**Case No: 3314400/2019**

# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| Mr D Boulter | v | Broadlands Hall Limited |

**Heard at:** Bury St Edmunds **On:** 12 February 2020

**Before:** Employment Judge Cassel

**Appearances:**
**For the Claimant:** In person
**For the Respondent:** Mr T O'Donohoe, Counsel

**JUDGMENT** having been sent to the parties on 3 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The Claimant, David Boulter, brings a claim of unpaid wages from his employment with the Respondent. The claim was listed for today for directions at an Open Preliminary Hearing and for the first part of these proceedings today an Open Preliminary Hearing took place.

2. The Claimant appeared unrepresented. He has been unable to work for the Respondent since January 2019 through stress. I considered the Overriding Objective in the Rules of Procedure and decided that throughout, among other things, unnecessary formality was to be avoided and that so far as was possible the matter was to be dealt with today.

3. During the Open Preliminary Hearing I explained that the Tribunal could only hear evidence in relation to unpaid wages at a substantive hearing, and not for holiday pay or other claims subsequently made by the Claimant. There had been no application to amend the claim either before today's hearing or today and as the case appeared relatively straight forward, it seemed to me appropriate to deal with it today on the basis which had been disclosed in the claim form.

4. I noted from the file that Orders to disclose information had been made, as long ago as 15 August 2019 and the Claimant had failed to particularise his claims.

5. At the end of the Open Preliminary Hearing, with the agreement of both parties, the Hearing was converted into a Final Hearing so that all matters, including whether the Tribunal had jurisdiction to hear the complaints, could be considered.

## Evidence

6. I heard evidence from the Claimant who had not prepared a written witness statement, but who gave evidence on oath and a note of his evidence is recorded. I heard from Colonel Keith Boulter who confirmed the truth of his statement and produced the attachments referred to therein. I also received a skeleton argument from Mr O'Donohoe.

## Findings of Fact

7. I make the following findings of fact based on the balance of probabilities. The Claimant commenced working for the Respondent in December 2003. His title was Staff Trainer which incorporated a number of roles. The Respondent is a limited company and the owner and Director is the Claimant's father, Colonel Keith Boulter. In his statement, which Colonel Boulter adopted in giving evidence, he confirmed that the principal place of business, Barnardiston Hall Preparatory School had been within his family for the past thirty years.

8. A salary was agreed between the Claimant and the Respondent and payments were made to him on a monthly basis. Payment statements were provided and the sums due were subsequently paid into his bank account.

9. The Claimant and his sister lived in premises in Clare, Suffolk, which property is in their joint names. The premises are not connected with his employment and the mortgage repayments were paid by Colonel Boulter. At some stage his sister moved out of the premises and the Claimant remained in occupation. A dispute arose as to the transfer of ownership of the property or a contribution to be made by the Claimant but those issues are not within the jurisdiction of the Employment Tribunal and on those matters I make no findings of fact.

10. The Claimant became ill in January 2019. At first sick notes were not provided but thereafter they were provided and he received 28 weeks of statutory sick pay.

## Conclusions

11. His claims can be summarised as follows:

    11.1 Unpaid wages from the period April 2017 until 3 January 2019;

    11.2 Unpaid wages from January 2019 until the present; and

    11.3 Contractual sick pay, which in part is coextensive with 10.2.

Unpaid wages from April 2017 until 3 January 2019

12. The claim form was received on 1 May 2019.

13. Under Section 13 of the Employment Rights Act 1996 ("the Act"), there is a right not to suffer unauthorised deductions from wages of a worker. Complaints have to presented before the end of a three month period beginning with:

    a. in the case of a complaint relating to a deduction by the employer the date of the payment of the wages from which the deduction was made.

14. The complaint appears to be on the basis of a series of deductions during that period, that is from April 2017 until January 2019. No evidence was provided as to why the claim had not been issued in time and no evidence given as to why it was not reasonably practicable to do so. The Tribunal has no jurisdiction to hear this complaint, but in view of the nature of the relationship and the uncertainty surrounding the matters that were raised, I agreed to determine what the outcome would have been had the Tribunal had jurisdiction.

15. I would have dismissed it in any event, for the following reasons.

16. Pay slips were issued to the Claimant in which all of the required information was included. For reasons which were not made entirely clear, the Respondent's accountant recommended Colonel Boulter outline the mortgage payments made on behalf of his son through his monthly wage slips. I make no finding of fact as to whether or not this was by agreement but the salient issue is that the Claimant did not raise any complaint about the manner of accounting until March 2019. Under Section 27 of the Act, the meaning of wage is defined. Nowhere within that definition is there reference to payments made in connection with his accommodation (which is not associated with his employment) and indeed under Section.27(2)(e) any payment for the worker otherwise than in his capacity as a worker is explicitly excluded.

17. The Claimant has asked that those mortgage payments be treated as pay and in so doing he is clearly wrong.

18. Under Section 8 of the Act, there is a right for a worker to be given by his employer an itemised pay statement. The particulars that need to be provided are detailed in Section.8(2). The pay statements that were provided show that all of those details were recorded.

19. Under Section 11(3)(b) of the Act, the accuracy of the amount is something on which the Tribunal cannot adjudicate.

20. A schedule of payments was recorded by the Respondent for the purposes of today's proceedings. After a brief adjournment the Claimant confirmed that the sum shown on the schedule corresponds to the pay slip details and the net payments due, subject to slight arithmetical minor discrepancies, had all been paid.

21. It follows, therefore, that all the payments to which he was entitled as a worker during this period had been paid to him.

Unpaid Wages from 3 January to Present / Sick pay

22. I was told that the Claimant's employment continues and it was agreed that his 28 weeks' statutory sick pay entitlement had been paid to him.

23. The Claimant's claim is that he was entitled to full pay throughout and this was by reason of a sickness policy which had been followed for his benefit in no more than six periods of sickness prior to January 2019, none of which exceeded a week. He claimed that this in some way entitled him to contractual sick pay which is continuing.

24. Colonel Boulter gave evidence that a Section 1 statement, a copy of which was produced, was served on the Claimant on or around 6 April 2015. Within that agreement there is specific reference to entitlement to statutory sick pay only. He gave further evidence that in exceptional circumstances he would exercise his discretion and pay a period, unspecified, of contractual pay. He cited examples of compassionate grounds in the case of a worker diagnosed with cancer.

25. The Claimant was adamant that he never received such a written statement or indeed any written terms of contract. To determine this issue, it is not necessary to make a finding of fact as to whether the Section 1 statement had been served. I do find that it was kept on the Claimant's personnel file for reasons of the Respondent's statutory obligations and in order to show compliance during an Ofsted inspection.

26. I do find however, that it was the custom and practice of the Respondent to pay statutory sick pay only and the exceptions to that policy were rare.

27. The Claimant was vague in his evidence as to what he claims is a term of his contract. It was a term uncertain. There was no time limit to that claimed contractual term and no evidence, apart from the Claimant's belief of its existence, that such a term of his contract existed.

28. I remind myself that the standard of proof in these proceedings is the balance of probabilities and applying that standard of proof I do not find there was a contractual term entitling the Claimant to receive sick pay as a worker indefinitely, or at all. I find that all his contractual entitlement to wages and pay was met from 3 January 2019 to the present and for all these reasons I dismiss this claim.

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Employment Judge Cassel

Date: 23 March 2020

Judgment sent to the parties on

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For the Tribunal office