



EMPLOYMENT TRIBUNALS

Claimant

Mr M McIntyre

v

Respondent

Avebury Architectural Services
Limited
(In Voluntary Liquidation)

Heard at: Bury St Edmunds

On: Friday 2 July 2021

Before: Employment Judge Bloom

Appearances

For the Claimant: In person

For the Respondent: Mr R O'Neil, Director

JUDGMENT

1. By consent, the Respondent shall pay to the Claimant the sum of **£1,270.00** representing pension contribution in arrears.
2. By consent, the Respondent shall pay to the Claimant the sum of **£6,825.73** gross, representing an outstanding bonus payment.
3. The Claimant's Claim of Constructive Dismissal succeeds. The Respondent is to pay to the Claimant a Basic Award in the sum of **£2,100.00** and a Compensatory Award in the sum of **£12,051.42**
4. The Recoupment Provisions do not apply to the above sums.

REASONS

1. At this Hearing the Claimant represented himself. The Respondents were represented by a Director Mr O'Neil. I dealt with the matter as a Telephone Preliminary Hearing on 17 April 2020 and the relevant issues were identified. The Claimant brings a Claim of Constructive Unfair Dismissal. That claim was based on the Claimant's assertions that he was owed a sum by way of outstanding pension contributions and an

outstanding bonus payment. Despite requests and a number of discussions that took place regarding those outstanding sums no payments were received. The Claimant had had enough by 28 August 2019 and then resigned. Insofar as the amounts relating to outstanding pension contributions are concerned the sum of £1,270.00 was agreed at the earlier Preliminary Hearing. Unfortunately the payment had still not been made by the Respondent to the Claimant. The sum relating to outstanding bonus was in dispute.

2. At the commencement of this Hearing the parties agreed the relevant amounts owed both in respect of pension arrears and outstanding bonus. Insofar as pension is concerned the Respondents agreed that it will now pay the sum of £1,270.00 to the Claimant. The Respondents offered and the Claimant accepted the outstanding sum of £6,825.73 gross in respect of outstanding bonus payments. By consent on that basis judgment is given in favour of the Claimant.
3. The Constructive Dismissal Claim is based on the Claimant's case that a continued failure by the Respondent to pay the pension sums and the outstanding bonus represented a fundamental breach of express terms of his contract of employment. A breach of those terms repudiated the contract and entitled the Claimant to resign pursuant to the provisions of Section 95(1)(c) Employment Rights Act 1996, i.e. they constituted a dismissal.
4. I heard evidence from the Claimant and from Mr O'Neil. The Claimant produced a Witness Statement. That statement sets out an unfortunate history of a number of conversations between himself and the Respondent relating to the outstanding sums due to him. The sums as claimed by the Claimant cover a period between December 2018 and July 2019. The sums claimed by the Claimant were not accepted by the Respondent. However, in my judgment, there was a failure by the Respondent to correctly address the Claimant's issues. They made little or no attempt to sit down with the Claimant and to reach a resolution concerning the disputed amounts. There was a history of some meetings which reached no conclusion and a trail of e-mails which again failed to reach a resolution. During his evidence to me Mr O'Neil accepted that the Respondent had always owed the Claimant the sum of £1,270.00 in respect of pension arrears and that they had always accepted the sum of £6,825.73 was owed in respect of outstanding bonus. He could not give me a satisfactory explanation as to why those sums were not paid to the Claimant notwithstanding the Respondent's admission that they were owed. I do not accept Mr O'Neil's argument that he did not pay those sums because of the Claimant's refusal to accept them in full and final settlement of all outstanding claims. Any employee who is owed a substantial sum of money by their employer and in a situation where the employer admits, at least, a substantial sum is due to the Claimant, is entitled to treat his contract as having been fundamentally breached by the employer, particularly in circumstances where a number of discussions had taken place already to try and resolve the issue. On 12 July 2019 the

Claimant sent a detailed e-mail to Mr O'Neil in a final attempt to try and resolve the issues. Although I accept Mr O'Neil became ill after that e-mail was sent, there is no valid reason in my judgment why the Respondent itself (who had at least one other director) could not have attempted to resolve the outstanding issues with the Claimant. By 28 August 2019 the Claimant had had enough and submitted his resignation and in my judgment was entitled to do so having taken the understandable view that his contract was repudiated by the Respondent as a result of non-payment of the sums due to him. As a consequence the Claimant's Claim of Constructive Dismissal succeeds.

5. The Claimant at the time of termination was earning £40,000.00 gross per annum. He is entitled to a Basic Award which at the time is capped in terms of statutory weekly pay in the sum of £525.00 per week. The Claimant was 38 years old at the time of termination and had been continuously employed for just over four years. The appropriate calculation therefore in respect of the Basic Award is four times £525.00 which equals £2,100.00.
6. As far as the Compensatory Award is concerned the Claimant's net pay with the Respondent was in the sum of £2,306.57. The Claimant was unable to secure any alternative employment for a period of six months following the termination of his employment. Taking into account a small amount of income within that period this results in a net loss to the Claimant in the sum of £11,551.42. In addition, the Claimant is awarded the sum of £500.00 for loss of statutory rights. This results in a total Compensatory Award payable by the Respondent to the Claimant in the sum of £12,051.42.
7. The Recoupment Provisions do not apply to these awards.

6 July 2021

Employment Judge Bloom

Sent to the parties on:

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For the Tribunal Office