



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr A Moore

v

**Respondent**

Cosey Homes Limited

**Heard at:** Cambridge (By Video CVP)

**On:** 1 September 2020

**Before:** Employment Judge Cassel

**Appearances**

**For the Claimant:** In person.

**For the Respondent:** Ms A Asch D'Souza (Legal Executive).

## RESERVED JUDGMENT

1. On the termination of the Claimant's employment the Claimant was owed the following sums: for non-payment of wages £1750, for unpaid car allowance £160 and for five days holiday £825. On the termination of his employment the Respondent lawfully deducted from the Claimant's pay £1500 towards training costs and £1371.05 for unreturned property.

2. No further order.

## REASONS

### Introduction

1. This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by video, all the parties were either in their homes or offices. A face-to-face hearing was not held because it was not practicable in view of the present healthcare crisis.

2. The claim was listed for hearing today and standard directions were issued by Employment Judge Michell on 6 May 2020. Unfortunately neither party complied with the orders relating to the service of documents, the preparation of a final hearing bundle or witness statements. I was told that the Respondent had served a bundle of documents on the Claimant on or around 17 August. These were forwarded to the tribunal electronically and were made available to me prior to the

hearing. Within that bundle was a witness statement of the Claimant. The Claimant objected to the inclusion of the statement which he stated was for the purposes of proceedings before the County Court and following an adjournment today his bundle of documents were served electronically as was his amended statement and that of a statement of Mr J Newbold. Ms D'Souza did not object to the late service of the documents and following a further brief adjournment to enable those papers to be considered the matter proceeded to hearing.

3. Before proceeding to the hearing of evidence I had to consider a preliminary matter as to whether the tribunal had jurisdiction to hear the Respondent's counterclaim in contract. At a Preliminary Hearing on 30 March 2020 Employment Judge Brown on considering the papers before him permitted an extension of time until 18 November 2019 for the Respondent to present its response to the claim. Time was also extended to enable the Respondent to make a counterclaim, and this was in terms that the Respondent was contractually entitled to recoup RICS subscriptions of about £435, training costs amounting to £1500 and/or the cost of equipment in the sum of £1450 from the Claimant.

4. When the matter came before Judge Michell on 6 May 2020 he was told that concurrent county court proceedings were still ongoing for those sums described in paragraph 3 above. I ascertained from Ms D'Souza that, although she did not represent the Respondent at that time she understood that the County Court proceedings were commenced prior to the submission of the response form and moreover having been rejected on two occasions by the court for non-payment of the appropriate fee the Respondent had, for the third time, resubmitted the County Court claim form with the correct fee and the proceedings remained extant. At no stage was I told that the Respondent had any intention of withdrawing those proceedings, which based on the information that I was provided predated the response to the claim in the Employment Tribunal. Furthermore I was not asked to merge the claims. I invited submissions and indicated that I was not prepared to consider the counterclaim on the basis that the extant county court proceedings were in train and the trial date was awaited. However I indicated that I was prepared to consider matters on the alternative basis advanced by the Respondent that there had been a lawful deduction from wages and I reminded the parties that the findings of fact in these proceedings would likely be findings to be adopted by the County Court should the matter not be withdrawn and the hearing arranged.

## **Evidence**

5. I heard evidence from the Claimant, Mr Alan Moore, and considered the evidence of his witness Mr J Newbold whose statement was produced. I explained that I would place whatever weight I felt appropriate on the statement of that witness but that as he was not cross-examined such weight would be limited. I heard evidence from Mr M Cosy, Respondent director. I also considered those documents to which my attention was drawn within the two bundles that had been produced electronically. At the end of the submissions made by both parties, for which I am grateful, I announced that my decision was reserved which I give herewith with reasons.

## Findings of Fact

6. I make the following findings of fact based on the balance of probabilities.
7. The Claimant is a chartered building surveyor. The Respondent is a provider of services providing homebuyers surveys, building surveys and valuation among other things. It employs approximately 55 to 60 people half of whom are registered surveyors.
8. The Claimant responded to an advert placed by the Respondent and accepted a position as a surveyor which was described as being "field-based." His employment started on 25 February 2019 and prior to commencing employment he was sent electronically a Contract Of Employment. Although the Claimant did not recall receiving that document he accepted that it was sent to him electronically and signed for by him prior to the commencement of his employment. His signature is shown as having been appended on 22 February 2019
9. The contract extends to 9 typed pages. Within it there is provision for his salary which was £43,000 per year plus £5000 car allowance payable in equal monthly instalments. Of particular relevance in these proceedings is the following provision "Salary is based on seven surveys per week. If less than seven is carried out per week the wage will be prorate of seven. If the company provides less than five surveys the full salary amount will still be received. Your first month salary and allowances will be 5/7 of the full amount as the workload will consist of five surveys per week and not seven. The aim of this is to ease you into the role."
10. Also within the contract is provision for the payment of pension and holiday pay and the term that the first three months of employment will be considered a probationary period and as such the company was required to give one weeks notice.
11. There is also a clause entitled "Deductions from Wages" in which the company reserves the right to deduct money "as a result of any loan, overpayment, default on your part or any other reason whatsoever... Such deductions may include any fines, charges, penalties are other monies paid or payable by the company to any third party for any act, omission or offence on your part which the company may be held vicariously liable (for example speeding fines, parking tickets and congestion charges)  
the market value of any unreturned company property on the termination of your employment  
if a training agreement is in place and you leave before the expiry of the clawback timescale, the company may deduct the outstanding amount from your final payment."  
Also within the contract was the following clause  
"The company will provide training in your first week at work worth £1500. This sum will not be chargeable to you after 12 months of continual employment. If you leave the company or your contract is terminated on valid grounds then the training fee will be chargeable to you and payable to Cosey Homes Ltd."

12. As part of the induction process, notwithstanding the Claimant's experience as a surveyor, Mr Cosy, by agreement spent one week with the Claimant, effectively to ensure that he was performing to the standard that the Respondent expected. Mr Cosy gave evidence that he is a FRICS, is accepted as a counsellor and undertook the necessary training which would have assisted the Claimant to become a registered valuer and to be able to receive enhanced pay. He gave evidence, which I accept, that the actual cost of providing the training was £3000, and that the sum of £1500 within the contract is a genuine pre-estimate of the cost.

13. The Claimant started work but within a short period of time the relationship soured. The Claimant gave evidence that he worked for approximately two months and then received a pay cheque for an amount considerably short of the amount that he considered that he was due. Email correspondence then took place and then one or more telephone conversations between the Claimant and Mr Cosy during which the relationship clearly broke down. The Claimant insisted that amounts that he considered to be payable be paid and the Respondent insisted on work having been undertaken be completed. In giving evidence Mr Cosy described the manner in which the Claimant acted as being "blackmail" and that he had paid the Claimant through his payroll department those sums to which he was entitled.

14. I was shown a list of surveys for which the Claimant was responsible and I find that the pay that he received in March and April accorded with the provisions within his written contract of employment. Having heard evidence from the Claimant I accept that he genuinely believed, but mistakenly so, that he was owed further pay.

15. Work was allocated electronically and it was agreed between the parties in giving evidence today that the work schedule in the Claimant's diary for May was cleared. In giving evidence the Claimant accepted that he considered that the actions of the Respondent amounted to a dismissal and that the dismissal took place on 1 May but that he continued to work for eight days thereafter, which in effect was his notice period. He completed the work that had been assigned to him during April.

16. The Claimant retained a number of items of the Respondent's property as he considered that he was lawfully exercising a lien and continued to do so pending payment of the money he considered to be owed for the shortfall of income in April and other payments to which he considered he was entitled. Mr Cosy gave evidence that after the ending of the Claimant's contract of employment which I find was the 9 May 2019, he purchased replacement equipment for a surveyor who undertook the work that would have been allocated to the Claimant and sought compensation for those sums that he paid out

## **Conclusions**

17. Those matters to be decided were laid out in paragraph 4 of the Case Management Summary of 6 May 2020 and I deal with those matters in the order that they were given.

18. The first question posed was whether the Claimant was paid all wages and holiday pay due to him? I have found that the Claimant was dismissed, that the effective date of termination of his employment was 9 May 2019. The Claimant gave evidence, which I accept, that his net pay for May, for that time that he worked until the expiration of his notice amounted to £1750. In addition he was owed £160 for eight days car allowance and £825 for holiday pay. That sum amounts to £2735 net.

19. The second question posed was whether he was entitled to notice pay. I find that he was not as any pay for notice, as required under the contract of employment, is covered under the pay provisions described in paragraph 18 above and any sum otherwise payable for notice is subsumed in the pay awarded for the month of May 2019.

20. The third question posed as to unfair dismissal no longer requires an answer as the claim was dismissed on withdrawal.

21. The fourth question was whether the Respondent was entitled to bring a contract claim. In these proceedings the Respondent has argued that in the alternative the Claimant was not entitled to any further pay as any deductions were lawfully made. Having considered the provisions of section 13 and 14 of the Employment Rights Act 1996, considered the Respondent submissions and the express terms of contract between the parties, such an argument is on the face of it well-founded. I do find that the Respondent was entitled to deduct the sum of £1500 towards training costs and the sum of £1307.05 for replacement equipment from the Claimant's pay. I do not find that the Claimant was required to make a contribution towards his professional certification, the RICS. There is no term within the contract of employment that expressly requires that nor can those terms that were drawn to my attention be read in such a way that it can be implied that such a contribution was in the minds of the parties at the commencement of the contract or at any time thereafter. The amount of the lawful deduction is therefore £2871.05.

22. I made it clear in answer to the submissions made, that I was not prepared to consider the counterclaim and thus there is no power to order the Claimant to pay £136.05, which is the shortfall.

23. Finally I simply express the hope that there will now be no need for the Respondent to proceed with its claim in the County Court and that this judgement will effectively bring the end to this unfortunate matter.

---

Employment Judge Cassel

Date: 2 September 2020

Sent to the parties on: 9 October 20

For the Tribunal Office