



EMPLOYMENT TRIBUNALS

Claimant

Mrs A Da Costa Pereira

v

Respondent

Prominent Ventures Ltd

Heard at: Watford by CVP

On: 16 July 2021

Before: Employment Judge Allen sitting alone

Appearances

For the Claimant: Unrepresented but assisted by her daughter Diana

For the Respondent: Ms Ash-D'Souza, Solicitor

JUDGMENT

1. Declaration In accordance with S12 of the Employment Rights Act 1996 (ERA) the respondent failed to provide the claimant with itemised pay statements between 1 November 2019 and 3 April 2019 as required by S8 ERA.
2. I make a Preparation Time Order in accordance with Rules 75(2) & 76(b) for 3 hours preparation time to be paid by the Respondent to the Claimant for work done in preparation for the hearing in the sum of £123. Rule 79(2) sets the rate at £33 in 2013 to increase £1 on 6 April of each year (8 years brings the current rate to £41).

REASONS

1. The respondent contracted out its payroll functions to Paymax. The claimant received her last itemised pay statement on 25 October 2019 from Paymax. At this time the respondent dispensed with the services of Paymax and brought the payroll function in house to be performed by the company accountant.
2. On 20 January 2020 the claimant received form P45 from Paymax. The P45 recorded date of termination of employment as 25 October 2019. Both parties accept the P45 was sent in error and the claimant continued to be employed by the Respondent.

3. On 18 June 2020 Mr Mapfumo, branch director told the claimant in an email that she was in fact employed by Paymax. No contract has been produced to support this and since on the Respondent's own account Paymax was contracted to perform payroll functions it is more likely than not this is incorrect and I reject it notwithstanding that whoever completed the P45 at Paymax entered Paymax Ltd as the employer. In my view this was opportunistic on the part of Mr Mapfumo who was well aware that Paymax was contracted to process payroll and nothing else.
4. The parties do not agree on the date employment was terminated. The claimant last performed a shift for the respondent in February 2020 but remained on the Respondent's books for some time. At the end of March 2020, the claimant informed the respondent, she would accept no more shifts until the itemised pay statements issue was resolved (page 56 bundle – email of 16 March 2020). The Respondent is unsure of the claimant's last date of employment and asserts employment terminated in April or May. Since none of the potential dates of effective termination would put this matter outside the statutory time limit I attach little significance to this. Acas was notified of Ms Da Costa Pereira's claim on 24 June 2020, certificate issued 24 July 2020. The claim is within time.
5. Mr Mapfuma, has submitted a statement on behalf of the Respondent. He is currently outside the jurisdiction and does not appear to have made any attempt to join the hearing remotely. His statement asserts:
 - 5.1. there was confusion between the claimant, the respondent and Paymax (para 4 - pages 96-97 of the bundle).
 - 5.2. PAYE tax should have been paid to HMRC in respect of the claimant and has now been done (para 9 – pages 96-97 of the bundle).
 - 5.3. In June 2019 the claimant did not submit her timesheets until August 2019 and in March 2020 3 timesheets were submitted and processed together (para 6 – pages 96-97 of the bundle).
6. I accept the claimant's account that when the June 2019 timesheets were submitted in August 2019 that was in fact a second submission. They were submitted a second time when the claimant enquired why they had not been paid. I also accept the claimant's assertion that she was instructed to submit timesheets at the end of a placement consequently it was not unusual for her to submit timesheets in blocks.
7. Nowhere in his statement does Mr Mapfuma dispute that there was a period between the 1 November 2019 and 3 April 2020 when the respondent failed to provide the claimant with any Itemised Pay Statements.
8. It is apparent from the claimant's email to the respondent on 16 March 2020 that the issue regarding Itemised Pay Statements had been going on for some time. In that email the claimant recounts that she has been in [the

Respondent's office] to speak about it and telephoned several times all to no effect. I accept this email as evidence the claimant had not received Itemised Pay Statements as she asserts.

9. Throughout the period between 1 November 2019 and 7 April 2020 the respondent continued to make payments into the claimant's bank account in respect of the shifts she had worked. The final payment on 7 April 2020 was in respect of her final shift in February 2020.
10. It makes absolutely no sense as to why the Respondent would pay the claimant for the shifts she worked without providing Itemised Pay Statements. What is apparent to me is that the Respondent was somewhat disorganised and inefficient in this regard as evidenced by the undisputed email from the claimant of 16 March referred to above.
11. I accept the claimant's evidence that the Respondent produced Itemised Pay Statements for the period 8 November 2019 to 3 April 2020 on 22 July 2020 during the conciliation process with Acas.
12. The Respondent's advocate today accepted that none of the itemised Pay Statements for the period 8/11/19 - 03/04/20 contain *'the number of hours for which payment was being made where the amount of wages or salary varies by reference to time worked, giving the number of hours either as a single aggregate figure or as separate figures for different types of work (or rates of pay)'* as required by S8(2)ERA.
13. The claimant makes an application for a preparation time order.

The law

14. Failure to provide itemised pay statements

14.1. A worker who has not been provided with an itemised pay statement has the right to refer the matter to an employment tribunal in accordance with S11(1) ERA. Employment tribunals are simply concerned with whether the worker has received a pay statement and, if so, whether that statement itemises deductions made.

14.2. If a tribunal finds that a worker has not received a pay statement, it must make a declaration to that effect in accordance with S12(3)ERA.

Conclusion

15. Having considered the evidence contained in the Respondent's bundle; which significantly includes the claimant's email of 16 March 2020 referred to above; I am satisfied the Respondent failed to provide the claimant with any Itemised Pay Statements between 8 November 2019 and 3 April 2020.

16. The claimant has been ably assisted by her daughter and was otherwise unrepresented throughout. The claimant has applied for a preparation order. I conclude 3 hours preparation time at the standard rate is proportionate in this case.

Employment Judge Allen

Date: 23/7/2021

Sent to the parties on: 20/8/2021

N Gotecha

For the Tribunal Office