



EMPLOYMENT TRIBUNALS

Claimant: Mr M Demir

Respondent: Thomson Crosby Capital Markets

Heard at: London Central

On: 28 July 2020

Before: Employment Judge Khan

Representation

Claimant: In person

Respondent: Mr E Balli, Solicitor

JUDGMENT having been sent to the parties on 29 July 2020 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

1. By a claim presented on 27 March 2020, the claimant brought a complaint of unauthorised deductions from wages. The respondent resisted this complaint.

The law

The right not to suffer unauthorised deductions

2. Under section 13 of the Employment Rights Act ("ERA") a worker has the right not to suffer unauthorised deductions from wages. A deduction under this section is defined in the following terms:

13 (3) Where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of the wages properly payable to him on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

3. Section 13(1) provides that an employer shall not make a deduction from the wages of a worker unless it is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

Valid service of notice of termination

4. To be effective, notice must be expressed to expire on a particular date unless there is a provision in the contract to the contrary.

The claim and the issues

5. The claimant complains that the respondent made unauthorised deductions from his wages when it failed to pay his wages from November 2019 until March 2019. He claims the gross amount of £70,000 i.e. 5 months' wages at £14,000 gross per month. His claim form also refers to his right to six months' notice pay "should the company decides to serve me a formal notice." The claimant says that he remained employed until 15 June 2020 when he took up new employment.
6. The respondent agrees that it did not pay the claimant from November 2019. It also agrees that the claimant had a contractual right to six months' notice. It says that the claimant's employment was terminated on 5 January 2020 due to financial difficulties. On this basis it says that the claimant was entitled to six months' notice pay.
7. The central issue in dispute was whether the claimant was dismissed on 5 January 2020 or whether he continued to be employed up to the date when he presented his claim i.e. 27 March 2020.
8. If the claimant was not dismissed between 5 January 2020 and 27 March 2020 then he would be entitled to compensation for all deductions made between November 2019 and 27 March 2020.
9. If the claimant's employment terminated on 5 January 2020 then he would be entitled to compensation for all deductions made between November 2019 and January 2020 and also to six months' net wages less any sum received in mitigation and subject to the statutory cap of £25,000 by virtue of regulation 10 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
10. I explained to the claimant at the beginning of the hearing that the tribunal would not have jurisdiction to consider any alleged deductions taking place after the date when the claim had been presented unless the claimant had presented a second claim covering this period or he had successfully applied to amend his claim to include these allegations.

The evidence and the procedure

11. I heard evidence from the claimant. The respondent did not rely on any witness evidence. I also considered separate bundles of documents provided by each party. Both parties made closing submissions.
12. During closing submissions the claimant made a late application to amend his claim to add a new complaint of unauthorised deductions for the period up to 6 June 2020. The respondent objected to this. I refused this application. It was made during closing submissions when all of the evidence had been heard.

Findings of fact

13. The claimant was employed by the respondent from 1 March 2019 as Head of Sales and Trading and Director. His annual gross salary was £168,000. This translated to gross monthly income of £14,000.
14. The pay date was the last working day each month.
15. As noted above, it is agreed that the respondent failed to pay the claimant any salary from 1 November 2019. The respondent accordingly conceded that it made unauthorised deductions from the claimant's wages in November and December 2019.
16. The relevant contractual provisions relating to the termination of the claimant's employment were set out in an Executive Service Agreement dated 1 March 2019 as follows. Under clause 16.1 the respondent was required to give the claimant six months' notice of termination. This was subject to clause 16.2 which provided for summary notice in writing or the making of a payment in lieu of notice if any of the conditions set out at 16.2.1 to 16.2.10 apply. The respondent did not say that any of these conditions applied. Clause 16.6.2 provided that if written notice was given then the respondent could "require the Executive to perform no duties and / or exclude him from entering Company premises and to cease all contact with other employees of the Company...PROVIDED THAT...the Company shall continue to pay the Executive his basic salary and contractual benefits as referred to in sub-clause 6.1 of this Agreement."
17. In an email sent at 16.00 on Friday, 3 January 2020 to the claimant and two other colleagues by Bulent Kalemdaroglu, Chief Operating Officer, stated:

"As you may have expected, TCCM needs cash injection from the current shareholders in order to carry out its daily activities and fulfil the financial commitments. The shareholders do not have any intention to contribute to the company financially. It is expected that the company will go into administration soon. For the above reasons...You do not need to come into the office any more...I hope that this turning point of your career will bring you all the successes and better lives."
18. I did not find that this email constituted unambiguous and unequivocal notice as contended for by the respondent. All this email did was to tell the claimant and his two colleagues that they were not required to come into the office any more. It did not refer to any notice period nor a date when their employment would end.
19. Nor did I find that the claimant's subsequent conduct demonstrated that he understood that his employment had ended on 5 January 2020, notwithstanding the respondent's contention to this effect. This is because I accepted the claimant's evidence that in the discussions he had with Mr Kalemdaroglu and Umut Utkan, Executive Chairman, between 6 January and late March 2020, which the respondent did not dispute took place, he asked if he remained employed and was told he did. The respondent produced no witness evidence to contradict this nor did it provide any cogent

reason why I should not accept the veracity of the claimant's evidence on this point.

20. I therefore accepted the claimant's evidence that he understood that he had been placed on garden leave. He had been told not to come into the office and also that he remained employed. His contract, at clause 16.6.2 provided for this arrangement. I also accepted that for the claimant, this was not an unusual occurrence in his over 14 years' experience of working in the financial services sector. I agreed that Mr Kalemdaroglu's good wishes for the future were not inconsistent with being placed on garden leave.
21. The claimant requested a P60 on 8 May 2020 so that he could complete his tax return. Notably, he did not request a P45 which is consistent with his evidence that he understood that he remained employed by the respondent. A P60 was emailed to the claimant on 11 May 2020 which recorded that he had received the gross amount of £98,000 in the previous financial year. This equates to seven months' salary i.e. for the months from April – October 2019 that the claimant was paid in that financial year.
22. The next month, on 8 June 2020, the claimant requested a P45. He wrote "Please provide me with my P45 as it has been 6 months since I was informed that I don't need to come to office on 6th January 2020". The claimant was therefore saying that he had treated the email dated 3 January 2020 as notice of termination which had ended on 6 June 2020, although this was only five months later. The claimant chased this document on 16 June 2020 and on the same date Mr Kalemdaroglu instructed the respondent's accountants to prepare a P45 for the claimant with his last working day being 5 June 2020. A P45 which referred to a leaving date of 5 January 2020 was completed on 17 June 2020 and forwarded to the claimant. This was the first document which referred to this purported termination date.
23. Although the respondent denied this, I found that the claimant did not accept that this was his correct termination date. The claimant emailed Mr Utkan on 23 June 2020 to complain that he had not received his salary for November and December 2019 nor his notice period from January – June 2020. He referred to his contractual right to six months' notice and he noted "I was told not to come to office on 05/01/2020 which starts my notice period." In a second email sent seven minutes later he wrote "Just to make it clear, I had a 6 months notice period in my contract. I have been told not to come to office on 6th January 2020 hence my notice period has been completed on 6th June 2020...So my last working day...is not 5th January 2020. It is 6th June 2020..."

Conclusions

24. I found that the respondent's email dated 3 January 2020 did not amount to valid notice of termination because it did not refer to a termination date. The respondent accepted that there was no provision in the claimant's contract which disapplied this requirement.
25. I also found that the claimant remained employed at the date when he presented his claim i.e. on 27 March 2020. This is because I found that he

had been placed on garden leave from 5 January 2020: he was told that he was not required to come into work and also that he remained employed; his contract provided for this.

26. The respondent conceded that it made unauthorised deductions from the claimant's wages in November and December 2019. I also found that it made unauthorised deductions in January and February 2020. The last deduction in respect of which the tribunal had jurisdiction to determine was made in February 2020. This is because the last working day in March 2020, which is when the claimant was due to be paid that month i.e. 31 March 2020 fell after the date when the claimant presented his claim.
27. The claimant's gross monthly wage in each of these months was £14,000. I therefore found that the respondent made unauthorised deductions across the four months from November 2019 to February 2020 in the total gross sum of £56,000.
28. I therefore made a declaration that the respondent had made unauthorised deductions from the claimant's wages, in contravention of his rights under section 13 ERA, and an order for payment in the gross sum of £56,000 within 21 days.
29. I was not required to determine on what date the claimant's employment ended after this date although it is notable that in his correspondence with the respondent dated 23 June 2020 the claimant stated that his employment had come to an end on 6 June 2020. According to his witness statement, the claimant took up new employment nine days later on 15 June 2020.

Employment Judge Khan

Date : 11th Aug 2020

JUDGMENT SENT TO THE PARTIES ON

.12/08/2020

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FOR THE TRIBUNAL OFFICE