



EMPLOYMENT TRIBUNALS

Claimant and Respondent
Mr M. Barber **Equinox Maintenance Limited**

Held at: Exeter by CVP
Before: Employment Judge Smail

On: 4 February 2021

Appearances

Claimant: In Person
Respondent: Mr Mellis (Counsel)

JUDGMENT having been sent to the parties on 4 February 2021 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

1. By a claim form presented on 7 July 2020, the Claimant claimed £150 in respect of contractual stoppage of potential fines, £138.71 for deductions of private mileage allegedly wrongly made, and £259.09 for unpaid overtime.
2. The Claimant was a Field Service Engineer for the Respondent between 7 May 2019 and 15 May 2020 when he resigned. The job involved him driving.
3. The Respondent defended the claims.

Withholding £150 in respect of potential parking fines

4. The £150 was withheld under an express contractual provision for any parking fines that might be discovered within three months of the employee leaving. After that period the £150 was repaid to the Claimant. So this claim falls away.

Deduction of undeclared private mileage

5. The private mileage was deducted because the Claimant had not declared any private mileage during his time with the Respondent. A tracker on a new vehicle driven by the Claimant indicated that there was travel on days the Claimant did not work. Details are set out in the Response. On that basis the sum was withheld.

Unpaid overtime

6. The defence to the unpaid overtime claim was that the Claimant had not particularised the detail. Further, there was belief, expressed by the

Respondent, that they could offset any overtime pay against days when the Claimant had been paid but had not in fact had sufficient work to fill a day's work.

7. There was in my judgement a good faith defence to the fines and the private mileage claims.
8. There was a fair point about the lack of particularisation of the overtime breakdown in the claim; but otherwise the defence was not a strong one. There was no right to set-off in that way.
9. The Claimant believes that there is an important aspect to the overtime claim, namely that systematically the Respondent does not pay overtime in breach of minimum wage legislation. I hear what he says, but it is difficult to infer too much from a claim limited to £259.09.

Respondent's offer to settle

10. In the event, the Respondent offered to pay the balance of the claim on 8 January 2021 through an open letter on a without liability basis. They said they would require a settlement via an ACAS COT3 form so as to bring proceedings formally to an end. The Claimant mistrusted the Respondent and did not want to sign anything. He assumed, without checking, that there would be a confidentiality clause in the settlement, and he did not want to be gagged about the overtime aspect to the claim.

Claimant's desire to claim 'exemplary damages' and preparation time

11. He also wanted to claim exemplary damages in respect of the overtime claim, and preparation time. The Respondent suggested to him by a letter dated 13 January 2021 that there is no jurisdiction to award exemplary damages in contractual claims. The power was said to be limited to tort claims. This is a claim based on the contract of employment and so the Respondent submits there is no power to award exemplary damages. The Claimant has not been in position to contradict that point of law prior to my giving oral Judgment on the matter. I concluded that the claim for exemplary damages appeared to be a misconceived one in that I did not have the power to make an award.
12. Further, he has not proved – in respect of a claim for £259.09 – that the Respondent has behaved in a way that might engage exemplary damages. The concept of exemplary damages is not proportionate to the matter in issue.
13. As to preparation time: I do have a discretion to award preparation time where a Respondent has conducted proceedings unreasonably or a Response has no prospects of success. The consideration only arises in respect of the overtime claim in relation to which there was a weak defence in that there was no right to set-off overtime against days where there was a shortfall of work.
14. However, there was a fair point about the particularisation or the lack of it in the claim form, entitling the Respondent to not admit it at least in the

Response. The Respondent did not unreasonably defend the claim at first and of course in the fullness of time it offered to pay it.

15. I do not find that there was unreasonable conduct by the Respondent to entitle the Claimant preparation time and he fails in that regard.

The Respondent's application for costs

16. The Respondent, however, applies for the cost of Counsel attending today. Counsel has been helpful today. He has explained the basis for the Response. He has explained why the exemplary damages claim was misconceived.
17. Costs arise for consideration where a Claimant has conducted proceedings unreasonably. The Respondent contends that it was unreasonable not to sign a COT 3 settlement.
18. I do not blame the Claimant for refusing to sign an agreement. He may have been wrong that there would have been a confidentiality clause in it; equally, he may have been right. I have observed the level of distrust he has of the Respondent and for that reason I find it difficult to criticise him for insisting on appearing today. The offer was only made one month prior to the hearing. It was not made right at the beginning when proceedings were issued.
19. This is a small claim worth only £357 and whilst Counsel has been helpful, the size of his fees is disproportionate vis a vis this claim.
20. On balance I find that the Claimant did not behave unreasonably in insisting on this hearing and if I were wrong about that I would exercise my discretion against awarding costs on the grounds of proportionality.
21. The result of the hearing is that there is Judgment for the Claimant in the sum of £352.16 payable within fourteen days.
22. The Claimant's application for exemplary damages is dismissed.
23. The Claimant's application for preparation time is dismissed.
24. The Respondent's application for costs is dismissed.

Employment Judge Smail
Date: 30 March 2021

Reasons sent to the parties on: 01 April 2021

FOR THE TRIBUNAL OFFICE