



EMPLOYMENT TRIBUNALS

Claimant: Mr S. Tempesta

Respondents: Panacea Senior Care Limited

Heard at: Watford (by CVP)

On: 9 March 2021

Before: Employment Judge McNeill QC

Appearances

For the Claimant: No attendance

For the Respondent: Miss N. Webber, Counsel

JUDGMENT

1. Following a concession made by the Respondent at the hearing, the Claimant's claim for unpaid wages in the sum of £500 gross is upheld and the Respondent is ordered to pay that sum (after deduction of any tax on that sum for which the Respondent may be liable), into the Claimant's bank account upon receipt from the Claimant of the Claimant's bank details.
2. The Claimant is ordered to provide details of the account into which he wishes the relevant sum to be paid, to include the name of the account holder, the account number and the sort code. Such details should be provided within 14 days of the sending of this judgment to the Claimant. They should be provided both to the Respondent's solicitor at email address a.penn@ashfords.co.uk and to the Respondent at info@panaceaseniorecare.co.uk.
3. The Claimant's remaining claims for compensation are dismissed on grounds that the employment tribunal has no jurisdiction to determine such claims and that the compensation claimed is not recoverable in respect of a claim for underpaid wages..
4. The Respondent's application for costs is dismissed.

REASONS

1. The Claimant was employed by the Respondent for one week from 26 January 2020 to 3 February 2020 as a live-in carer. The Claimant brought a claim against the Respondent for £500 unpaid wages and for additional compensation on the basis that he was “fooled around” by the Respondent.
2. The Respondent has always accepted that the Claimant was entitled to some payment in respect of unpaid wages and that the gross weekly wage for 7 days’ work was £500. Its contention was that the Claimant was entitled to only £357.15 gross based on 5 days’ work at £71.43 a day.
3. The Claimant initially brought his claims against two respondents but the claim against the Second Respondent, Ms Zemianska, was struck out by a judgment of Employment Judge Hyams, sent to the parties on 2 February 2021, on the basis that the claim against Ms Zemianska had no reasonable prospect of success. It was explained in reasons provided to the parties that Ms Zemianska was not the Claimant’s employer and could not be responsible for a failure to pay wages.
4. At 18.45 on 8 March 2021, the evening before this hearing, the Claimant sent an email to the tribunal, cc the Respondent’s solicitor, explaining that he did not propose to attend the hearing. He expressed a lack of confidence in the tribunal fairly determining his case. He alleged that the Respondent had lied to the tribunal and stated: “if the Judge isn’t willing to care about it’s pointless for me to link up to repeat the same things I have written different times”.
5. The Claimant did not attend the hearing.
6. The Respondent was represented by Counsel at the hearing.
7. At the start of the hearing, I confirmed to the Respondent’s Counsel that I had read the documents in the 103 page bundle provided. I had also read a witness statement provided on behalf of the Respondent. I could identify no cause of action falling within the tribunal’s jurisdiction save for the claim for unpaid wages.
8. Having taken instructions, the Respondent’s Counsel confirmed that the Respondent conceded the sum of £500 gross claimed in respect of unpaid wages. The Respondent required the Claimant’s bank details in order to make this payment. The Claimant had contended in correspondence that he had already provided these details to the Respondent. In the absence of hearing any evidence, I could not confirm whether or not he had provided these details

but, if he wants to be paid the monies due to him, he should provide those details again.

9. Those details should be provided promptly as set out in the Judgment above. This case has gone on for some time with very lengthy correspondence and it is clearly in the interests of both parties that it should now be brought to a close.
10. The Respondent made an application for costs from the Claimant on grounds of his alleged unreasonable conduct of the proceedings. I was referred to correspondence “without prejudice save as to costs” dated between September and November 2020 in which the Respondent offered to settle the case for £500 and warned the Claimant that the Respondent would apply for costs if he recovered no more than that offer. The Respondent sought to explain to the Claimant that this was the only claim in respect of which the tribunal had jurisdiction.
11. The Claimant rejected the Respondent’s offer and, in lengthy correspondence to the tribunal, insisted that he was entitled to more than the sum offered because of a range of matters associated with his employment which he alleged were untrue, unfair or otherwise wrong. As the Claimant did not attend to give evidence, I could not make any findings on those matters which, in any event, became irrelevant once the Respondent had conceded in full the only claim over which the tribunal had jurisdiction.
12. The Respondent submitted that the Claimant’s claims other than the claim for £500 never had any reasonable prospect of success. On 28 October 2020, Employment Judge R. Lewis had specifically asked the parties if they agreed to conclude this matter by Judgment for £500 gross. The Claimant had not attended the hearing today.
13. I took into account that it is exceptional for the tribunal to make costs orders. Many parties, like the Claimant here, are unrepresented before the tribunal and do not understand the limits of the tribunal’s jurisdiction. Although the Claimant would almost certainly have benefitted from taking some advice, there was no requirement that he should do so.
14. I also took into account that the Respondent did not concede its liability to pay £500 gross until today, even in response to the question from Employment Judge R. Lewis. Its offers previously were “without prejudice save as to costs”. It did not contradict the Claimant in correspondence when he said that he had already provided his bank details to the Respondent, when he was asking to be paid, or ask for those details to be provided again.
15. I consider that the Claimant’s conduct was unreasonable in his extremely lengthy and repetitive correspondence raising matters which he then did not

attend the tribunal to explain or pursue. The hearing was listed to determine the claims that he had asked the tribunal to determine. Had he attended, that would have been an opportunity for the Judge to explain the jurisdictional issues to him.

16. However, for the reasons already set out and taking into account that the concession as to the unpaid wages was only made this morning, I did not exercise my discretion to make a costs order. I also noted that I had no evidence of the Claimant's means and that it would have been disproportionate to allow further time for such evidence to be provided.

Employment Judge McNeill QC

Dated: 9 March 2021

Sent to the parties on:

22 March 2021

.....

For the Tribunal:

.....

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.