



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimant Mr T Manunza
Respondents Mr A Omotajo (1)
 Fitness Agents Ltd (2)

Employment Judge: Mr J S Burns CVP Final Hearing on 18/9/20

Representation
Claimant: in person
Respondents Mr S Jagpal (Consultant)

Judgment

1. The Second Respondent is joined
2. The claims fail and are dismissed against both Respondents.

Reasons

1. I heard evidence on oath from the Claimant and from the First Respondent, who is the owner of the Second Respondent. I was referred to various documents which I had been sent electronically.
2. The ET1 was issued against the First Respondent. I accept that he never received it. When he recently became aware of these proceedings, he caused a draft ET3 to be prepared for the Second Respondent. I concluded that it was in the interests of justice to allow the claims to proceed on a defended basis against the First Respondent without further pleadings and to join the Second Respondent on its ET3 so as to obtain finality to this dispute binding on all parties.
3. The Claimant was not employed by the First Respondent. His statement of terms signed by him shows that the Second Respondent was his employer. All his pay and payslips came from the Second Respondent. Without more the claims against the First Respondent must be dismissed.
4. The Claimant worked for the Second Respondent from 14/1/2019 to 31/8/2019. He left his employment without giving two weeks' notice (which under his contract he was obliged to give) at the beginning of September 2019.
5. He originally claimed arrear salary and holiday pay. He subsequently received a payment of £702 for holiday which he accepts settles that aspect.

6. The remaining issue was whether the Claimant had been paid in full for his work in the second half of his first month (January 2019) and for his last month (August 2019).
7. The Claimant had the onus of proof but was disorganised and inconsistent in presenting his case, first saying that he claimed £960 for January 2019 and £800 for August, and then changing his mind and claiming £800 for January and £960 for August 2019. He simply asserted that he did not think he had been paid in full.
8. In contrast the First Respondent's evidence was clear and what he said was consistent with the documentation provided in the form of payslips, invoices and schedules.
9. Significantly the Claimant, having been given an opportunity during a break in the hearing to study the Respondents' main evidence (in the form of a schedule at pages 29 and 30 of the Respondents' bundle - showing all payments and their component parts made to the Claimant throughout his employment and afterwards by way of salary), stated that he agreed with and accepted it as accurate.
10. This schedule shows that the Claimant was paid in full for his work. The confusion on his part arises from the fact that the Second Respondent's payroll period runs from the 16th day of each month to the 15th day of the following month, with the payment for that period being made on the first day of the next month after that. Thus the pay that the Claimant says he did not receive in full for the second half of January 2019 was in fact included in the payment made on 1/3/2019. The pay for August 2019 was paid in full – the first half being included in the payment made on 1/9/2019 and the second half being paid on 1/10/2019. This is clear from the schedule which the Claimant accepts as accurate.
11. Certain deductions were made from the Claimant's pay. I took evidence about these and looked into the largest (£880.77 as damages for the Claimants failure to give contractual notice) in some detail. I am satisfied that they were all reasonable and authorised in advance in writing by the Claimant's signed employment terms and conditions.
12. The Claimant is not owed anything by the Second Respondent so the claims against it must be dismissed.

NOTE

The hearing was held by CVP. The tribunal considered it as just and equitable to conduct the hearing in this way. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were some difficulties caused by the judge's and possibly the Claimant's internet connections dropping intermittently. However we managed to resume after breaks and got through the necessary stages of the hearing. The participants were told that it was an offence to record the proceedings. The tribunal ensured that the witness/es, who were all in different locations, had access to the relevant written materials. I was satisfied that the witness/es were not coached or assisted by any unseen third party while giving evidence.

J S Burns
18/9/2020
Employment Judge
London Central

For Secretary of the Tribunals

Date sent to the Parties – 21/09/2020