



EMPLOYMENT TRIBUNALS

Claimant

Mr S Lee

v

Respondent

Jason's Transport Services Ltd

Heard at: Bury St Edmunds (by CVP)

On: 04 January 2021

Before: Employment Judge Laidler (sitting alone)

Appearances

For the Claimant: In person.

For the Respondent: Mr J Nitsche, Director.

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

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (V). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

No further sums are due to the claimant and all claims are dismissed.

REASONS

1. This hearing was listed by Employment Judge Lewis when he conducted a telephone hearing on 5 May 2020. That should have been the full merits hearing but unfortunately due to the national lockdown at that time it was only possible to conduct the hearing by telephone and he then listed the full merits hearing to take place today.

2. He also made orders on that day as follows:-
 - (1) That by 5 June 2020 the parties send to each other copies of all documents they wanted to refer to at the hearing.
 - (2) The respondent to prepare and bring to the tribunal hearing 3 sets of photocopies of both sides documents with page numbers and assembled in date order.
 - (3) By 10 July 2020 each side to write and send to the other a written summary of what it is they or any witness coming to give evidence on their behalf wanted to say at the hearing.
3. The claimant indicated that he had prepared such a statement although it was not before the Employment Tribunal. Unfortunately, the Judge did not have the tribunal file and Mr Lee sent in that statement again. It transpired that Mr Nitsche had not done such a statement. Neither had he prepared a bundle of relevant documents.
4. The Tribunal heard from both parties. The claimant's case is that he commenced employment on 24 September 2018 which is not in dispute. His starting salary was £33,300 per annum. Weekend working was to be paid at £150 per day.
5. There is further no dispute that the claimant handed in his notice at the beginning of August 2019. Mr Nitsche entered into an agreement with Mr Lee for an increase in salary to £36,400 per annum. There is a dispute as to the aim of that increase. The respondent's position is that it was on the basis that Mr Lee would remain in employment. Mr Lee says that no such agreement was entered into. Further, he says that he did receive that pay at the end of August. Mr Nitsche says that was a mistake. The tribunal is satisfied that the agreement had been entered into that the claimant's salary would increase and as evidence of that he was actually paid the new amount in his August salary before he resigned. There is no documentary evidence that any agreement was made between the parties that that increase was subject to the claimant remaining in employment for a specified period.
6. The claimant went on holiday at the end of August and on returning was not happy with the rota that had been given to him and decided to re-institute his resignation which was duly accepted. He worked on 2 September but then left employment. He has calculated some of the amounts owing to him at what he says was his new rate of pay and the claimant's calculations are as follows:-

One week in hand from the commencement of employment	£640.00
One day overtime July/August 2019	£150.00
Two days annual leave at the new salary rate	£280.00

One day, 2 September 2019 at new rate	£140.00
Sub-total	<u>£1,210.00</u>
Less £300 overpayment	£300.00
Less final pay of £330.98	<u>£330.98</u>
Total claimed by the claimant	<u><u>£579.02</u></u>

7. The claimant has calculated the total pay received from his payslips to total £33,664.32 and not £33,964.32 as stated in the ET3 by the respondent.
8. Mr Nitsche relies upon calculations carried out by his accountants. He does not dispute that the original salary was £33,300. As the claimant left before completing a year's service the respondent has calculated its figures on a daily rate basis. They had initially worked this out on 256 working days per year but then the accountant realised it should be 260. That made the daily rate £128.08. Mr Nitsche was otherwise not able to answer any of the judges questions about the calculations, therefore it is difficult to take these into account. The respondent's calculations were as follows:-

221 days worked at £128.08	£28,305.68
25 days annual leave at £128.08	£3,202.00
Overtime, 17 days at £150.00	£2,550.00
One day holiday owed (it is the respondent's case that the claimant was entitled to 26 days pro-rata of which he took 25).	£128.08
Sub-total	<u>£34,185.76</u>
Less 2 days overpaid in overtime	£300.00
Total due	£33,885.76
Less paid to date	<u>£33,964.32</u>
Final amount overpaid	<u><u>£78.56</u></u>

9. The respondent also states that it had a training policy under which if the employee left within a year the total cost of his training would be deducted, but that has not been invoked by the respondent and neither does it seek to recover the £78.56 it says it has overpaid (as above) by way of counter claim.

10. The Judge found it difficult to come to any conclusion on this matter without the payslips and it was agreed that the claimant would lodge those within 7 days of this hearing and both parties were then content that the Judge would consider those when reaching her decision and send that in writing to the parties without the necessity for a further hearing.
11. The claimant sent in his payslips as directed. The detail of those received is set out below. No payslip was received for November 2018 but it can be seen from the year to date figure in the December payslip that the claimant was also paid £2775.00 gross in November.

Date of payslip	Gross pay	Net pay	Overtime	Year to date gross	
28 October 2018	£2775.00		£150.00	£17,149.39	
28 December 2018	£2775.00			£22,849.39	
28 December 2018	£2775.00		£300.00	£23,149.39	
28 January 2019	£2775.00		£300.00	£26,224.39	
28 February 2019	£2775.00		£150.00	£29,149.39	
28 March 2019	£2775.00			£31,924.39	
April 2019	£2775.00				
31 May 2019	£2775.00		£300.00		
31 June 2019	£2775.00		£900.00		£300 paid in error
31 July 2019	£2775.00		£150.00	£12,450.00	
31 August 2019	£3033.34		£150.00	£15,633.34	
30 September 2019	£630.98		-£300.00 overtime paid in error.	£15,964.32	

12. No details have been provided by the claimant as to the days of holiday taken so as to establish what if anything was due to him on leaving the respondent's employment. Neither have any details been given as to the days overtime was worked and for which day the claimant asserts payment remains outstanding.

Conclusions

13. The figures have been difficult to reconcile. The burden is on the claimant to establish the sums he says are due to him and he has not done so.
14. There was no 'week in hand'. The claimant was paid his full month's salary at the end of his first month with the company. Deducting therefore the £640 claimed for that week from the claimant's calculations leaves him not due any amount even on his own figures. The total claimed by the claimant was £579.02. Deducting the £640 from his calculation leaves him having been overpaid by £60.98 on his own figures.

15. In the absence of evidence as to the day the claimant states he worked overtime but was not paid or the detail of annual leave taken the tribunal has to conclude that no further sums are due to the claimant and his claims are dismissed.

Employment Judge Laidler

Date: 29 January 2021

Sent to the parties on:

.....23/2/2021

For the Tribunal:

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