



EMPLOYMENT TRIBUNALS

Claimant: Mr J Pritchard

Respondent: Chetu Incorporated

Heard at: Manchester

On: 2 October 2020

Before: Employment Judge Phil Allen
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms S Sotomayor, Human Resources Compliance

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The respondent made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of £310.55.
2. The respondent breached the claimant's contract of employment in respect of payment of expenses and the respondent is ordered to pay the claimant the sum of £70.91.
3. The respondent failed to pay the claimant's holiday entitlement in full and is ordered to pay the claimant the gross sum of £169.13.
4. The above sums must be paid to the claimant within 14 days.

REASONS

1. The claimant was employed by the respondent from 13 January 2020 until 20 or 21 February 2020 as a National Account Manager. The claimant brought claims

for various sums which he said were due to him which had not been paid. The claimant also sought punitive damages. The respondent denied that the claimant was due any further sums.

The Issues

2. At the start of the hearing the Tribunal clarified with the claimant exactly what he was seeking and why. In the course of the proceedings the claimant had produced a lengthy statement in response to Orders made in which he outlined why he was claiming and the reasons for it. The conclusion of that document listed the sums that the claimant was seeking. The sums claimed and the issues were as follows:

- (1) The respondent claimed that the claimant's employment had terminated on Thursday 20 February 2020 and had paid him only to that date, whereas the claimant said it had only terminated on Friday 21 February 2020. The claimant claimed one day's pay of £143.33 as an unlawful deduction from wages;
- (2) The claimant disputed the amount which he had been paid in respect of holiday and claimed that he was due a further sum of £216.43. This was claimed under the Working Time Regulations 1998 and/or as an unlawful deduction from wages and/or breach of contract;
- (3) The claimant alleged that the respondent had failed to pay outstanding business expenses of £70.91, which was claimed as a breach of contract;
- (4) The claimant was unable to reconcile the amounts which he had received in his February and March pay, with the amounts that he believed he was due. He alleged that there was a further £112.73 outstanding which he claimed as an unlawful deduction from wages; and
- (5) The claimant claimed £4,299.92 as punitive damages and for compensation.

3. At the outset of the hearing the Tribunal made clear to the claimant that he would need to explain the basis upon which he was seeking punitive damages for such an award to be made.

4. In the course of the hearing the claimant also made reference to the alleged failure of the respondent to provide an itemised pay statement in January 2020. That was referred to in the lengthy document produced by the claimant in response to the Case Management Orders. It was highlighted to the claimant that such a claim was not contained in the claim form. The claimant was unable to identify any part of the claim form which contained such a claim. Accordingly, it was explained to the claimant that the Tribunal would not be able to consider or determine a claim for failure to provide an itemised pay statement where such a claim had not actually been brought before the Tribunal (without the claim being amended). As was

explained to the claimant, the Tribunal was not determining the merits of that potential claim, but it was unable to consider the claim at all where it had not been included in the matters claimed in the claim form.

5. At the start of the hearing the Tribunal explained to the claimant that matters in relation to the enforcement of GDPR (data protection) were a matter for the Information Commissioner and were not something the Employment Tribunal was empowered to, or able to, determine.

The Hearing

6. The Code V used on the Judgment records that the hearing was conducted remotely with both parties participating by video, using CVP. The respondent's representative undertook the hearing from the respondent's offices in the US. The time at which the hearing started was moved back from 10.00 to midday (UK time) in order to assist with the time difference.

7. The claimant represented himself at the hearing. The respondent was represented by Ms Sotomayor.

8. The Tribunal had been provided with a significant amount of documentation by both parties. The Tribunal read the documents which had been sent and looked in detail at those to which it was referred by the parties.

9. One document referred to by Ms Sotomayor in her evidence was not in the possession of the Tribunal, but was considered with Ms Sotomayor reading the relevant contents and the claimant's signature being shown to the Tribunal by CVP.

10. The Tribunal heard oral evidence from the claimant. The areas about which the Tribunal needed to hear evidence in the light of the identified issues were highlighted to the claimant and he responded to the Tribunal. Ms Sotomayor was provided with the opportunity to cross examine the claimant. Ms Sotomayor also gave oral evidence, was asked questions by the Tribunal, and Mr Pritchard cross examined her.

11. Following the evidence, each of the parties was provided with the opportunity to make submissions. In fact the submissions were overly detailed, both parties having had the opportunity to explain their case during their evidence. The Tribunal also asked questions of the parties.

12. At the end of the hearing judgment was reserved. Based on the evidence heard, the Tribunal makes the findings outlined below.

Facts

13. The claimant was based in the UK. He was employed by the respondent from 13 January 2020.

14. The Tribunal was provided with two contract of employment documents for the claimant which referred to two different employers. There was no dispute between the parties that the employment terms were contained in a document headed "Principle Statement of Terms and Conditions of Employment", which stated that it was issued on 27 November 2019, and was signed by the claimant. That document records that the claimant's days of work were Monday to Friday. His salary was £3,105.50 per month. The respondent's holiday year ran from 1 January to 31 December and the claimant's annual holiday entitlement was 5.6 working weeks (28 working days). Accrual of leave for those who worked less than a full year was calculated on a pro rata basis. Holiday pay was to be calculated using a basic rate of pay. The claimant placed some reliance on a provision which said, "*We may occasionally need you to work on a public/bank holiday. We will pay you for working in this event. You will also receive compensatory time off with pay. You must take this at a later, mutually agreeable date within the current leave year*". The contract provided that the claimant was not entitled to any notice, but it was not in dispute that the claimant was in fact legally entitled to one week's notice.

15. During his employment the claimant incurred various expenses while working for the respondent and the Tribunal was shown a document headed "non-billable expenses report". That recorded that the claimant was to be reimbursed a total of £632.43 for expenses incurred.

16. On the morning of Friday 21 February 2020 the claimant was unable to access the respondent's systems and/or to undertake any work for the respondent. The claimant was dismissed by way of an email sent by Mr Garlock of the respondent which stated simply, "*Jason Pritchard, your employment is hereby terminated*". There was no dispute that the email was sent on Friday 21 February 2020. The parties differed about the time record on the email that was sent to the claimant, but the claimant's evidence was that he received the email at 12.30pm on 21 February 2020, which the Tribunal finds to be the time when he was first notified that he was dismissed.

17. The Tribunal was provided with payslips for the claimant dated 28 February 2020 and 31 March 2020. The 28 February payslip records the claimant's monthly salary as being £3,105.50. There is a recorded deduction called "salary adjust" for £1,098.87. Whilst not explained on the payslip, this appears to be an adjustment made by the respondent as a result of the fact that the claimant did not work for the full month in February. A further adjustment made and recorded on the payslip was for 7.99143.33076 days, for which the claimant was paid an additional amount of £1,145.21. Expenses of £561.52 were paid. £1,198 was also withheld, which was recorded on the payslip as "adjustment".

18. On 31 March the claimant was paid the £1,198 adjustment which had been withheld from the previous month. That payslip also records that a £96.03 was deducted from the payment made to the claimant to reflect 0.67 of a day which Ms Sotomayor evidenced was an amount which the respondent believed had effectively been overpaid in the previous statement.

19. Ms Sotomayor's evidence was that the respondent withheld the figure of £1,198 as a result of the claimant having not returned the respondent's property to it at that time. When the property was returned, the payment was made. Ms Sotomayor relied upon a document signed by the claimant, which was shown to the Tribunal, entitled "An Equipment Loan Agreement".

20. In her evidence, Ms Sotomayor claimed that the company had not paid the claimant for 21 February because he had not worked on that day. Ms Sotomayor could not explain the difference between the expenses claimed and recorded as payable, and the amount actually paid. Ms Sotomayor asserted that the 7.32 days referred to on the response form which resulted in the payments made to the claimant, included a week's/five days' pay in lieu of notice. The remaining additional 2.32 days paid (which was what resulted when the adjustment in the March payslip was taken into account) was pay in lieu of holiday. Ms Sotomayor believed that holiday was paid as it was taken and that was why the claimant's payment in lieu of holiday reflected the holiday accrued during a month, when in fact the claimant had worked for a longer period.

21. It was the claimant's evidence that he had taken 1½ days leave. As the respondent was unable to produce any record of when the claimant had taken leave, the Tribunal accepts the claimant's account and finds that during the employment he took 1½ days leave.

22. The claimant also asserted that he was entitled to two additional day's leave because he had worked by travelling during a weekend. Ms Sotomayor's evidence was that employees were not provided with additional leave for travelling at weekends.

The Law

23. The claimant's claims for unlawful deduction from wages are considered under sections 13-24 of the Employment Rights Act 1996. The respondent is required not to make a deduction from wages due unless the deduction is otherwise authorised or for a reason laid down in those provisions. The question for the Tribunal is whether the claimant was entitled to sums not paid to him and whether there was any valid legal and/or authorised reason for such deductions.

24. The claimant's claim for expenses is a breach of contract claim (as expenses cannot be considered wages under the unlawful deduction from wages provisions). The questions are: what was the claimant contractually entitled to and was that outstanding on the termination of his employment?

25. In respect of the claim for holiday pay, the claimant is entitled to such payment in lieu of holiday as is provided for in the Working Time Regulations 1998. The provisions which apply and their impact on the claim are explained in more detail below. As the claimant's contract of employment reflects that minimum entitlement, the contract adds nothing material to the application of the law under the Working Time Regulations. However the contract does provide the terms which

apply to the accrual or payment of any additional leave, over and above the minimum entitlement under the Regulations.

26. Other issues of relevance are: when the claimant's employment terminated; and whether the claimant is due pay if he did not actually work on his final day. It is trite law that an individual cannot be dismissed until they have been informed that is the case. If an individual is available for work they should be paid for it, whether or not an employer provides the employee work to do. If an employee is not available for work, they are not entitled to be paid.

Discussion and Determination

27. The claimant was available to work on 21 February 2020. He was unable to work because the respondent excluded him from access to its systems. The claimant was only informed that his employment was terminated on 21 February 2020. Accordingly, the claimant's employment was not terminated the previous day (20) – the date of termination was 21 February. As the claimant was available for work he was entitled to be paid for 21 February 2020 even though he did not actually do any work (because he was unable to). Accordingly, the claimant was entitled to one day's pay for 21 February 2020. It was agreed that the rate of pay for one day was £143.33. Therefore, the Tribunal finds that the respondent made an unlawful deduction from the claimant's wages of £143.33.

28. The claimant was unable to understand the amounts that he had been paid for the relevant period(s) or the deductions that the respondent had made. The claimant was not assisted by the way in which the adjustments were recorded on the payslips, which provided little real information about how the figures had been identified. Ms Sotomayor's evidence did not shed a great deal of light on the sums included on the payslips. The absence of any genuine explanation from the respondent about how the figures were calculated, made it impossible for the Tribunal to determine how the respondent reached the figures that it included on the payslips. The claimant's own calculations also did not appear to the Tribunal to be clear and/or correct.

29. The claimant worked for the respondent for three weeks or 15 days, out of the four weeks or 20 working days, in February 2020. Setting aside the one day (21 February) which has already been taken into account above, the claimant worked 14 of the 20 working days. Accordingly, the claimant should have been entitled to 14/20ths of a month's pay. That means the claimant should have received £2,173.85 for February for the period he worked (not including the 21 February). The adjustment to full salary should have been £931.65. The adjustment recorded on the payslip is £1,098.87. Accordingly, the Tribunal finds that the respondent made an unlawful deduction of £167.22 from the claimant's pay. This exceeds the amount claimed by the claimant but is awarded in any event.

30. The total unlawful deduction from wages made by the respondent is the gross sum of £310.55, when the figures identified in paragraphs 27 (£143.33) and 29 (£167.22) are added together.

31. In respect of expenses and the breach of contract claim, Ms Sotomayor simply had no explanation for the discrepancy between the form recording what was due to the claimant and the amount actually paid. There was no explanation provided which might mean that any sum claimed was not payable under the terms of the contract. Accordingly, the Tribunal finds that the respondent breached the claimant's contract of employment by failing to pay to him expenses that were due, and the claimant is awarded £70.91 as remedy for that breach.

32. The holiday pay claim is somewhat more complicated. The respondent's position was that the claimant was only entitled to 2.32 days. The claimant's position was that he was entitled to 3.83 days as well as the 1.5 days' annual leave which he had in fact taken. Neither party made any reference to the Working Time Regulations or the way in which those provisions record that holiday should be calculated in the first year of employment.

33. Regulation 15A of the Working Time Regulations 1998 applies to leave during the first year of employment. Regulation 15A(2A) records that, in the first year, leave is deemed to accrue at the rate of 1/12th of the amount on the first day of each month of that year (under the Regulations each month being the anniversary of the start date). As the claimant was entitled to 28 days' leave per annum, which accordingly was 2.33 days per month, the claimant's total leave entitlement was 4.66 days as he had passed the start of the second month of employment.

34. Regulation 15A(3) provides that where any calculation results in a fraction of a day, it is to be rounded up to the nearest half day. This means that the claimant's entitlement was to five days' leave.

35. As found above, the claimant had taken 1½ days' leave, meaning that he had 3½ days outstanding. The Tribunal finds that nothing in the documents provided gave the claimant any entitlement to additional leave as a result of undertaking travel (or work) on non-working days and does not find that the provision referred to in paragraph 14 provides for such an entitlement (applying as it expressly does to public/bank holidays and not weekend or other non-working days).

36. Using the agreed figure of £143.33 per day, the claimant was entitled to total pay in lieu of accrued but untaken annual leave under the Working Time Regulations of £501.66. The claimant was paid 2.32 days, that is £332.53, in respect of annual leave as recorded in the payslips (once the period of notice is taken into account). As a result, the claimant was underpaid in respect of holiday £169.13, which the respondent is required to pay.

37. It was confirmed to the claimant at the start of the hearing that the Tribunal would need considerable persuasion that the claimant was entitled to punitive damages. The basic position is that the Employment Tribunal does not have power to award the claimant punitive damages for the claims brought, and none of the legislation relied upon contains any such entitlement. In submissions the claimant explained that he was relying upon employment law in making this submission. Whilst the Tribunal understands why the claimant is critical of the respondent's conduct, particularly in the light of the findings made, the Tribunal does not have

jurisdiction to award the claimant punitive damages or compensation, whether on the basis of the claims found or at all.

Conclusion

38. As a result of the matters outlined above, the respondent has made unlawful deductions from the claimant's wages, has breached the claimant's contract of employment and has failed to pay him sums due in respect of holiday. The respondent is ordered to pay the sums due, as confirmed at the start of this Judgment.

Employment Judge Phil Allen

15 October 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
26 October 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number: **2401715/2020**

Name of case: **Mr J Pritchard** v **Chetu Incorporated**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 26 October 2020

"the calculation day" is: 27 October 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.