



EMPLOYMENT TRIBUNALS

Claimant: Mr J Bhurabhai

Respondent: Akquire Points Ltd (in liquidation)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

RULE 21 JUDGMENT

1. The complaint of breach of contract succeeds. The respondent is ordered to pay the claimant **£25,000**.
2. The respondent has failed to pay the claimant's holiday entitlement under the Working Time Regulations 1998 and is ordered to pay the claimant the sum of **£3142.87**.
3. The Respondent failed to provide the Claimant with a statement of written particulars. I make an order under section 38 of Employment Act 2002 of the higher amount of 4 weeks pay. The Respondent is ordered to pay the additional sum of **£3461.52**.

REASONS

1. A public hearing took place on 14 January 2021 in accordance with the requirements of Rule 21. The Respondent had presented a response but had subsequently indicated that it did not intend to defend the claim or attend any hearing. It was given notice of the hearing and did not, in fact, attend.
2. I heard evidence from the Claimant and considered the documents supplied. I did not have sufficient information to make a decision on all relevant matters and I therefore ordered the Claimant to provide additional information by 11 February 2021. In fact, the Claimant did not comply with that order by that date. However, he supplied the information by 30 March 2021, and he has given an explanation for the delay.
3. Based on the information in the tribunal file, and what I heard and read on 14 January 2021, and based on the information supplied on 30 March 2021, I am satisfied that a determination can properly be made on all of the claim. I have taken into account that it is an error of law to enter judgment simply because the claim is undefended without proper consideration of the matter and that the Presidential Guidance on the correct approach must also be taken into account.

The Claims & Issues

4. The issues were set out by EJ Bartlett in the summary produced after the preliminary hearing of 10 October 2019. In summary, these were:
 - 4.1. Was the claimant an employee and if not (there would be no jurisdiction in relation to breach of contract) and was he a worker?
 - 4.2. If an employee, (i) what was the Claimant's entitlement (if any) to salary during employment and (ii) what was his entitlement (if any) to a payment of damages for the fact that no notice of termination was given.
 - 4.3. Did the Claimant have any entitlement to holiday pay and, if so, what sum (if any) should be awarded for the Respondent's failure to pay anything for holiday pay during employment.

The Facts

5. I am satisfied that an agreement was reached between the Claimant and the Respondent. This agreement was an employment contract albeit it was not in writing. The agreement was reached after initial discussions had taken place via Slack which were subject to contract.
6. The Claimant did in fact start doing work for the Respondent. By its conduct, the Respondent accepted that a contract had been formed. The Claimant worked for the Respondent between 18 October 2017 and 24 September 2018. One of the terms of the agreement was that the Claimant was entitled to a salary of £45,000 per year.
7. He has not satisfied me that a clear and certain agreement was reached between the parties as to share options. On the contrary, he has simply proven that discussions took place, during which the parties had different views as to what should be agreed. Even taking the evidence at its highest, there was (at most) an offer from the Respondent to the Claimant about share options, but he did not accept that offer. Even if an agreement had been reached based on the Respondent's offer, the Claimant would not have become entitled to the options (as he was not an employee for a full 12 months). Furthermore, had the Claimant convinced me that he was entitled to share options (and entitled in principle to damages for breach of contract in relation to the failure to allow him to act on them) then I would have been likely to determine that his loss (and therefore his damages) should be zero, given that the company is in liquidation.
8. The Claimant was employed for 341 days. On 24 September 2018, the Respondent dismissed the Claimant summarily. The Claimant was not in breach of contract, and the Respondent had no grounds to dismiss him without notice on that date. There was no specific express term agreed in relation to notice. My decision is that the Claimant is not entitled to a period which is greater than the statutory minimum, being one week.
9. The agreement between the parties was that the Claimant's salary payments would be deferred. There was no express agreement as to the exact events which would trigger the Claimant's entitlement to salary paid. In other words, his salary during employment was £45,000 from Day 1, but the parties did

not agree the exact dates by which the Claimant would eventually be paid for Month 1, Month 2, etc. It was agreed that there would be some delay.

10. In the Slack communications, there was some discussion about the Respondent seeking “seed money” of £500,000. However, there was no agreement (either express or implied) that the Claimant would not receive his deferred salary payments until after the Respondent had acquired any specific minimum sum (£500,000 or any other amount) for seed money.
11. However, I am satisfied that there was an implied term that the Claimant was agreeing to defer salary (for an unspecified maximum period) only while he was an employee, and that there was an implied term that the Claimant would be entitled to the full amount of his deferred salary on termination.
12. The Claimant’s normal days of work were Monday to Friday. Other than for bank holidays, he did not take any days off.
13. There was no agreement that the Claimant would be paid overtime, or given time off in lieu, for working extra hours Monday to Friday or for working on Saturday or Sunday.
14. The Claimant made a claim for Universal Credit, and received payments under that scheme commencing on 2 July 2018 and continuing until after 24 September 2018. I do not have specific documentation about what the Claimant said to the relevant government agency about any aspect of his employment with the Respondent, including about the number of hours that he was spending working or about his deferred salary entitlement. However, in principle, a person can be entitled to receive Universal Credit while they are in employment.

The Law

15. The Working Time Regulations 1998 provide that an employee is entitled to 5.6 weeks paid time off per year.
16. Regulations 16 and 14 set out the calculations for part of a year, and the entitlement to be paid a sum in lieu of unused entitlement on termination.
17. Part II the Employment Rights Act 1996 deals with unauthorised deduction from wages. S13 defines the right not to suffer unauthorised deductions and s27 defines wages. As per section 13(3)
 - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
18. The definition of “deduction” can be met even in the event of a complete non-payment on a particular occasion.
19. Part I the Employment Rights Act 1996 deals with the right to statements of employment particulars. The right is set out in section 1 and is to be

interpreted in accordance with sections 2 to 6 and 7A and 7B.

20. Section 38 of the Employment Act 2002 specifies that an employee might be entitled to compensation if an employer has failed in its obligation to give statement of employment particulars and if the employee succeeds in a claim within the jurisdictions listed in Schedule 5 which, amongst other things, includes the tribunal's breach of contract jurisdiction and breach of the working time regulations.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by a worker) under section 41B or 41C of that Act, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

Analysis and conclusions

21. All of the complaints were brought within the relevant time limits.
22. £45,000 per year is equivalent to £865.38 per week.
23. The Claimant had taken bank holidays (1.6 weeks) but no other days,
23.1. So his leave entitlement under the Working Time Regulations 1998 is:
 $[(341/365 \times 5.6) - 1.6]$ weeks
23.2. And that converts to a payment in lieu of $£865.38 \times [(341/365 \times 5.6) - 1.6]$
 $= £3142.87$
24. The Claimant's dismissal without notice was a breach of contract. His damages for that particular breach being one week's net remuneration (so £865.38 less sums representing the tax and national insurance which would have been deducted and he worked, and been paid for, his notice).
25. Furthermore, I am satisfied that there was an implied term that the termination of employment triggered the Claimant's entitlement to receive payment for the salary which he had deferred. He had agreed to defer salary to help the business which was employing him, not so that the business could have a loan from him after he had departed. The deferred gross salary was $341/365 \times £45,000$, so just more than £42,000.
26. His net loss for the Respondent's 2 breaches of contract (failure to give notice and failure to pay deferred salary on termination) exceeds the £25,000 cap. Therefore I award £25,000 for breach of contract.
27. I do not make an award for unauthorised deduction from wages because there were no occasions, within the definition in section 13(3) the Employment Rights Act 1996, during the Claimant's employment, upon which there were deductions. There were no agreed dates, during employment, on which the Claimant should have been paid wages.
28. I am satisfied as per section 38(3)(b) that it is just and equitable, given the

breach of contract, and failure to pay holiday, and given the complete failure to supply any of the written particulars, it is just and equitable to award the "higher amount". I therefore order the Respondent to pay 4 x £865.38 = £3461.52.

29. I have considered whether to give any credit to the Respondent for the sums that the Claimant received, during his employment, by way of Universal Credit. I am satisfied that no such credit should be given.
30. The awards which I have made do not fall within the Schedule to the Employment Protection (Recoupment of Benefits) Regulations 1996. I made the awards mentioned above on the assumption that the information which the Claimant supplied when claiming Universal Credit matched the evidence which he gave during this litigation.

Employment Judge Quill

Date: 06.05.21

JUDGMENT SENT TO THE PARTIES ON

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