



EMPLOYMENT TRIBUNALS

Claimant: Mr A Walker

Respondent: Broadband Infrastructure Company Limited

Heard: by video **On:** 31 January 2022

Before: Employment Judge S Jenkins

Representation

Claimant: In person

Respondent: Not present or represented

JUDGMENT

1. In addition to the claims on which judgment had previously been given in favour of the Claimant, the Claimant's claim of breach of contract succeeds.
2. In respect of all the Claimant's claims, the Respondent is ordered to pay to the Claimant a total sum of £21,979.06, making appropriate tax deductions where relevant. The individual elements of that total sum are as follows:
 - (i) Breach of contract - £2,945.86 (£1,730.76 gross in respect of notice, £102.60 in respect of expenses, and £1,112.50 in respect of pension contributions).
 - (ii) Unfair dismissal - £9,367.35.
 - (iii) Unauthorised deductions from wages - £6,339.85 gross.
 - (iv) Holiday pay - £2,250.00 gross.
 - (v) Failure to provide written particulars of employment - £1,076.00.

REASONS

Background

1. As no response had been received from the Respondent to the Claimant's claims, despite the claim form having been re-served on the home address of one of its directors, a judgment under Rule 21 of the Employment Tribunals Rules of Procedure had been issued by Employment Judge Sharp on 15 November 2021.

2. That judgment confirmed the following:
 - a. That the Respondent had made unauthorised deductions from the Claimant's wages.
 - b. That the Respondent had failed to provide the Claimant with a written pay statement. (I observed that that appeared to have been an error in that the Claimant's claim was that there had been a failure to provide him with a written statement of particulars of employment and not a written pay statement.)
 - c. That the Claimant had been automatically unfairly dismissed as a result of asserting a statutory right.
 - d. That the Respondent had failed to pay the Claimant's holiday entitlement.
 - e. That no judgment was issued regarding liability in respect of the Claimant's contractual notice pay claim and the Claimant had to prove that contractual entitlement.
3. This hearing was therefore to deal with the question of the Claimant's breach of contract claim, in relation to both liability and remedy, and to deal with the remedy issues in relation to the claims on which Judge Sharp had given judgment.
4. I heard evidence from the Claimant, by reference to a written statement and answers to questions from me. I also considered the documents in a bundle of documents provided to me which included a detailed schedule of loss.
5. The Respondent was not in attendance, and had it been in attendance it would only have been able to participate to the extent I permitted due to its failure to submit a response. I considered it appropriate to proceed with the hearing in its absence.

Findings

6. My findings, which I based on the Claimant's evidence on affirmation, and which I saw no reason not to accept, were as follows.
7. The Claimant was employed by the Respondent, a small employer with only a handful of employees, as a business development manager. He was initially recruited in January 2020, but, due to the onset of the Covid-19 pandemic, did not start his employment until July 2020,
8. The Claimant's salary was £39,000 per annum, which equated to £750 per week and £150 per day gross. He was also entitled to a car allowance of £500 per month, which equated to £6000 per annum and £115.38 per week.
9. The Claimant's payslips indicated that 5% of his salary was deducted by way of pension contributions, and was to be paid over to NEST. Those deductions were made, but were never paid over. Indeed, the Claimant's investigations with NEST confirmed that no pension had ever been set up for him.
10. No written contract of employment or written statement of employment

particulars was ever received by the Claimant, despite a request, and despite the Respondent's offer letter indicating that a formal contract would be provided.

11. There were issues regarding payment throughout the Claimant's employment. The car allowance was not paid from September 2020 onwards, salary was sometimes not paid or was paid late, and the Claimant received occasional ad hoc sums without any reference been provided as to what they related to.
12. The Claimant complained about those issues and ultimately contacted ACAS in early March to try to resolve matters. He then, on 10 March 2021, received a letter, dated the day before, from the Respondent's Chief Executive Officer, confirming his dismissal by reason of redundancy on 10 March 2021. No prior warning was given to the Claimant about his dismissal and no meeting was held to discuss it. Two other employees, undertaking work similar to the Claimant's, were however recruited shortly afterwards.
13. The Respondent's letter stated that the Claimant was entitled to two weeks' notice, and fifteen days' holiday pay, but no sums were received by him in respect of those matters.
14. The Claimant was also not reimbursed in respect of expenses incurred in respect of a client visit he undertook in October 2020.
15. Subsequent to the termination of his employment, the Claimant searched for further work and obtained a new position in May 2021. That role has a salary of £38,500 per annum and a car allowance of £2,500 per annum, i.e. an overall package of £41,000 as opposed to the overall package of £46,000 with the Respondent.

Conclusions

Breach of contract – liability and remedy

16. As I have noted, Judge Sharp had given judgment in respect of a number of the Claimant's claims. The first issue therefore for me to consider was the Claimant's breach of contract claim. In her judgment, Judge Sharp had referred to the Claimant's contractual notice pay claim. However, I noted that the Claimant's claim form encompassed claims in respect of expenses and pension contributions, which would not fall within the unauthorised deduction from wages provisions of Part II of the Employment Rights Act 1996. Those elements also therefore fell to be considered as part of the Claimant's breach of contract claim.
17. I was satisfied, from the content of the Respondent's own dismissal letter, that the Claimant was contractually entitled to two weeks' notice, which he did not receive. His claim in respect of his notice pay therefore succeeded, and the amount ordered to be paid by the Respondent to the Claimant in respect of that, covering salary and car allowance for that period, was £1730.76 gross.
18. I was also satisfied that the Claimant was not paid in respect of expenses

incurred and pension contributions deducted from his salary, which were not paid over to the pension provider. His breach of contract claim in respect of those matters also therefore succeeded, with the Respondent being ordered to pay the Claimant £102.60 in respect of expenses, and £1,112.50 in respect of pension contributions.

Other claims - remedy

19. Turning to the other claims on which Judge Sharp had issued judgment, my conclusions on remedy in respect of those matters were as follows.

Unfair dismissal

20. The Claimant's schedule of loss, which I saw no reason not to accept, noted net losses, taking into account the Claimant's earnings in mitigation, and including a sum in respect of loss of statutory rights, up to the date of this hearing of £6,212.31, and ongoing net losses over a further period of 52 weeks, which I accepted was reasonable, of £3,155.04. The sum to be paid by the Respondent to the Claimant in respect of the unfair dismissal compensatory award was therefore £9,367.35.
21. No basic award was due as the Claimant was only employed for some eight months.

Unauthorised deductions from wages

22. As I have noted, the Claimant's car allowance was not paid from September onwards, which amounted to 7 months at £500 per month, i.e. £3,500.00 gross. There was also then a shortfall in respect of payments, which the Claimant's schedule of loss had grossed up in the sum of £2839.85. That therefore led to a total sum to be paid by the Respondent to the Claimant in respect of the unauthorised deductions from wages claim of £6,339.85 gross.

Holiday pay

23. As the Respondent noted in its dismissal letter, the Claimant was due 15 days' holiday at a daily rate of £150, which led to a gross sum to be paid by the Respondent to the Claimant of £2,250.00

Failure to provide written statement of employment particulars

24. With regard to the Claimant's claim in respect of failure to provide him with written particulars of employment, I noted that section 38 of the Employment Act 2002 provided that, if the Claimant had succeeded in other relevant claims, which he had in this case, then, unless I considered there were exceptional circumstances, I should award a minimum of two weeks' pay (a week's pay for these purposes been capped at the sum of £538.00). If I considered it was just and equitable, I could award a higher sum of four weeks' pay.
25. I did not consider that there were any exceptional circumstances which would justify me not making any award under this particular provision. I also

noted that the Respondent was a small employer, and therefore felt that it would not be just and equitable to award the higher amount of four weeks' pay. Instead, I ordered the Respondent to pay to the Claimant the minimum amount of two weeks' pay, which, by reference to the capped sum, led to an award of £1076.00.

Other

26. The Claimant also pursued additional compensation in respect of what he contended to have been a failure by the Respondent to apply the ACAS Code. I noted that section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, gives a Tribunal power to increase compensation in respect of various claims by up to 25% if there was a failure by the employer to comply with the provisions of a relevant code, that code in this particular case, being the ACAS Code of Practice on disciplinary and grievance procedures.
27. However, I noted that the Employment Appeal Tribunal, in Holmes v Qinetiq Ltd [2016] ICR 1016, confirmed that the ACAS Code was limited to internal procedures relating to disciplinary situations, which include misconduct or poor performance, and may extend beyond that but are likely to be concerned with the correction or punishment of culpable behaviour of some form or another.
28. I noted that in this case the Respondent's ostensible reason for dismissing the Claimant was redundancy, and that Judge Sharp's conclusion had been that the Claimant had been unfairly dismissed by reason of his assertion of a statutory right. Either way, neither of those reasons related to misconduct or poor performance on the part of the Claimant. I did not consider that there was any obligation on the part of the Respondent to comply with the ACAS Code of Conduct on disciplinary and grievance procedures, which is expressly said not to apply to redundancy issues. I therefore did not consider that there was any uplift to be applied to any elements of the Claimant's compensation.

Employment Judge S Jenkins
Date: 31 January 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON 3 February 2022

FOR THE TRIBUNAL OFFICE Mr N Roche