



EMPLOYMENT TRIBUNALS

Claimant: Dr M Rahman
Respondent: Brainberry Ltd

AT AN OPEN PRELIMINARY HEARING BY CVP

Heard at: Leicester On: Friday 13 August 2021

Before: Employment Judge P Britton (sitting alone)

Representation

Claimant: In person
Respondent: Kartheeka Bojan, Director of Respondent

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

1. The claim for unpaid wages, including unpaid holiday pay, succeeds to the extent of £427.85. The Respondent is accordingly ordered to pay the Claimant that sum.

REASONS

Introduction

1. The claim was presented to this Tribunal on 30 April 2021. In it the Claimant, who has a PHD and continues in research in neuro science at Oxford University, set out how he was employed by the Respondent between 13 August 2020 and 31 January 2021. Stopping there, when the Claimant first undertook work as a new Neuroscientist for the Respondent it was under its then name of Ceberum Matter Ltd (CML) and which it changed to Brainberry Ltd. He entered into a first contract with it, which is before me,

on 13 August 2020.

2. Before I continue, suffice to say that his claim is in relation to the entire period of the employment is that he was underpaid wages due as per contract including holiday pay as per the Working Time regs. Cross referencing to the Response and that is denied. Thus, I have had to determine the issue. I have considered the documents before me referred to by the parties and heard evidence and submissions from the Claimant and Ms Bojan.

Findings of Fact

3. Some of it clearly is either not in dispute or cannot be because the documents speak for themselves. The first contract that the Claimant entered into on 13 August 2020 with what was then CML was a probationary contract (Contract 1). It is clear from reading it that it reflected the hope that the Claimant would be able to get an extended visa which would enable him to work full time for the Respondent. But he could only get a visa for 20 hours per week to work which explains contract 2. As regards contract 1 it made plain that the Claimant was being paid a salary which was said to be pro rata £28,000 and was thus stated to be £14,933.33. Under this contract there was no statement setting out an hourly rate but bearing in mind that it was clear that he was to work 20 hours a week it does not take any difficulty to work out that the hourly rate was therefore £14.36 per hour.

4. He then entered into the second contract which was by now with Brainberry Ltd following the change of name. That is also before me. I stress that both contracts were signed by first Dr Rahman and then by Ms Bojan. The second contract as to remuneration I will now refer to. This contract was signed off by both parties on 13 August 2020. Set out essentially for my purposes at clause 4 was that the hours of work would be over three days a week on a temporary basis, and which of course reflects the limited visa permitting only 20 hours work per week. The hours never increased from twenty. I accept the evidence of the Claimant in that respect reflected in the record he contemporaneously kept of hours worked and which shows working 20 hours each week over 2.5 days per week. Ms Bojan has provided no documentary evidence to the contrary.

5. That brings me to paragraph 6 and remuneration and particularly 6.2: *"You will be paid your agreed upon amount £28,000 pro rata by credit transfer to your bank account in arrears at the rate of £14.36 gross per hour worked on the last date of each month"*. It follows that the contract is capable of clear construction; namely that the Claimant would be paid at £14.36 per hour gross for each hour worked. It follows that for Ms Bojan in the email trail that I have read to seek to argue that as he would take a break of 30 minutes therefore its only £13.46 for an 8 hour day cannot be right. The contract is clear, the time he takes a break is not paid for. What is paid for is the hours worked at £14.36 per hour gross. And that is what he has recorded. On the evidence that I have there was never any issue until after the employment ended when we get this contention from the Respondent that its £13.46 per hour. Contractually it can't work.

6. Therefore the calculations become straightforward. First as to hours worked I have been able to look at the PAYE pay slip for the last month worked, namely 31

January 2021, which helpfully gives me a totalizer for the total pay from the commencement of this employment. And in that respect the parties were able to agree on the actual total hours worked during this employment as being 456.61 hours. Again, the maths is easy because $456.61 \times \text{hourly rate of } £14.36 = £6794.14$. But he actually got gross pay of £6909.10 i.e. overpaid on the actual wages element of £114.96.

7. That however leaves me with the holiday pay. Using the Government's ready reckoner on the internet, and which Miss Bojan had endeavoured to do prior to today, and which assists in calculating holiday pay, it is clear taking the length of this employment i.e. 13 August 2020 through to 31 January 2021, and working on the basis that the Claimant worked 2.5 days per week x 20 hours that he is therefore entitled to 32.8 hours of holiday pay.

8. That of course then equals $32.8 \times £14.36 = £758.20$. However, the Claimant fairly conceded that he did take 2 days holiday and there is no payment change in the payslips that I have seen. Thus he agrees that. this means $7.5 \times 2 = 15 \times £14.36 = £215.40$ has been paid. I then credit back that the Respondent overpaid him as I've said already on the wages front by £114.96, therefore the balance becomes £427.85.

9. The Respondent has presented no documentation to the contrary. In particular no record of leave taken.

10. Accordingly I award compensation in the sum of £427.85.

Employment Judge P Britton

Date: 2 September 2021

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