



EMPLOYMENT TRIBUNALS

Claimant: R Thomas

Respondent: Pulse Healthcare Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY
ON CVP (London Central)

On: 5 November 2021

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In Person (attending on the telephone)
For the respondent: Mr J Crozier (Counsel)

JUDGMENT

The claimant's claims for unlawful deduction of wages and for sums payable under the "Furlough Scheme" do not succeed and are dismissed.

REASONS

Background

1. The claimant lodged an ET1 with the Tribunal on 15 June 2020 claiming he was owed "other payments". This claim was rejected, but was subsequently accepted (on 7 July 2021) upon reconsideration: with the claim form treated as having been received on 11 June 2021. Unfortunately, there was no documentation available as to the reasons for the initial rejection or the basis upon which the claim was reconsidered.
2. The respondent defended the claim. As this was a Fast-track claim the hearing was scheduled for 25 August 2021 (allocated 2 hours), but was postponed (upon the respondent's request) to 5 November 2021.

Conduct of the Hearing

3. The hearing was conducted remotely; however, the claimant had trouble connecting to the video hearing and could only join by telephone. Both parties confirmed that they were prepared to continue with the hearing on this basis. I decided that whilst this was far from ideal, it would nevertheless, be appropriate to continue with the hearing.
4. At the commencement of the hearing, I confirmed with the claimant that he had access to the Bundle of documents prepared by the respondent (of 197 pages) – referred to as the Hearing Bundle. The claimant said that “most of” the documents he had sent to the respondent (and the Tribunal) on 22 October 2021 had been included in the Hearing Bundle. Upon further questions from me, he confirmed that all the documents he wished to rely on had been included in the Hearing Bundle and that he was happy to proceed using that Bundle.
5. As the claimant had not prepared a written witness statement, we agreed that the claimant would use his Particulars of Claim (at paragraph 8.2 of the ET1) as his witness statement and he confirmed this as his evidence-in-chief on oath. The respondent’s witness, Karen Matthews-Shard had provided a written statement and I explained to the claimant that he would be able to ask her questions about that statement. I also explained the procedure for the hearing, as the claimant was a Litigant in Person (LIP)
6. However, it soon became clear from very early in the cross-examination process that the claimant sought to rely on what he described as his “contract of employment”, which he believed meant that he had a permanent role to work at Moorfields Hospital. He said this contract was with Bank Partners (with was the trading name of the respondent) and set out his hours of work and job title etc. The claimant accepted that he had not sent this document for inclusion in the Hearing Bundle, he could not explain why.
7. Given that the claimant appeared to be saying that he was an employee (which was disputed by the respondent); based on a document which was not available to the Tribunal, I suggested that it would be sensible before proceeding with a substantive hearing, to clarify the Issues in the case and carry out any necessary case management (which may lead to re-scheduling the Final Hearing). This was especially important as the claimant was a LIP and was part of my duty under the Overriding Objective (Rule 2 Tribunal Procedure Rules 2013) to ensure a fair hearing for both parties.

Clarifying the Issues

8. The claimant said he believed he had a contract of employment dated 27 July 2019, which set out his start and finish times; his working hours and job title. The claimant said he had only sought legal advice about his entitlement under the Furlough Scheme and not about his employment status or otherwise.

9. The claimant did not appear to understand Mr Crozier's point that the claimant was neither an employee nor worker of the respondent, who was an intermediary supplying the claimant's services to Moorfields. I attempted to explain the respondent's argument to the claimant.
10. Mr Crozier referred to page 43-46 of the Bundle, which was the Terms and Conditions of Bank Partners. Under these Terms, the claimant was described as an agency worker (covered by the Agency Worker Regulations 2010). He was given weekly assignments (to work at Moorfields), the last of which ended on 27 March 2020.
11. As the claimant was neither an employee nor worker within the definition of the Employment Rights Act 1996 (ERA), he had no claim under section 13 for unlawful deduction of wages.
12. The claimant accepted that his assignment ended on 27 March 2020, though he said his last day worked was 20 March 2020. He also appeared to accept that what he had referred to as a "contract of employment" was, in fact, Assignment Details from Sharon Peppiatt (of the respondent) as regards his role at Moorfields.
13. If this were the case, I asked the claimant why he claimed that he should be paid between assignments (as his next assignment was in July 2021). The claimant's response was unclear and confused, but he did say that he was eligible for the Furlough Scheme and he believed that it was "unfair" that he was not provided with work and was not put on Furlough. He said he had sought advice from HMRC, ACAS, the CAB and the CEO of Moorfields who all told him he should be on Furlough.
14. Mr Crozier referred to various documents on Cabinet Office Guidance in the Bundle, which demonstrated the complexity of the Furlough Scheme which developed and evolved from its inception in March 2020 till its closure in September 2021. He also pointed out that the concept of "unfairness" had no place in a claim for unlawful deduction of wages.
15. Mr Crozier referred the claimant to his Particulars of Claim in which he acknowledged that his local MP (Stella Creasy) had put him in touch with a solicitor who had "*pointed out a few flaws in the scheme to show its all down to if the employer chooses to do so or not*". The claimant agreed that he had understood this to mean that there was no obligation to put him on Furlough.
16. Given the claimant's acceptance that: (1) his assignment with the respondent ended on 27 March 2021 and (2) that there was no obligation on the respondent to pay him under the Furlough Scheme, it appeared that there was no claim for unlawful deduction of wages which could be substantiated.
17. The claimant then said that he had always started well before his official working hours and had not been paid any overtime. However, he accepted that

this had not been put in his ET1 form – he said that he had forgotten to include this.

18. I explained to the claimant that in the light of the discussions on the nature of his claim, it was clear that there was no valid claim for unpaid wages.
19. I suggested that the claimant may wish to take this Judgment and Reasons to one of the Sources of Free Legal Advice suggested by the Tribunal. The claimant said he had received a copy of this information when he had lodged his claim; however in order to assist the claimant I have set the relevant information out below:

“There is a good, reliable guide to the law and procedure, from Citizens Advice www.citizensadvice.org.uk.

ET Litigant in Person Support (ELIPS) One-off free advice from employment lawyers run by the Employment Lawyers Association - see <https://www.elaweb.org.uk/content/employment-tribunal-litigant-person-supportscheme>

Advice agencies

Law Centres: www.lawcentres.org.uk

The address of a law centre nearest to you is available on their website.

Citizens Advice: www.citizensadvice.org.uk

The website has the address of your local Citizens Advice. It also explains workrelated issues and practical advice, such as writing a Schedule of Loss. The Whitechapel Advice clinic at Tower Hamlets Citizens Advice offers specialist employment advice to those in Tower Hamlets: Call 020 7247 1050.

Discrimination cases only: You can try - **Equality Advisory and Support Service:** www.equalityadvisoryservice.com helpline is on 0808 800 0082 (free phone) - **MIND** the mental health charity provides a free “Infoline” on **0300 123 3393** - **The Disability Law Service** provides information and support for disabled people, their families and carers <https://dls.org.uk/our-services/employment/>. Helpline – call **020 7791 9800** (option 7).

MaryWard Legal Centre:<https://www.marywardlegal.org.uk/legaladvice/employment-advice/> They offer employment advice by phone 10-1pm, 24.30pm (0207 831 7079) or you can complete an enquiry sheet and email it to them: employmentappointments@marywardlegal.org.uk.

BPP Employment Law Telephone Advice Line: Call 0207 633 4534 and leave a message. A student will try to contact you for details and refer you to a volunteer lawyer.

Law Works: www.lawworks.org.uk

The LawWorks Clinics Network is a nationwide network of free legal advice sessions supported by LawWorks. For a listing, see the website. “

Conclusion

20. The claimant's claims for unlawful deduction of wages do not succeed and are dismissed.

Employment Judge Henderson

JUDGMENT SIGNED ON: 8 November 2021

**JUDGMENT SENT TO THE PARTIES ON
08/11/2021.....**

FOR THE SECRETARY OF THE TRIBUNALS