



EMPLOYMENT TRIBUNALS

Claimant: Mr J Pritchard

Respondent: Cognitive Publishing Limited

HELD AT: Manchester

ON: 7 September 2020

BEFORE: Employment Judge Phil Allen
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms A D'Souza (Legal Advisor)

JUDGMENT having been sent to the parties on 11 September 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

Background

1. The claimant was employed by the respondent from 4 to 15 November 2019 as a Business Development Manager.
2. The claimant brought two separate claims to the Tribunal. Together these were claims for: holiday pay, both as an unlawful deduction from wages and under the Working Time Regulations; other unlawful deductions from wages; breach of the right to an itemised pay statement; and for a failure by the respondent to provide a statement of terms and conditions of employment. All of these claims have been defended by the respondent.
3. There were two claim numbers (2401224/2020 and 2400983/202) and they have been joined today by agreement of the parties, and have been determined today as agreed. The respondent highlighted that there were issues with timing in

relation to the second claim, but in any event it covered issues which were in the first claim.

4. One issue raised by the respondent was the correct title for the respondent in these proceedings. The correct title is Cognitive Publishing Limited who was the employer of the claimant. That is the entity against which the Tribunal had accepted the claim, but in any event the Tribunal confirms that the respondent is that company.

The Hearing

5. The Tribunal has heard evidence from the claimant who was also cross examined. The Tribunal has also heard evidence from Mr Rowlands, the respondent's Managing Director, who was cross examined. Each witness had prepared a statement which was read and accepted as their evidence.

6. The Tribunal has been provided with a bundle of documents and has read those pages to which it has been referred either in witness statements or during the evidence.

7. The parties came prepared to argue about the portion of the last day that was actually worked by the claimant. On the pleadings it looked as if that was an issue that might need to be determined. In fact it is not relevant to the issues which have needed to be determined. In any event, in evidence Mr Rowlands accepted that the claimant left the respondent in the afternoon of his last day of work. Two other witnesses who were going to be called by the respondent and for whom statements had been prepared, have not been called because that issue was not in dispute.

8. The parties made oral submissions. After adjourning, I delivered this Judgment and reasons to the parties verbally on the day of hearing.

The Facts

9. The claimant worked for the respondent for two weeks. In advance of starting he was sent a letter of appointment. On the first day of his employment, or thereabouts, the claimant was provided with a document headed "Contract of Employment" which is at page 28 in the bundle. The claimant objected to parts of it and returned it to the respondent. No replacement document was ever provided.

10. The claimant was entitled to a salary of £25,000 per annum to be paid on a monthly basis on the 15th day of the following month (or earlier if 15th was a weekend). There is no entitlement in the contract for the claimant to be paid sick pay or pay for other absence, over and above statutory sick pay. The contract provided for annual leave, which was less than the amount to which the claimant was entitled under the Working Time Regulations.

11. Mr Rowlands dismissed the claimant on 15 November 2019. The claimant was paid on 13 December 2019. He was paid £961.53 in basic pay. He was paid holiday pay for 0.769 of a day. A deduction was made of £48.07 for two 2 hour absences for appointments that the claimant had attended. The pay statement or pay slip was only provided on 20 May 2020.

The Law

12. In terms of the law, I have considered sections 8-12 of the Employment Rights Act 1996 on itemised pay statements; sections 1-7B of the Employment Rights Act 1996 on the right to a statement of terms and conditions of employment; section 13 of the same Act on the right not to suffer an unlawful deduction from wages; and regulation 15A(3) of the Working Time Regulations with regard to the entitlement to leave in the first year of employment.

Discussion and conclusions

13. In terms of my findings, I will do this following the way in which the claimant presented his seven claims, which he set out very clearly towards the end of his witness statement.

14. The first element of claim is in relation to annual leave, the claimant says he was paid on termination for less annual leave than he was entitled to. The respondent paid for 0.769 of a day, the claimant said he was entitled to 0.833 of a day. The claimant claimed a further £12.52 was due for 0.064 of a day.

15. I find that the claimant was entitled to one day's pay in lieu of accrued but untaken annual leave. The reason for that is that the leave to which the claimant was entitled is to be rounded up to the nearest half day, as provided in section 15A(3) of the Working Time Regulations. This was not a claim that was found based on the terms of the contract, but rather on the terms of the regulations.

16. The claimant's daily rate (as explained below) was £96.15. He was paid £73.94 under the pay statement. Accordingly, as the claimant should have been paid in lieu of one day's pay, he is entitled to a further £22.21. The non-payment of that amount was an unlawful deduction from wages made by the respondent in respect of annual leave.

17. In relation to the second claim, this relates to the pay paid to the claimant for the period worked. The claimant was entitled to £25,000 per annum. If that is divided by 52 that results in a week's pay. If that is multiplied by two you reach the figure that the claimant should have been paid as two weeks' pay, which is £961.53. That is the amount that the claimant was actually paid. That was correct, so there is no shortfall.

18. In terms of the third claim (that is that the claimant was underpaid by £12.52), the same basic calculation applies. However the daily rate is calculated by dividing the week's pay identified by five (being the number of working days in the week). That results in the daily rate of £96.15. The claimant has worked out his figures using a daily rate of £99.21 and I do not find that to be correct. I appreciate there are different ways of calculating such things, and there is no criticism of either party for using different methods of calculation, but nonetheless what the Tribunal finds to be the correct figure (and calculation) is that recorded in this Judgment. The Tribunal finds no underpayment.

19. In relation to the fourth claim, the claimant was absent from work for four hours to attend appointments. A £48.07 deduction was made by the respondent. The claimant says these deductions should not have been made. As the claimant did not attend work, he had no entitlement to pay for those hours. The claimant was unable to identify any document (or a provision in any document) which provided that he was entitled to pay for those periods. The contract does provide that the respondent can make deductions from the final pay owed to the claimant of any sums due. The claimant was not entitled to pay for the four hours he did not work, and the respondent was entitled under the contract terms to make such a deduction. Therefore this was not an unlawful deduction from wages, even if the claimant thinks he should have been paid for the appointment (which I can understand), but it is not an unlawful deduction from wages.

20. In relation to claim five, that is the claim for an itemised pay statement. The itemised pay statement was not provided until 20 May 2020. The claimant, as any employee, was entitled to a statement at the time that the payment was made, which in this case was 13 December 2019. As a result, the claimant is entitled to a declaration under section 8 of the Employment Rights Act 1996. The Tribunal makes a declaration that the respondent failed to give the claimant an itemised pay statement as required by section 8 of the Employment Rights Act 1996. The claimant sought a declaration only in this respect, and he is entitled to and has been given that declaration.

21. Under claim six, the claimant alleged that he was not given a statement of terms and conditions, as he was entitled. The Tribunal finds that the claimant was given a statement of terms and conditions within two months of the start of his employment, albeit the claimant gave it back. As a result, the claim does not succeed.

22. There is a difference between an agreed employment contract and a statement of terms and conditions. Because the claimant did not agree, there was no agreed employment contract. Nonetheless, the respondent complied with their duty to provide a statement of the terms and conditions in this respect by giving it to the claimant.

23. The respondent was wrong in one submission that it made: an employee is entitled to a statement if their employment is expected to last two months or more, and is entitled to that statement in any event even if they leave before completing two months. So had the respondent not provided the statement, there would have been a breach, but I have found that it was provided.

24. The seventh claim was a claim in relation to a P45. As was outlined to the claimant at the start of the hearing, the Tribunal has no jurisdiction to determine this claim at all. The claimant did not identify any legislation or rely upon any legislation to contend that the Tribunal was wrong in this respect.

Summary

25. I have found that there was an unlawful deduction from wages of £22.21. I have also made a declaration in relation to the respondent's failure to provide an itemised pay statement. The claimant's other claims are not successful.

Employment Judge Phil Allen

Date: 21 September 2020

REASONS SENT TO THE PARTIES ON

29 September 2020

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