EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr K Abayomi	**v**	Cordant Security Limited

Heard at: Watford by CVP **On**: 19 April 2021

Before: Employment Judge Quill (sitting alone)

Appearances

For the Claimant: In person
For the Respondent: Mr Brill, in-house representative

JUDGMENT

1. The claims for breach of contract and/or unauthorised deduction from wages are not well founded and they are dismissed.

REASONS

Claims, Hearing and Evidence

1. I had a bundle of documents that was an agreed bundle of 82 pages and during the hearing I received an additional document from the claimant's side. There was one witness from each side, the claimant's witness statement was in the bundle. The witness statement by Danny Stoughton on behalf of the respondent was sent to me separately. Each of the witnesses gave evidence on oath and was questioned by the other side and by me.

2. The claims were presented in time following early conciliation and the termination of employment. If there were any claims for either notice of pay or redundancy pay, then they were dismissed on withdrawal by Employment Judge Lewis on 6 April 2021 and the claimant clarified before me that he was not claiming holiday pay.

3. The claim alleges that the Claimant was promised regular work but he did not get regular work and therefore did not get the income that he was expecting. He was not alleging that he was guaranteed a certain minimum level of weekly pay, even if he did not do any work.

Facts

4. The claimant did one training shift for the respondent and he was paid for that. That was 22 April 2020. Prior to starting work for the employment, the claimant had signed a contract (job title security officer) and it is in the bundle between pages 39 to 50 and amongst other clauses, that included clause 7.4, which says:

> "there is no obligation on the company to make available all or part of the minimum hours in any particular months or weeks or to spread them evenly over the year or to provide them at particular intervals you acknowledge that there may be periods when no work is allocated to you.

5. The minimum hours that were guaranteed by the contract were 366 hours, but the measure period for that was a period of one year. The first year was to be 15 April 2020 to 14 April 2021, and then a year that ran after. That is according to the written contract, signed by the claimant.

6. The claimant, having completed his training shift, made himself available for work from May 2020 onwards. He was not contacted in the first few days of May. The reason he was not contacted was because there was no work available for him. This was during the Covid lockdown, and the Respondent did not have enough clients who wanted the Respondent's security services to be provided to them that week. The claimant sent an e-mail to the respondent on 10 May in which he pointed out that he had not been contacted. Before that, the claimant telephoned Danny Stoughton, the Operations Manager on 7 May and had a conversation about why he had not been offered any work. In that conversation, Mr Stoughton had told him (and told him truthfully) that the reason he had not been contacted yet was because all of the clients' requirements were already being met and that there were no additional shifts available. Mr Stoughton suggested that the claimant should stay in touch and that he would be offered work in the future if and when it did become available. On 10 May, the claimant sent an e-mail to the respondent pointing out (correctly) that he had not been offered any shifts up to that stage. He also made an assertion that he had been promised during the induction period that he would be getting 20 hours per week.

7. After the claimant's e-mail, in the later part of May, there was frequent communications (or attempts to communicate) from Mr Stoughton to the claimant. The reason for those attempts to contact the claimant were to attempt to offer him shifts to do; the Respondent had some shifts available and thought that they were potentially suitable for the claimant. The claimant did not reply promptly to the attempts to contact him and this went on until late May/early June when the respondent decided that, because of the claimant's failure to keep in touch, the probation period was not passed and the employment would be terminated.

8. Other than the one shift itself, the training shift on 22 April, there were no dates on which the claimant actually did any work for the respondent.

Law

9. Unauthorised deduction from wages is dealt with in Part II of the Employment Rights Act. The breach of contract claim is governed by the ordinary Common Law principles.

10. Each party is bound by what their agreement is. So, for example, an employment contract typically is an agreement that the employer agrees to pay certain sums of money to the employee and the employee agrees to do certain work for the employer. The specific details of what work would be done and what payments (or other remuneration) there will be is governed by the contract.

11. In the employment context, the analysis of simply enquiring as to what the parties agreed is potentially modified by the need to consider cases such as Autoclenz Ltd v Belcher and Uber v Aslam. It is appropriate for an Employment Tribunal to have regard to the unequal bargaining position that the parties find themselves. If I were to find that the true agreement reached between the parties was not reflected in a written agreement (and, especially if I found that the claimant had only signed a particular written agreement - one that did not actually match the true agreement – because they believed they had no choice if they wanted to get the job), then I could look behind the black and white written agreement and make a decision about what the actual contract was that had been agreed between the parties.

Analysis

12. It is common ground between the parties that the claimant was an employee of the respondent. My finding is that the terms which were agreed were as per the written contract that the claimant signed (around 6 April 2020) prior to starting work for the respondent and prior to his training.

13. If at any stage the claimant had been given information by the Respondent about how much work he would be offered (and/or how regular his hours might be), such information did not form part of the contract. The Respondent did not make a contractually binding promise that the Claimant would have (say) 20 hours minimum per week.

14. The written contract said that he would have a minimum number of hours (366) over the first year. That was on the assumption that he remained in employment for the full year; had he done so, and not received at least 366 hours, then there might have been a breach of contract claim that could have been brought (in the civil courts if still employed). However, that did not happen; his employment ended after much less than a year. This written agreement is not a sham. It reflects what the parties actually agreed between themselves. As it turned out, for various different reasons, the claimant was not actually provided with work. In part that was because there was a downturn in available work because of the pandemic and in part it was because the claimant did not respond to Mr Stoughton promptly when Mr Stoughton contacted him (or attempted to contact him) to arrange specific shifts for him.

15. Regardless of the specific reasons why the work was not done by the claimant, there was not any breach of contract by the respondent in terms of what it agreed to do in terms offering the claimant work or in terms of paying him for any work which he did actually perform.

16. For those reasons the breach of contract claim fails.

17. An unauthorised deduction from wages claim (if any) also would fail because there was no work done by the claimant for which he was not paid the correct sums.

Postscript

18. (After the oral decision and reasons was given, the Claimant sent an email to reiterate that he had not intended to bring an unauthorised deduction claim. I acknowledge that, as I said in the reasons, the Claimant did make clear at the outset and throughout the hearing, that he was not claiming that he had actually worked hours for which he had not been paid, or that there was a fixed weekly/monthly salary; his claim was that he was to be paid an hourly rate for work actually performed, and he believed the Respondent had not supplied the hours to him, in breach of a promise to him.)

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Employment Judge Quill

Date: 14 July 2021

Sent to the parties on: .....

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For the Tribunal Office