EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Zhang	**v**	**Farazad Advisory Ltd**
Heard at: London Central (by video)		**On**: 30 October 2020
Before: Employment Judge P Klimov		

Representation

For the Claimant: Ms. E Hodgetts (of Counsel)

For the Respondent: Mr. K Farazad (CEO)

JUDGMENT having been sent to the parties on 2 November 2020 and reasons having been requested by the Respondent on 4 November 2020, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Respondent requested written reasons by an email sent by Mr Farazad to the Tribunal on 4 November 2020. On 23 February 2021, the Respondent's solicitors sent a further email to the Tribunal asking for written reasons. Unfortunately, neither the original request nor the Respondent's solicitors' followup emails were passed to me. On 6 May 2021, the Respondent's solicitors sent another email asking that the issuing of written reasons was expedited. On 7

May 2021, the Claimant's solicitors emailed the Tribunal supporting the Respondent's request for the written reasons to be issued as soon as possible. These emails were passed to me on 10 May 2021. I apologise to the parties for the delay in providing written reasons, which was partially caused by the closure

of the London Central Employment Tribunal's building on 18 December 2020 for COVID safety reasons and resulting restrictions on the staff and judiciary accessing the paper files and the tribunal's case management IT system.

2. By a claim form presented on 30 January 2020, the Claimant brought claims for unauthorised deduction from wages in relation to her salary for the period from 13 September to 7 November 2019, and for breach of contract in relation to her bonus and expenses.

3. On 27 February 2020, the Respondent presented a response denying liability for the claims and making a counterclaim for sums of money the Respondent claimed it had paid for the Claimant's work visa sponsorship ("COS") and for her Chartered Financial Analyst ("CFA") exam.

4. The Respondent also made a claim for the Claimant's breach of a non-compete covenant. Pursuant to articles 4(b) and 5(e) of Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 the Tribunal does not have jurisdiction to consider such claims, and therefore, I struck out that claim.

5. At the hearing, the Respondent accepted liability for the Claimant's unpaid salary for the period from 13 September to 7 November 2019. I, therefore, made a declaration that the Respondent had made an unauthorised deduction from the Claimant's wages and ordered the Respondent to pay to the Claimant the sum of

£5,000 (gross) in respect of the unlawfully deducted wages and account to HMRC for any tax and NI due.

6. Later during the hearing, the Respondent also accepted liability for unpaid expenses in the amount of £190.52 and I ordered it to pay that sum to the Claimant as damages.

7. The Respondent contended that the Claimant was not entitled to any bonus by reason of her not completing the requisite one-year period of service. Further, the Respondent claimed that the Claimant was liable to reimburse the Respondent for costs the Respondent had incurred for the Claimant's COS (£3,137.20), because she had failed to complete two years of service. Finally, the Respondent claimed that because the Claimant had not remained in its employment for a minimum period of three years, she was liable to pay back to

the Respondent a sum of $1,000, the Respondent had paid for the Claimant's CFA exam. In support of these claims the Respondent was relying of "Company policy" but did not present any such policy document to the Tribunal.

8. At the hearing, Ms Hodgetts appeared for the Claimant. The Respondent was represented by Mr Farazad. The Claimant gave sworn evidence and was crossexamined. Mr Farazad did not provide a written witness statement. However, the Respondent's grounds of resistance were taken as his sworn evidence and he was cross-examined on that basis. I was referred to a bundle of documents of 287 pages the parties introduced in evidence. Ms Hodgetts also produced a note on law.

9. The main issues I needed to determine were:

(i) Whether the Claimant was entitled to the claimed bonus of £20,000 under the terms of her contract of employment with the Respondent.

(ii) If so, whether the Respondent was in breach of contract by failing to pay the Claimant her bonus.

(iii) Whether under the terms of her contract of employment the Claimant was liable to reimburse the Respondent for her COS and the CFA exam.

10. The bundle of documents contained two contracts signed by the Claimant and the Respondent. The first contract (the "June Contract") was signed by the Claimant on 18 June 2018. It had the date of 15 June 2018 next to the Respondent's signature.

11. However, the Claimant evidence were that when she had received the contract from the Respondent for her signature it had not been signed by the Respondent. She signed the June Contract and return a copy to the Respondent for its signature. She then chased the Respondent several times for a copy of the June Contract with the Respondent's signature. On 6 November 2018, she eventually received a copy the June Contract signed by Mr Farazad. I accepted her evidence on this.

12. The June Contract stated that the Claimant's start date was 13 August 2018, it was for a fixed period of 3 years, automatically renewable, unless terminated earlier. Her job title was "Senior Investment Analyst". Under the terms of the

June Contract, the Claimant was entitled to an annual salary of £30,000 and a minimum guaranteed bonus of £20,000. No conditions as to the length of service were attached to the bonus entitlement.

13. The second contract ("November Contract") was signed by the parties on 5 November 2020. It contained different terms. The Claimant's job title was "Project Analyst", her start date was changed to 7 January 2019 and her guaranteed bonus to £10,000. No conditions as to the length of service were attached to the bonus entitlement.

14. Having heard the parties' oral evidence and having considered the documents in the bundle I made the following key findings.

15. The Claimant commenced her employment with the Respondent on 13 August 2018. Until 18 August 2018 she worked as an intern (20 hours a week) to avoid breaching her student visa conditions. From 18 August 2018 she worked full time for the Respondent under the term of the June Contract. That arrangement was agreed by the Respondent.

16. Mr Farazad argued that his signature on the June Contract had been forged and the whole contract was a forgery, and that the only contract he had ever signed with the Claimant was the November Contract. I rejected that assertion.

17. I accepted the Claimant's evidence that the June Contract had been sent to her by the Respondent, which she had signed and returned a copy for the Respondent's signature on 18 June 2018, and that the Respondent eventually had sent her a signed copy of the June Contract on 6 November 2018. Her evidence on this issue were supported by the documentary evidence in the bundle I was referred to, including text messages between the Claimant and Mr Farazad, her salary payment records, Mr Farazad reference to the Claimant's probationary period in his email of 27 June 2018 to the Claimant (which appears as a term in the June Contract, but not in the November Contract), metadata of the June Contract document, the Certificate of Employment issued by the Respondent confirming the Claimant's salary of £30,000 and a guaranteed bonus of £20,000, the Claimant's work emails where the Claimant is identified as Investment Analyst (her title under the June Contract).

18. I found Mr Farazad assertion that the June Contract was a forgery not credible. That claim clearly contradicted contemporaneous documents and how the parties' conducted themselves from June 2018.

19. On 5 November 2018, Mr Farazad asked the Claimant to sign the November Contract. He explained to her that it was necessary for the purposes of applying

for the Claimant's Tier 2 visa before her current student visa expired in December 2018, and that the changes to the contract terms (the title and the bonus entitlement), were simply to make the process of obtaining the visa easier. Mr Farazad assured the Claimant that her job title and her remuneration package would remain as in the June Contract. The Claimant agreed to that due to the time pressure because her student visa was due to expire in December 2018.

20. The Respondent asked the Claimant to pay herself an application fee of £1,550 for her visa and promised to reimburse her for that expense. When the

Claimant was dismissed, the Respondent still owed her £190.52 for that expense.

21. The Respondent was paying the Claimant her wages with delays and not in full. The Claimant had to repeatedly chase the Respondent for her salary, expenses and payslips.

22. On 7 November 2019, Mr Farazad called the Claimant into his office and dismissed her with the immediate effect. He did not give her a reason for the dismissal.

23. Later in November, when the Respondent had received a request for reference from the Claimant's new employer, it sent the Claimant a letter dated 7 November 2019 terminating her employment on one month's notice. The letter stated: "*due to the current economic climate in the UK, your position is no longer available*". By that letter, the Respondent also purported to put the Claimant on a gardening leave. The Respondent did not pay the Claimant for her one month's notice.

24. There are no terms in the Claimant's contract of employment under which the Claimant is liable to pay back to the Respondent any sums paid by the

Respondent in relation to her COS or the CFA exam. The Respondent did not pay for the Claimant's CFA exam.

25. There are no terms in the Claimant's contract of employment requiring the Claimant to complete any minimum period of service before becoming entitled to the guaranteed bonus of £20,000. In any event, the Claimant had completed one year of service before her dismissal on 7 November 2019.

26. Based on my findings of fact, I decided that the Claimant's June Contract was a genuine contract of employment, under which she had been employed from 18 August 2018 until her dismissal on 7 November 2019.

27. I found that the November Contract did not have the legal effect of replacing the June Contract or otherwise varying the terms of the June Contract. The November contract was effectively a sham contract. I was satisfied that in acceding to the Respondent's request to sign it, the Claimant was relying on the Respondent's assurances that it was only needed for processing her visa application and it would not alter her employment terms with the Respondent, and therefore, the Claimant had had no intent that the November Contract would create further or different legal relations between her and the Respondent.

28. Under the terms of her contract of employment, the Claimant was entitled to a minimum guaranteed bonus of £20,000. Therefore, the Respondent was in breach of contract by failing to pay the Claimant her guaranteed bonus of £20,000.

29. I also found that the Claimant was not liable to reimburse the Respondent any costs in relation to her COS or the CFA exam. Furthermore, the Respondent did not pay the claimed $1,000 in relation to the Claimant's CFA exam.

30. For these reasons, I found that: (i) the Claimant's claim for breach of contract was well founded and ordered that the Respondent must pay to the Claimant £20,000 as damages for breach of contract, (ii) the Respondent's counterclaim for the sums in relation to the COS and the CFA must fail.

Employment Judge P Klimov
16 May 2021

Sent to the parties on:

17th May 2021.

For the Tribunals Office

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