



THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant

and

Respondent

Mr R Skupin

Werner and Werner Limited

Held at London South

On 11 August 2020 (By video)

BEFORE: Employment Judge Siddall (Sitting Alone)

Representation

For the Claimant: In person

For the Respondent: Mr S Ratajski

JUDGMENT

The decision of the tribunal is that the claim for unlawful deduction from wages is not well founded and it does not succeed.

REASONS

1. The Claimant claims arrears of pay. In a claim form lodged on 21 January 2020 he said he was owed £1500 in unpaid wages and he also claimed tax which he said the Respondent should have paid to HMRC.
2. Due to restrictions operating as a result of the coronavirus pandemic, the hearing took place via Cloud Video Platform. The Claimant had problems

connecting at first but he was eventually able to dial in by telephone. Neither party objected to the hearing being conducted in this way. Both the Claimant and Mr Ratajski gave evidence.

3. The facts I have found and the conclusions I have drawn from them are as follows. The Claimant is registered as self-employed. He used to work as a plumber and now offers his services as a project manager. However he stated that he did not operate his own business: it appears he just works on-site from project to project.
4. The Claimant was engaged to work on a building project by the Respondent. It is not in dispute that he started work on 29 August 2019 and finished on 21 December 2019. He met with Mr Ratajski who offered him a daily rate of £140. The claimant said that this was not enough. They agreed that he would be paid a daily rate of £140 but that he would receive an additional £1500 on successful completion of the project which was expected by Christmas that year.
5. The Claimant's duties involved running the site, looking after staff, ordering materials and being responsible for health and safety. Other staff were hired and paid by the Respondent. The Claimant supplied his own tools, boots and helmet.
6. The Claimant and Respondent parted ways on 21 December 2019. The Claimant stated that he was told by Mr Ratajski that the project had come to an end. He said that he asked for his bonus money of £1500. Mr Ratajski refused to pay it. I asked the Claimant what reason Mr Ratajski had given him for refusing the payment. He told me that no reason had been given. However when Mr Ratajski gave evidence he stated that he had told the Claimant that he was ending his contract because he was not happy with his performance. He said that initially everything had gone OK but that he had become unhappy with how the Claimant was performing his role. He had been focussing on doing some exams and the work was not being pushed along. It was Mr Ratajski's evidence that he decided to let the Claimant go. He stepped in to manage the remainder of the project himself, and it was not completed until February 2020. When I asked the Claimant if Mr Ratajski had explained to him the reasons why he was not paying the bonus, he agreed that Mr Ratajski had told him this.

7. There was no written agreement setting out the conditions under which the bonus would be paid.
8. It was the Respondent's position that the Claimant was self-employed and that the tribunal had no jurisdiction to hear this claim. In his claim form, the Claimant alleged that Mr Ratajski was paying in cash and was avoiding payments of tax and National Insurance to HMRC. Mr Ratajski produced copies of payslips showing that the Claimant had been paid under the CIS scheme and that a 20% reduction had been made for tax and NI. I asked the Claimant whether he was registered as a subcontractor under the CIS scheme. Initially he said that he did not know – he had sent all the papers to the Respondent. Mr Ratajski said in evidence that an employer can check the papers but that it was for an individual to register under the scheme and the deduction of 20% would then show on the payslip. On questioning again, the Claimant agreed that he was registered under the CIS scheme although he suggested that the Respondent had not checked his status.
9. My decision is as follows.
10. I am satisfied that the Claimant would qualify as a 'worker' for the purposes of a claim for unpaid wages under section 13 of the Employment Rights Act 1996. Although he had to supply his own tools and PPE, this is standard on building sites. It is clear that he was required to perform the work personally. The evidence produced by the Respondent, a copy of the self-checking tool to determine if a person is self-employed, suggests that the Claimant was not able to provide a substitute. He was clearly working under the direction of the Respondent and for the purposes of this project he was not in business on his own account. He was part of the management structure at the site and had responsibility for supervising staff hired by the Respondent.
11. As to the bonus, it is clear that a sum of £1500 was agreed between the Claimant and the Respondent. The expectation was that it would be paid at the conclusion of the project by Christmas 2019. However there was no written agreement and the conditions under which the bonus would be paid are not set out. Mr Ratajski stated that the bonus was only payable upon satisfactory completion of the project and the Claimant did not challenge him on this. I find that it would be normal for a company that was agreeing to pay a bonus to

make this conditional upon the work being completed in a satisfactory way. I find that it is more likely than not that this was the bonus arrangement agreed between the parties.

12. There is a dispute about whether the project had finished before Christmas 2019. The Claimant says that it had and that everything was 'fine'. Mr Ratajski's evidence is that the project was running behind and that he decided to end the contract with the Claimant. He stepped in to finish the project himself and it was not completed for several more weeks.
13. As there is no written evidence concerning this point, I must decide whose evidence I accept. On balance, I prefer the evidence of Mr Ratajski. I have noted in particular that the Claimant initially denied that Mr Ratajski gave him any reason for withholding the bonus in December. Having heard what Mr Ratajski had to say, he conceded that he had been told that he would not be paid bonus because Mr Ratajski was not happy with his work.
14. I also accept Mr Ratajski's evidence that the project was not completed before Christmas but went on into the New Year. Again the Claimant did not challenge this.
15. The Respondent had also produced a copy of an email that the Claimant had sent to the client after his contract had ended, in which he pointed out numerous issues with the work that had been done and suggested to them that the Respondent had been cheating them. On the one hand this could be seen as the actions of a disgruntled member of staff and evidence that the Respondent was 'cutting corners'. On the other hand, the Claimant has produced no evidence himself about the state of completion of the project as at Christmas 2019. This email which he sent (but was disclosed by the Respondent) does suggest that there was in fact much work still to be done. The Claimant argues that these were just 'snagging' issues but the list is lengthy. Second I note that the Claimant was complaining about the standard of work on a project where he himself was site manager and therefore where he had a strong degree of control and responsibility for the work. Whilst I treat the evidence contained in this email with some caution, I find that on balance it gives some weight to the Respondent's assertion that the project was not going well and that it had not finished at Christmas 2019.

16. In conclusion I find that the Respondent agreed to pay the Claimant a bonus of £1500 if the project was completed on time and in a satisfactory way. I find on the balance of probabilities that the project was over-running and that the Respondent brought the Claimant's involvement to an end because they were not happy with his performance as site manager, and that he was informed of this on 21 December 2019. I therefore find that the bonus claimed is not due to the Claimant. Neither has he established that he is owed any sums by way of tax that was being illegally withheld. The claim fails.

Employment Judge Siddall
Date: 11 August 2020