



EMPLOYMENT TRIBUNALS

Claimant: Mr D Thurston

Respondent: KPH Leicester Ltd t/a Ask Recruitment

Heard at: Sheffield by video

On: 26 March 2021

Before: Employment Judge Rostant

Appearances

For the claimant: In person

For the respondent: Ms McGuire, consultant

JUDGEMENT

The claim fails and is dismissed.

REASONS

1. This is a claim brought by Mr Thurston under section 13 Employment Rights Act 1996. Mr Thurston complains that the respondent made an unauthorized deduction from his wages between the period 17 April 2020 and some point at the end of July 2020 when he resumed work under a temporary contract supplied by the claimant to a client St Gobain.
2. In this hearing I heard from the claimant and the respondent's representative and considered a file of documents. The essential facts in the case are not in dispute.
3. Section 13 provides that an unauthorized deduction is made from wages when an employer fails to pay a worker or an employee sums of money to which that worker or employee is contractually entitled for any period of time.
4. The claimant had a global contract with the respondent. That contract placed no obligation on the respondent to offer the claimant work to the claimant or on the claimant to accept any work offered to him. When the respondent wished to offer work to the claimant it was on the basis of a further, temporary, contract. That contract stipulated the length of the contract, the weekly hours, the days and hours when those hours would be worked the rate of pay. An example is at page 25

5. I am satisfied that the respondent had obligations under contract to pay the claimant and supply work for the period when such a temporary contract was in force.
6. The claimant accepts, as I think he must, that outside of the period covered by such a temporary contract, the respondent had no obligation to pay him.
7. The claimant had a number of such contracts from the start of his employment by the respondent, under which he was supplied to St Gobain. However, for the period in question there was no such contract in force. The last temporary contract, on the evidence before me, expired on 30 April 2020 and was not replaced.
8. I accept that the claimant had a conversation with somebody St Gobain, in which he was told that his last temporary contract would be extended. However, there was no such conversation between the claimant and the respondent and the conversation that the claimant had with the respondent's client cannot form the basis for any contractual arrangement between the claimant and the respondent.
9. It is unfortunate that the claimant's position after the 17th of April was not made clear to him. It seems clear from the documents before me that the end user client believed that the claimant might be entitled to furlough pay under the job retention scheme and told the claimant as much. It also seems apparent that the respondent made an attempt to apply for furlough pay under the job retention scheme for the claimant and others. It is also clear that the respondent's attempt to register under the scheme was unsuccessful. At no point did anyone make it clear to the claimant that he was not entitled to pay under the job retention scheme for the simple reason that the retention scheme would not apply to somebody in the claimant's position where there was no job being retained and no pay attached to such a job.
10. That lack of clarity, perhaps explained by the relative novelty of the retention scheme, led the claimant to believe that he might receive furlough pay whilst waiting to restart work. It also explains why this claim was brought. Matters were further compounded by the respondent's failure, until the very last minute, to provide the documentary evidence upon which it has relied to establish the true contractual position. No criticism in my judgment can be made of the claimant for pursuing his claim.
11. Nevertheless, the evidence shows that there was no contract other than the global contract referred to above between the claimant and the respondent for the relevant period. There was, therefore, no obligation on the respondent to offer work to the claimant and therefore no obligation for the respondent to pay the claimant any wages. It follows therefore that the contractual obligation to pay which must exist for a successful claim under section 13 did not exist and this claim is bound to fail.
12. Written reasons were applied for by the respondent.

Case Number:1806270/2020

Employment Judge Rostant

26 March 2021