



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing which has been not objected to by the parties. The form of remote hearing was V (fully – all remote). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to comprised of the pleadings, correspondence between the Tribunal and the Respondent as set out below, and a bundle of documents produced by the Claimant.

Claimant

Respondent

Mr K Sikka

v

Outdoor Visual Communications Ltd

Heard at: Watford (via CVP)

On: 18 February 2021

Before: Employment Judge Smeaton

Appearances

For the Claimant: In-person

For the Respondent: Did not appear

JUDGMENT

1. The Respondent has made an unauthorised deduction from the Claimant's wages contrary to Part II of the Employment Rights Act 1996 and is ordered to pay the Claimant the net sum of £2,000.
2. The Respondent has failed to pay the Claimant his accrued holiday pay in breach of the Working Time Regulations 1998 and is ordered to pay the Claimant the net sum of £2,389.42
3. The Respondent is in breach of the Claimant's contract by failing to pay all of the notice pay due to him on termination of his employment and is ordered to pay the Claimant the net sum of £4,778.85.

REASONS

1. By a claim form dated 6 October 2019, the Claimant, Mr K Sikka, brought a claim for unauthorised deductions from wages, holiday pay and breach of contract (notice pay) following the termination of his employment with the Respondent, Outdoor Visual Communications Limited (“OVC Ltd”). The Respondent submitted a response defending the claim but did not address the claims brought.
2. On 31 May 2020, the Tribunal wrote to the Respondent noting that it had failed to answer the Claimant’s claims adequately or at all and indicating that it was considering striking the response out. The Respondent was given 28 days to set out in writing its full defence to the complaints made. A further request for a response was made by the Tribunal on 30 July 2020.
3. No response having been received by the Tribunal within 28 days (or at all), on 21 October 2020 the response was struck out on grounds that it had no reasonable prospects of success and/or was vexatious. The Respondent was to be given notice of any hearing but its participation was to be limited to the extent permitted by the Tribunal.
4. The matter was listed for final hearing and, on 9 February 2021, the Claimant was ordered to produce a bundle of documents demonstrating the amounts he said were owed to him by the Respondent.
5. The hearing proceeded via CVP on 18 February 2021. The Claimant joined the hearing remotely. He produced a number of documents comprising emails between himself and the Director of the Respondent, Mr Lance Fisher, and his bank statements for the relevant period demonstrating what he had received from the Respondent. The Respondent did not attend the hearing. Prior to the hearing commencing, the Tribunal attempted to telephone the number provided by the Respondent on its response form but was unable to make contact. I was satisfied that the Respondent had been adequately notified of the hearing and that it was in accordance with the overriding objective to proceed in its absence.
6. The Claimant did not produce a witness statement but confirmed that he wished section 8.2 of his ET1 to stand as his evidence. I asked him further questions to explain the amounts claimed.
7. Having considered his oral evidence and the documentary evidence provided, I made the following findings of fact.
8. The Claimant was employed by the Respondent as a Managing Director between 1 July 2018 and 22 July 2019. Although no contract of employment or pay slips were provided to the Tribunal, according to the ET1 and ET3 both parties are in agreement that the Claimant’s gross monthly salary was £10,416 (£6,607 net). Upon questioning by me, having regard to his bank

statements, the Claimant confirmed that his net monthly figure was in fact £6,607.12.

9. On 24 June 2019, the Claimant was informed that he would be receiving a letter terminating his employment with four weeks' notice. He continued to work for the Respondent during his notice period. In June and July 2019, he was paid £92.34 for expenses (in two tranches) and £4,607.12 of his June salary (in three tranches). His last payment from the Respondent was on 18 July 2019.
10. On 1 July 2019, Mr Fisher emailed the Claimant informing him that his last day of service would be 22 July 2019 and that he would receive 11 days' outstanding holiday entitlement. On 22 July 2019, Mr Fisher emailed the Claimant stating that the outstanding £2,000 from his June salary would be settled on 31 July 2019 and that the outstanding 22 days of employment and 11 days' holiday entitlement would be settled on 1 September 2019. When the Claimant lodged his claim form in October 2019, those sums remained unpaid and have not been settled to date.
11. Section 13 of the Employment Rights Act 1996 provides, so far as is relevant:
 - (1) An employer shall not make a deduction from wages of a worker employed by him unless –
 - (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) The worker has previously significant in writing his agreement or consent to the making of the deduction.
12. Regulation 13 of the Working Time Regulations 1998 provides, so far as is relevant:
 - (1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year
 - (2) ...
 - (3) A worker's leave year, for the purposes of this regulation, begins –
 - (a) On such date during the calendar year as may be provided for in a relevant agreement; or...
 - (4) ...
 - (5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins.
13. The Claimant contacted HMRC and was informed that the Respondent had declared his earnings despite not having paid him and had been taxed accordingly. It is for this reason that the Claimant seeks net figures.

14. The emails from Mr Fisher to the Claimant make clear that there is no dispute (and I accept) that the Claimant was owed £2,000 net from June's salary, 11 days' holiday and outstanding notice pay.
15. The Claimant has claimed £8,753 in respect of those sums. He was unable to explain how he had reached the sum of £6,753 as his notice pay plus 11 days' holiday (the remaining £2,000 is clear). The Claimant claims four weeks' notice pay but this would result in double recovery with an effective date of termination of 22 July 2019, given that part of his notice period was in June 2019, the wages for which he has claimed separately. I find, as set out in Mr Fisher's email from 31 July 2019, that the Claimant is owed 22 days' notice pay. Accordingly, I calculate the sums due to the Claimant as follows:
 - £2,000 net in respect of his June salary
 - £2,389.42 net in respect of 11 days' outstanding holiday entitlement; and
 - £4,778.85 net in respect of 22 days' outstanding notice pay.
16. That makes a total of £9,168.27 net.
17. The Claimant also claims the sum of £2,100 in legal fees which he said he had incurred in both chasing payment of the sums owed to him and challenging his dismissal. He has not provided invoices from his solicitors and was unable to provide a breakdown of how those fees were incurred.
18. I indicated to the Claimant that if he wished to pursue an application for costs he would need to make a separate application in writing providing evidence of the sums claimed and a breakdown of how the fees were incurred so that it is possible to understand which fees were incurred in pursuing the amounts claimed in this claim and which were incurred in challenging the circumstances surrounding his dismissal. Only the former could potentially form the basis of a costs application.
19. In response, the Claimant maintained that he was not seeking costs as such but that the £2,100 amounted to damages incurred as result of the breach of contract. I do not accept that argument. Anything which might properly be regarded as preparation for litigation cannot be claimed as damages for breach of contract. Even if I am wrong about that, the issue above remains. The Claimant is unable to explain what amount is related to the breach of contract claim before the Tribunal and what amount concerns a challenge to his dismissal.
20. If the Claimant wishes to pursue a costs application, he must do so within 28 days of receiving written notice of this judgment.

Employment Judge Smeaton

Date: 8 March 2021

Sent to the parties on: .17/03/2021.....

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For the Tribunal Office

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