



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs F Jamil

v

Tshovo Accountancy Services London

Heard at:

Watford

On: 27 September 2019

Before:

Employment Judge Loy

Appearances:

For the claimant:

In person

For the respondent:

Mr. Akobola, director

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The respondent shall pay to the claimant the sum of £704.70; and
2. The claimant's claim for a refund of £750 training fee is not well-founded and fails.

REASONS

Introduction

1. The claimant is a qualified certified (ACCA) accountant. The respondent is a business providing accountancy services such as bookkeeping and tax advice to its clients. The claimant was engaged by the respondent as a Junior Accountant between 13 August 2018 and 12 November 2018. Following a period of Acas conciliation between 12 November 2018 and 26 December 2018 the claimant presented a claim form to the tribunal on 8 January 2019. She claims arrears of pay, are fund of her training fee and compensation for "time wastage and stress". The claimant says that she received no pay whatsoever from the respondent despite carrying out "90-100" hours of work for them.
2. The claimant relies upon a written agreement between the parties signed on 23 July 2018 ("the Contract"). She relies also on what she was told about the position when she was recruited. Her understanding was that she would receive

training from the respondent and at the same time the respondent would provide her with paid work. It was common ground that she paid £750 to the respondent for the training she was to receive. It was also common ground that some work was provided to the claimant during the training period which fell outside the training programme. The amount of such work (in terms of time spent on it) was a matter of significant dispute. The level of pay for any work that has been carried out is also disputed. The claimant claims a pay rate equivalent to a salary of £27,000 per annum. This was the anticipated annual earnings of the claimant once she completed the training. In the alternative, the claimant claims an hourly rate at the national minimum wage. Given the claimant's age and the time period to which this claim relates the relevant national minimum wage is £7.83 per hour.

3. The respondent says that the claimant has misunderstood both the Contract and what was said to her. It says that the Contract is a training agreement. It is not a contract of employment. The Contract provides for a compulsory period of 8 weeks training. The claimant was required to complete that training to the respondent's satisfaction before she would be given any paid work. Only after the respondent had "signed off" the claimant as having successfully completed the training would a relationship of employment come into effect and paid work be provided. Had matters gone to plan, the terms of the employment phase would have been set out in a different written agreement. The respondent says that this is its standard operating model when it comes to training and recruitment.
4. The respondent's central point is that the parties never reached the employment phase of the relationship. The relationship between the parties broke down irretrievably before the completion of the training. The respondent says that there is no obligation on the respondent to pay the claimant anything at all. Alternatively, if there is an obligation to pay the claimant for work carried out, the respondent says that the figure of £27,000 per annum is irrelevant. The expectation that the claimant would be employed on such terms simply did not materialise. No such contract ever existed. Moreover, that figure is only an estimate of on-target earnings. Had an employment relationship arisen, the actual pay rate would have been a percentage of the invoices delivered to clients. As for the training fee of £750, that was expressly non-refundable.
5. Put simply, the claimant says the training and the paid work were to run concurrently whereas the respondent says that they were to run consecutively.

Claims and issues

Claims

6. The claimant's claim is for arrears of pay. It is a claim for unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and/or a breach of contract which arises or is outstanding on termination of the employment under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994 / 1623). The tribunal notes that unauthorised

deductions from wages applies to workers and not just to former employees.

Issues

7. The tribunal has to decide the following issues:
 - 7.2 was the claimant was entitled to be paid for the work she carried out between 13 August 2018 and 12 November 2018?
 - 7.3 If so, was any work in fact provided to the claimant and how much?
 - 7.4 what was the applicable pay rate for that work?

Procedure, documents and evidence heard

8. The tribunal heard evidence from the claimant and from Mr Akobola. No other witnesses were called. The tribunal were presented with documents relating to the claimant's recruitment and terms of engagement (a document referred to by the respondent as the "training agreement"). The claimant provided copies of text messages and emails relating to client assignments, chasing up for a start date and chasing up her own pay. She also produced copies of financial documents belonging to the clients on whose files she worked.

Fact-Findings

9. There is only one written agreement between the parties. That is the Contract. It does not have a title. Nor is it not an easy document to read in the sense that its structure and sentences are often difficult to follow. Nonetheless, the following provisions are relevant to this case. It describes the claimant's position as Junior Accountant. The primary responsibilities are to prepare and examine financial records. The claimant was to start work "once you have completed set up (*sic*) the integration process". It contains a section entitled "TRAINING AGREEMENT FOR TASLONDON ACCOUNTANTS." The training fee payable on commencement of training is expressly non-refundable. It says that the claimant "must also be given a separate work contract". No such work contract was presented to the tribunal. However, the tribunal notes that it was intended to be provided as a separate document.
10. The training period in the Contract is 8 weeks. The claimant was required to successfully pass all courses. There is a "Training Plan" at the end of the document which timetables 8 courses over an 8-week period on various accountancy related topics such as tax planning, payroll services and VAT returns. A non-refundable training fee is referred to. As is recorded above, the claimant paid a fee of £750. The document also says that the claimant "will receive" (emphasis added) a training certificate" and an "Accounting role With TASlondon" £25,000 Per anum ote income (*sic*)". It was common ground that the likely on-target earnings for the claimant would be £27,000 given her experience

and qualifications.

11. The claimant provided copies of text message / email exchanges with certain of the respondent's employees. A good deal of those messages are between the claimant and Natasha Soki, a senior member of the respondent's professional staff. The remainder are exchanges with the respondent's administrative resource.
12. One set of emails/text messages record the claimant's attempts to get payment for the work she was doing. By way of example, there is an email to the claimant of 31 October 2018 from the respondent's accounts department in which she is told, "You are due to receive payment for client work, however we do not have your banking details on file". In an email of 12 November, again between the accounts department and the claimant, she is told, "...your money is scheduled to go out with the November Pay Cycle". On 13 November 2018, Mr Akobola emailed the client in these terms:

"Dear Faiza,

I trust you are well.

Management has received a request from accounts for your pay advance and it will be actioned.

We are at the Business show today thus the authorisation will go out tomorrow – as this need to be counter-signed.

I will also call you for a discussion.

Regards,
Wemba"

13. It was common ground that no payment was made to the claimant at any time.
14. A separate set of emails/text messages record matters relating to client work. By way of example, Natasha Soki texts the claimant on 2 October 2018 asking her, "How are you getting on with the client work?" On 30 October 2018, the claimant sends a text message to the Ms Soki in which she informs her, "I have done my work on NINE 360." On 5 November 2018, the claimant in a further text to Ms Soki asks, "Please give me a client to work on." Shortly thereafter, the relationship deteriorated beyond the point of repair, mainly due to the fact that the claimant was not receiving any pay at a time when she was in difficult financial circumstances. This is reflected in the claimant's strongly worded email of 1 December 2018 to Mr Akobola and Ms Soki in response to not receiving any payment in the November pay run. The claimant sets out her intention to commence tribunal proceedings to recover the £750 training fee and to recover unpaid wages for the "90 hours" that she worked on client files.

15. The claimant also produced financial documents belonging to the three clients upon whose files she worked: Romeo Santiago, Over Limited and NINE 360. She says that this plainly shows that she was doing work for the respondent for which she should be paid. In addition, the claimant produced a document which records the hours that she worked on Over Limited. A total of 41 hours of work are recorded in that document.
16. Mr Akobola told the tribunal that it followed its normal practice when recruiting the claimant. He was very clear that the training phase and the employment phase were distinct and consecutive. The recruit is required to pay for the training. After the training has been done, paid work is provided to the recruit. If the business provides the work to the accountant, the business retains 60% of the value of the invoice. If the accountant brings in the work, the business retains 40% of the value of the invoice.
17. Mr Akobola described what became an increasingly acrimonious relationship between the business and the claimant. The claimant appeared to believe that she was entitled to be provided with paid client work from the outset. It was explained to the client on a number of occasions that she would receive paid work only after completing her training. However, the claimant was insistent and made repeated requests to be given paid work. Eventually the respondent relented and gave her work to do, as much to appease her as anything else. That work was on the three files referred to by the claimant. The tribunal asked Mr Akobola whether he accepted that the respondent benefited from the claimant's work. He accepted that it had, although he considered the estimate of 90-100 hours to be disproportionate. He suggested the work done could be completed in a relatively small number of hours.

Conclusions

18. I informed the claimant that the tribunal has no general jurisdiction to award compensation for "time wastage and stress". I could therefore not consider that part of her claim.
19. I accept the respondent's contention on the structure of the training phase of the relationship and the employment phase of the relationship. At the time that the Contract was entered into the effect of the agreement was that the claimant would pay for the training she was to receive over an 8-week period and thereafter a "work contract" would be entered. That this is the correct construction of the contractual relationship can be seen by the use of the future tense in the Contract when it refers to the fact that a training certificate and an Accounting role will be provided.
20. The claimant experienced significant personal difficulties. She had resigned from her other jobs and there was a delay to her starting with the respondent. She then realised there would be a further delay while she completed a training period. I accept her evidence that she genuinely believed that she would get paid

work from the outset. However, I do not find that to be the correct interpretation of the Contract for the reasons given.

21. It was however accepted by the respondent that it did provide work to the claimant which fell outside of the scope of the training commitment and that it did so in direct response to the claimant's increasingly insistent requests for paid work to be given her. That may be a decision that the respondent regrets, but it remains a decision they took nevertheless.
22. I also rely on the responses that the respondent gave to the messages and emails sent by the claimant chasing payment between September and December 2018. The respondent attributed its failure to make payment to the claimant to its own administrative error. Such a reply is only consistent with the respondent being aware that it owed the claimant money. At no stage did Mr Akobola, Ms Soki or members of the respondent's accounts team reply to the claimant in terms which denied that payment was due. On the contrary, when the claimant chased payment in September and October 2018 no one disputed the claimant's entitlement. That included Mr Akobola, a director of the company, who said in writing to the claimant on 13 November 2018 that "authorisation" of a pay advance to the claimant "will go out tomorrow". I therefore find that an unwritten contract came into existence in September 2018 between the claimant and the respondent which involved the provision of work by the respondent in return for remuneration. In other words, the claimant became entitled to be paid for work undertaken.
23. I do not accept the claimant's contention that the term as to pay in the unwritten contract was £27,000 per annum pro rata. Having found that the anticipated contract, to which £27,000 would have been only estimated on target earnings, never came into existence it follows that the terms of that contract as to pay did not come into existence either. Looking at the surrounding circumstances, in particular that the claimant was asking for paid remuneration to help her manage a very challenging financial position, I accept the claimant's alternative position that the parties would have agreed a pay rate at the level of the national minimum wage.
24. I accept the claimant's evidence about the hours she says she worked on the three clients. The claimant's consistent position is that she worked 90 hours in total. Although she says 90-100 hours in her claim form, the written evidence at the time says 90 hours and I take that figure as the more consistent and reliable. There is a written record made at the material time in respect of one client, Over Limited. That is broken down by date, hours worked and work done. The total of 41 hours leaves a balance of 49 hours between the other two clients. That does not seem unreasonable given the time intensity of the work in question. I therefore find that the claimant is entitled to 90 hours pay at £7.83 totalling £704.70.
25. I do not uphold the claimant's claim for the re-payment of the £750 she paid the

respondent for training. It was an express term of the Contract that the training fee was non-refundable. The respondent did not withhold any of the training or fail to keep its side of the bargain. Indeed, it was in the respondent's own interests that the claimant completed her training because after that point the respondent would start to earn fees from her work. In reality, the parties' relationship completely broke down on account of the claimant's insistence on paid work to which she was not entitled under the Contract and the respondent's dilatory attitude to payment.

Employment Judge Loy

Date: 20 July 2020

JUDGMENT SENT TO THE PARTIES ON

.....24/07/2020.....

.....S.Kent.....
FOR THE TRIBUNAL OFFICE