkins

HEARD AT Exeter ON

8 August 2019

BEFORE Employment Judge Goraj

REPRESENTATION

Claimants – In person

Respondent – did not attend

JUDGMENTS having been sent to the parties on 10 September 2019 and written reasons having been requested in accordance with Rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:-

REASONS

The claimants

1. The claimants, who are husband and wife, have brought claims against the respondent for arrears of salary and notice pay. The Tribunal has heard evidence from the claimants and also from Mr Stephen Charles Kerridge

(Mr A Kerridge's father). The Tribunal has also had regard to the documentary evidence submitted by the claimants.

The respondent

2. The respondent did not attend the hearing. The Tribunal was not advised of /did not receive any explanation for the respondent's non-attendance. The Tribunal however had regard to the written submissions and associated documents which were provided to the Tribunal by the respondent including on 10 June 2019.
3. Following the conclusion of the hearing on 8 August 2019, the Tribunal became aware of an email from the respondent which appeared to have been received by the Tribunals on or around 5 August 2019 advising the Tribunal of her proposed non-attendance at the hearing and making further representations about the case. The respondent did not seek an adjournment of the matter in that email.
4. The Tribunal advised the parties of the position on 10 September 2019 (when issuing the summary judgments) including that having had regard to such email the Tribunal was satisfied that there was no good reason for the Judgments to be revoked or varied including as (a) the respondent had had an opportunity to give oral evidence at the hearing and (b) in any event, the matters raised by the respondent in such email had in essence already been raised in previous correspondence with the claimants/the Tribunal and had therefore been taken into account accordingly.

The status of the claimants

5. It was apparent from the papers that there was an issue between the parties regarding the status of the claimants namely, whether they were employees of the respondent. In summary, the respondent contended that the claimants were both self-employed consultants. This issue was considered by the Tribunal as addressed below.

FINDINGS OF FACT

Mr A Kerridge

6. In July 2018, Mr A Kerridge ("Mr Kerridge") was approached by the respondent, who then lived nearby, who asked him whether he knew of anyone who could look after her horses. As a result of such discussion, Mr Kerridge, who was then looking after his children on a full-time basis, offered

to look after the claimant's horses for which he was paid £150 in cash per week.

7. In August 2018, the respondent asked Mr Kerridge to take on further responsibilities including with regard to the management of her property/dealing with associated issues relating to contractors. Having considered the available evidence, The Tribunal is satisfied, on the balance of probabilities, that it was agreed between Mr Kerridge and the respondent at that time that he would work for the respondent for four hours a day on two days a week (ie 8 hours a week) at £50 per hour with effect from the beginning of September 2018 in return for a monthly payment of £1,600. When reaching this conclusion the Tribunal has taken into account in particular (a) the sworn oral evidence of Mr Kerridge and (b) the payments which the respondent accepts that she made to Mr Kerridge from September 2018 onwards as referred to further below.
8. The Tribunal is further satisfied that (a) it was also agreed between Mr Kerridge and the respondent at that time that Mr Kerridge would be based at the claimant's property and would undertake duties as directed by her from time to time (b) pursuant to such agreement Mr Kerridge attended the claimant's property two days a week and undertook duties as directed by the respondent and (c) the duties undertaken by Mr Kerridge included dealings with contractors and farriers and other house management services. No further terms and conditions were agreed.
9. Mr Kerridge did not receive any payslips from the respondent or any written statement of terms and conditions of employment.
10. The Tribunal is satisfied, on the available evidence, including as set out in the record of payments made to Mr Kerridge provided to the Tribunal by the respondent, that Mr Kerridge received the following payments by bank transfer from the respondent between September 2018 and 26 February 2019 namely :- (a) a payment of £1,600 on 25 September 2018 (b) a payment of £1,000 on 18 October 2018 (c) a payment of £1,000 on 13 November 2018 and (c) a further payment of £500 (as part of a joint payment to him and his wife of £1,000) on 8 February 2019. The Tribunal further accepts Mr Kerridge's oral evidence that he was informed by the respondent that she was unable to make full payment of the agreed monies because of cash flow difficulties.
11. The respondent terminated Mr Kerridge's contract (without notice) on 26 February 2019. The respondent accepts in the response to the Tribunal (in respect of Mrs Kerridge's claim) that she "let the claimants go" on that date but contends that it was because of concerns regarding their work and attendance.

12. At the time of the termination of his contract Mr Kerridge had a shortfall in monies due in the sum of £5, 500 namely (a) £600 in respect of October 2018 (b) £600 in respect of November 2018 (c) £1600 in respect of December 2018 and January 2019 and (d) £1,100 in respect of February 2019.
13. The Tribunal is not satisfied on the available evidence that the respondent had proper grounds to terminate Mr Kerridge's contract without notice. When reaching this conclusion, the Tribunal has taken into account the contentions contained in the respondent's written statement/ submissions that following the commencement of Mrs Kerridge's contract with the respondent there was a deterioration in the attitude and standard of work performed by Mr Kerridge and further that although the respondent conducted a disciplinary hearing on 13 February 2019 there was no improvement in Mr Kerridge's work/ attitude thereafter. The Tribunal has also taken into account however that the allegations were denied by the claimants in their statements and oral evidence (including that Mr Kerridge was subject to any disciplinary proceedings) and further the respondent has not provided any details of any alleged gross misconduct on the part of either claimants or attended the Tribunal Hearing to give oral evidence in support of her contentions. The Respondent stated in her written statement that she was displeased that the claimants had turned up for work on 26 February 2019 with colds because of her medical conditions and further that they were phoning / texting the hospital because a relative was having an operation that day.
14. Mr Kerridge did not seek alternative employment following the termination of his contract with the respondent as he resumed his child care duties on a full time basis.
15. Upon the termination of their contracts the claimants were requested by the respondent to submit invoices for any outstanding monies. The Claimants submitted a joint invoice to the respondent dated 26 February 2019 for alleged outstanding monies in response to such request for consultancy fees and subsequently further invoices giving credit for monies received from the respondent.
16. It was contended by the respondent in the papers that Mr Kerridge had received unpaid loans from her which is denied by Mr Kerridge. The Tribunal is not satisfied, in the absence of any supporting evidence from the respondent that there are any such outstanding loans due to the respondent.
17. Following the termination of his contract with the respondent Mr Kerridge received a loan from his parents in the sum of £6,000 in order to assist him and Mrs Kerridge with their financial responsibilities in the light of the failure

of the respondent to make payment of outstanding monies. Mr Kerridge/Mrs Kerridge are required to pay interest at 1% per annum to Mr Kerridge senior in respect of such loan (which is still outstanding and which Mr Kerridge is unlikely to be able to repay for 12 months or more). Mr Kerridge has not however provided the Tribunal with any evidence of any other consequential losses arising from the above-mentioned alleged deductions from pay.

Mrs H Kerridge

18. Having given careful consideration to the available oral and documentary evidence, the Tribunal is satisfied that it was agreed between the respondent and Mrs H Kerridge shortly before Christmas 2018 that Mrs Kerridge would leave her existing employment (for which she was paid a basic annual salary of £35,000 plus bonuses) and would work for the respondent.
19. The Tribunal is further satisfied that the following terms were agreed between the respondent and Mrs Kerridge at that time namely (a) Mrs Kerridge would work for the respondent as her personal assistant on an annual salary of £45,000 per annum (b) Mrs Kerridge would work a minimum of 20 hours per week but would be required to undertake additional hours up to 35 hours per week as required by the business for the performance of her duties (c) Mrs Kerridge would work the same hours as her husband at the respondent's premises and would undertake her remaining duties working from home (d) Mrs Kerridge would be entitled to 5.6 days holiday per year and (e) although Mrs Kerridge would initially be employed by the Respondent her employment would, on a date to be agreed, subsequently be transferred to a limited company set up by the respondent. When reaching the above conclusions regarding Mrs Kerridge's salary and hours of work that Tribunal has taken into account that the respondent accepted in her response form that Mrs Kerridge started a trial as a general assistant on 6 January 2019 on a salary of £45,000 per annum for 35 hours per week.
20. Pursuant to the terms of the agreement Mrs Kerridge commenced her contract with the respondent on 7 January 2019. Mrs Kerridge undertook personal assistant responsibilities as directed by the respondent from time to time including typing, dealing with paperwork, booking appointments researching projects and liaising with the respondent's business partner Mr Crocker with regard to other business ventures.
21. Draft contracts of employment were subsequently prepared by Mrs Kerridge on the instruction of the respondent for the proposed transfer of Mrs Kerridge's contract to a separate limited company however such contract was not formally agreed/executed at the time of the termination of Mrs Kerridge's contract with the respondent.

22. During the course of Mrs Kerridge's contract with the respondent she received two payments of £500 in January and February 2019.
23. Mrs Kerridge's contract with the respondent was terminated by the respondent on 26 February 2019 as referred to above in respect of Mr Kerridge. The Tribunal is not satisfied on the basis of the available evidence that the respondent had proper cause to terminate Mrs Kerridge's contract without notice. When reaching this conclusion the Tribunal has taken into account in particular, that the respondent has not provided the Tribunal with any evidence of any repudiatory conduct on the part of either claimant (paragraph 13 above).
24. The Tribunal is satisfied that Mrs Kerridge took reasonable steps to mitigate her losses following the termination of her contract with the respondent. Mrs Kerridge obtained alternative employment on 29 March 2019.

THE LAW AND THE CONCLUSIONS OF THE TRIBUNAL

The law

25. The Tribunal has had regard in particular to the following statutory and associated provisions :- (a) sections 1 (particulars of employment) 13 – 27 (unlawful deductions), 230 (employees and workers) of the Act (b) section 38 of the Employment Act 2002 and (c) the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order") (breach of contract claims).

MR KERRIDGE

26. The Tribunal has considered first the unlawful deduction and breach of contract (for notice) claims by Mr Kerridge including, the preliminary issue of whether Mr Kerridge was an employee of the respondent (as contended by Mr Kerridge) or a self-employed consultant (as contended by the respondent).

Status

27. Having given very careful consideration to the findings of the Tribunal together with the submissions of the parties and the legal provisions referred to above the Tribunal is satisfied that Mr Kerridge was an employee (and also a worker) of the respondent for the purposes of section 230 of the Act from 1 September 2018 until 26 February 2019 (the effective date of termination for the purposes of the Act). The Tribunal is not however satisfied that Mr Kerridge was an employee of the respondent prior to that date.

28. When reaching the above conclusions, the Tribunal has taken into account the contentions of the respondent that Mr Kerridge was retained on a self-employed basis including her contentions regarding the lack of any control over Mr Kerridge and the submission of invoices in February 2019 which she says were both consistent with self-employed status. When considering this issue the Tribunal has also had regard to the paucity of documentary evidence including any written terms and conditions of employment or payslips, the limited number of hours worked by Mr Kerridge and the nature of the payments which were made to him by the respondent from November 2018 onwards.
29. The Tribunal is however satisfied having viewed the position overall, that there was the necessary mutuality of obligation between the parties and control by the respondent for Mr Kerridge to be an employee of the respondent including having regard in particular to (a) the agreed hours worked by Mr Kerridge (b) that Mr Kerridge undertook duties based at the respondent's property and as directed by the respondent (c) there is no evidence to suggest that Mr Kerridge was in business on his own account/ provided his services on that basis (including that he was entitled to provide a substitute) (d) the respondent's contention that he was subject to disciplinary action on 13 February 2019 and the summary termination of his contract by the respondent on 26 February 2019 and (e) the monthly payments which were made to Mr Kerridge including that there was no suggestion of any invoices being required by the respondent or submitted until after the termination of Mr Kerridge's contract.
30. The Tribunal is not however satisfied that Mr Kerridge was an employee of the respondent prior to September 2018 as the original relationship was a casual/ ad hoc arrangement as referred to at paragraph 6 above.

Unlawful deductions from pay

31. The Tribunal has therefore gone on to consider Mr Kerridge's unlawful deductions claim for outstanding salary in the sum of £5,500. The Tribunal is satisfied having regard in particular to its findings regarding the terms of Mr Kerridge's contract of employment and further in respect of the monies received and outstanding (as referred to at paragraph 10 and 12 above) that the respondent has made a series of unlawful deductions amounting to £5,500 in respect of Mr Kerridge's accrued salary and which monies the respondent is ordered to pay to Mr Kerridge.
32. The Tribunal is further satisfied that Mr Kerridge has incurred consequential losses as a result of such unlawful deductions in respect of the payments of interest on the loan of £6,000 from his father which was given to Mr Kerridge and Mrs Kerridge to assist them with their financial responsibilities in the

light of the failure of the respondent to make payment of Mr Kerridge's / Mrs Kerridge's accrued salary. The Tribunal accepts the evidence of Mr Kerridge that he will be unable to make repayment of such loan for at least 12 months and Mr Kerridge is therefore awarded a further sum of £60 in respect of the annual interest payment (agreed interest rate at 1% per annum) (paragraph 17 above).

Breach of contract for notice

33. The Tribunal has gone on to consider Mr Kerridge's breach of contract claim for notice. The Tribunal is not however satisfied that Mr Kerridge is entitled to any damages for such breach contract as Mr Kerridge accepted in his evidence that he had reverted to his full-time childcare duties following the termination of his employment with the respondent and had not taken any steps to secure alternative employment. This element of the claim is therefore dismissed.
34. Finally, Mr Kerridge was not issued with any statement of terms and conditions of employment as required pursuant to section 1 of the Act. In all the circumstances, the Tribunal is satisfied that it is appropriate to award Mr Kerridge a further sum of £800 (two weeks' gross pay x £400) pursuant to section 38 of the Employment Act 2002 in respect of such failure by the respondent.
35. The total sum awarded to Mr Kerridge is therefore £6,360 (£5,500, plus £60 plus £800) which monies the respondent is ordered to pay to him.

MRS KERRIDGE

36. The Tribunal has gone on to consider the claims by Mrs Kerridge for outstanding wages and for breach of contract for notice. The Tribunal has also considered as a preliminary issue the question of Mrs Kerridge's employment status.

Status

37. The Tribunal is satisfied having regard in particular to the findings of fact at paragraph 19-21 above together with the legal provisions considered in respect of Mr Kerridge's claim that Mrs Kerridge was an employee (and a worker) of the respondent from 7 January 2019 until 26 February 2019 (the effective date of termination for the purposes of the Act). When reaching such a conclusion the Tribunal is satisfied, in the light of such findings of fact, that there was the necessary mutuality of obligations and control by the respondent and that Mrs Kerridge was therefore an employee.

Unlawful deductions of wages

38. The Tribunal has therefore gone on to consider Mrs Kerridge's claim for unlawful deductions. The Tribunal is satisfied in the light of the findings of fact at paragraphs 19 and 22 above, that the respondent has made unlawful deductions from the claimant's pay for January and February 2019 in the total sum of £5,055 namely :- (a) January 2019 – 3 x gross weekly salary of £865 ($\text{£}45,000 / 52$) = £2, 595 - £500 received from the respondent = £2, 095 and (b) February 2019- 4 x gross weekly salary of £865= £3,460- £500 received from the respondent = £2,960. The respondent is accordingly ordered to pay such monies to Mrs Kerridge.

Breach of contract

39. Finally, the Tribunal has considered Mrs Kerridge's claim for breach of contract for notice. The Tribunal is satisfied, in the light of the above findings of fact, that Mrs Kerridge's employment was terminated without notice and without proper cause to justify her summary dismissal on 26 February 2019. The parties did not agree any express terms as to notice. In the absence of such express terms the Tribunal is required to determine what would have been implied as a reasonable period of notice in all the circumstances of the case. In the light of the fact that Mrs Kerridge was paid on a monthly basis and further her agreed level of her salary (£45,000 per annum) the Tribunal is satisfied that a reasonable period of notice would have been one month.

40. The Tribunal is further satisfied that Mrs Kerridge took reasonable steps to mitigate her loss and as a result of which she was able to obtain alternative employment on 29th of March 2019.

41. In all the circumstances, the Tribunal is satisfied that the claimant is entitled to damages for breach of contract for one month's net salary in respect of notice and Mrs Kerridge is therefore awarded (and the respondent is ordered to pay to her) damages in the sum of £2,422. This figure is calculated on the basis of four weeks' gross salary of £3,460 less 30% in respect of tax and national insurance. The Respondent is ordered to pay such monies to Mrs Kerridge.

42. Mrs Kerridge is therefore awarded a total sum of £7,477 (£5,055 + £2,422).

Employment Judge Goraj
Dated 29 October 2019