



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Jeyaratnam  
**Respondent:** Mentor International Management Consultants Ltd  
**Heard at:** East London Hearing Centre  
**On:** Monday 24 February 2020  
**Before:** Employment Judge Burgher (sitting alone)

## Representation

**Claimant:** In person  
**Respondent:** Julien De Souza (Head of Finance)

**JUDGMENT** having been sent to the parties on 4 March 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1 The matter was listed before me to consider the Claimant's claim for unpaid wages and unlawful deductions of wages. The Claimant also made a claim for unfair dismissal. The unfair dismissal claim was not accepted due to insufficient service. The Claimant was informed of this by letter dated 7 November 2019 and he was given 14 days to explain why it should not be struck out. He responded on 11 November 2019 stating that he was unfairly treated and made to feel that he was being discriminated. No representations were received from the Claimant as to why the unfair dismissal claim should not be struck out. The claim for unfair dismissal is therefore formally struck out on the basis that the Claimant had insufficient service to bring such a complaint.

2 As far as the payment claims are concerned, the Claimant claimed the sum of £1400 in respect of the season ticket loan that he says resulted from a misrepresentation made to him about his future employment with the Respondent. The misrepresentation was allegedly made by Mr Julian De Sousa, who was the Head of Finance of the Respondent. The Claimant also claimed for two months' salary as a result of losses flowing from him being out of work until he secured more beneficial employment.

### Amendment application

3 The Claimant applied to amend his claim to add race discrimination. The Claimant presented his claims on 1 October 2019 and he did not make any reference to unlawful discrimination. The Claimant had objected to his unfair dismissal claim being struck out on the basis that Mr De Sousa had humiliated the Claimant in front of the whole office on the basis of something he did not do. The Claimant maintained that he did a good job and he believes that Mr De Sousa had an underlying issue with him. The Claimant stated that there was a lack of communication towards him became a problem and he was made to feel that he was being discriminated against.

4 The Claimant did not specify what type of discrimination he was referring to in his email of 11 November 2019 but sought to apply for the claim to be amended to add a claim for race discrimination on grounds of who he was.

5 I considered the Claimant's application to amend. I considered the Selkent principles including the balance of hardship and interests of justice. If the amendment was not allowed, the Claimant would be denied the opportunity to raise an important complaint of race discrimination. This was considered against:

- (i) the delay and lack of clarity in how the Claimant seeks to put his race discrimination complaint;
- (ii) the fact that the Respondent had not had a previous opportunity to consider them by way of grievance or otherwise;
- (iii) that fact that the Claimant did not bring a discrimination complaint in his 1 October 2019 claim; and
- (iv) his letter of 11 November 2019 did not specify what type of discrimination was being alleged, led me to conclude that the balance of hardship favours the Respondent.
- (v) I considered that it was too late to allege a race discrimination complaint at the final hearing.
- (vi) I also had regard to the merits of the Claimant's allegations which, if relating to dismissal are undermined by the Claimant's assertion that Mr De Sousa terminated two other individuals of different races prior to the expiry of their fixed term contracts.
- (vii) I concluded that it was not in accordance with the overriding objective to delay determination of the pleaded issues.

6 In these circumstances I refused the Claimant's application to amend his claim to add race discrimination.

## Evidence

7 The Claimant gave evidence on his own behalf and Mr De Souza gave evidence on behalf of the Respondent. Mr Andrew Hank, IT manager of the Respondent made submissions.

8 I was also referred to relevant miscellaneous documents.

## Facts

9 I have found the following findings of facts from the evidence.

10 The Claimant commenced employment with the Respondent on 17 July 2018 and was dismissed on 7 August 2019.

11 The Claimant entered a contract with the Respondent that was signed by him on the 20 July 2018. The contract states that the Claimant was employed on a fixed term of employment commencing on 17 July 2018 and finishing on 12 July 2019. Under the contract there was an option available for both parties to extend the contract on a rolling monthly basis. The option was required to be agreed in writing no later than one week (7 days) before the end of the relevant month and can continue indefinitely.

12 Under clause 2.1, the notice period provisions state that during the course of the contract either party may terminate the employment by giving to the other not less than one month's notice.

13 The Claimant stated that he had a discussion with Mr De Sousa in July 2019 regarding the need for certainty of his employment following the end of the fixed term contract. The Claimant stated that he was assured by Mr De Sousa that he would be employed for a further year going forward. Following this assurance the Claimant applied for a season ticket loan to pay for travel costs from Transport for London. The cost of the season ticket was £1,404.00.

14 In order to benefit from the season ticket loan the Claimant was required to sign a separate agreement dated 1 August 2019. The letter specifying the agreement stated:

*“Re: Season Ticket Loan*

*Further to our discussion on the above, a priority payment of £1404.00 will be transferred to you today with regard to your annual season ticket with Transport for London (Tfl). This loan will be repayable over 12 months, the first deduction being made from your August salary.*

*Should you leave the company before, this loan is repaid in full, for whatever reason any balance will fall due at that time.*

*Please sign below to authorise the company to deduct repayments in accordance with the above.”*

15 On 1 August 2019 the Claimant signed the agreement, authorising the Respondent to deduct the season ticket loan in accordance with the above terms.

16 The payment in respect of the season ticket was then made to the Claimant and there was a processing of the payment on the same day.

17 The Claimant used the money to purchase a season ticket.

18 On 7 August 2019 Mr De Sousa terminated the Claimant's contract. The Claimant was nonplussed about this and was uncertain about the reasons for the termination. Mr De Sousa stated that the Claimant's performance fell below the standards that were expected. The Claimant did not accept this. However, this is something I have to engage with the purposes of the Claimant's claims.

19 The Claimant was provided with contractual notice and the season ticket loan was recouped. The Claimant asserted that he is entitled to the £1,404.00 which was deducted from his final salary because he would not have taken the loan out at all if he had known that he was not going to be employed by the Respondent going forward. The Claimant states that this put him in financial difficulties and he was left with no money to survive because had paid his rent and food.

20 The difficulty with the Claimant's claim was emphasised that he still had the asset of the £1,404 season ticket that he was seeking full repayment. In any the Claimant stated that he was able to claim back about £1,100 from TFL about a month after his termination of employment. This underlined the curious basis for his claim for repayment of the £1,404.00.

21 On the evidence and the contractual documentation I concluded that this claim was misconceived. In these circumstances the Claimant could not reasonably maintain that he should be paid the sum claimed. I could have understood if the Claimant was claiming difference the sum of £300 for however he was not maintaining that and was seeking the full amount to put him in a position to compensate for the stress and anxiety suffered.

22 In any event, whichever way the contract is assessed the Claimant is not entitled to any sum in respect of the season ticket loan. Under the contract is not entitled to any sum in relation to season ticket loan given that he signed the agreement 1 August 2019. The Claimant stated that he naively trusted Mr De Sousa. However, neither the contract nor the terms of the season ticket loan support the Claimant's claim for certainty of employment for a further year. The contract could be determined on one months' notice and the loan agreement requires the Claimant to repay the sum. This was deducted from his salary properly and therefore the Claimant's claim for repayment of the loan advance fails and is dismissed.

23 In relation to lost earnings claims the Claimant claimed for two months loss of earnings resulting from his own inability to secure alternative work. Whilst this head of claim may have been appropriate under a claim for unlawful discrimination or unfair dismissal there was no such live claim before me. As such the Claimant was limited contractual entitlements, which under the rolling fixed term contract of was one months'

notice. The Claimant was paid one months' notice. Therefore, his claim in this regard also fails and is dismissed.

**Employment Judge Burgher  
Date: 26 March 2020**