EMPLOYMENT TRIBUNALS

Claimant: Michael Mcintyre

Respondent: Odesi Energy Group Ltd

Heard at: **London Central**

On: **22 March 2022**

Before: **Tribunal Judge J E Plowright acting as an Employment Judge**

Appearances

For the Claimant: In person
For the Respondent: Eduardo Wille (Global Operations Manager for the respondent)

JUDGMENT

1. The Employment Tribunal has jurisdiction to hear the claim.

2. The claim for a redundancy payment is dismissed.

3. The respondent made an unauthorised deduction from wages by failing to pay the claimant wages due to him and is ordered to pay the claimant the sum of £8047.02 being the gross sum due.

REASONS

Claims and Issues

1. The claimant worked as an electrical technician on an oil rig for 28 days for the respondent, Odesi Energy Group Limited, which is a small UK business, based in

London. The claimant has brought claims for failure to give him a redundancy payment and unauthorised deduction of wages.

2. The issues in the case are as follows:

   2.1 Does the Tribunal have jurisdiction to hear the claim at all?

   2.2 Was the claimant entitled to a redundancy payment?

   2.3 Was the claimant entitled to wages that were lawfully owed to him?

Procedure/Procedure, documents and evidence heard

3. In terms of documentation, I had before me the claim form (ET1) and the respondent's response (ET3). I also had emails between the claimant and the respondent, text messages between the claimant and the respondent, a contract of employment, and a signed timesheet for the claimant. At the hearing, I heard oral arguments from both the claimant and the respondent.

The Facts

4. On the 18th March 2021, the claimant, who lives in Denmark, signed a contract of employment with the respondent company, a UK company based in London, to work as an Electronic Technician on an oil rig in Thailand.

5. The contract has 19 headings and the terms of the contract are set out underneath those headings. There is also an Appendix to that contract. There is a dispute as to the interpretation of the contract and so I set out the relevant terms.

6. Under Clause 'V' headed "COMPENSATION" it is stated:

   "The Day Rate will be paid for each day worked during the term of this Agreement. The Day Rate includes full payment for services rendered. All amounts set forth in this agreement are expressed in United States dollars.

   The EMPLOYEE agrees to properly complete their timesheet for each tour of duty and obtain approval by the appropriate representative of the CLIENT prior to submitting their timesheet to the company for payment. Failure to submit a properly completed and approved timesheet will result in a delay of payment to the EMPLOYEE.

7. Under Clause VI headed "WORK SCHEDULE, TRAVEL AND TRAINING" the following is stated:

   *"A The standard tour of duty under this agreement is **28** days of work on the rig. The employee, however, agrees to work whatever work schedule COMPANY representatives assigned to him. The work schedule and the pay resulting from such schedule will be adjusted for each particular area's or CLIENT's requirements at the sole discretion of the company and may be changed at any time.*

   …

C The EMPLOYEE agrees to follow the COMPANY'S or CLIENT'S travel arrangements made unless alterations are approved by COMPANY or CLIENT.

If the EMPLOYEE alters the schedule for any reasons without any authorization from the COMPANY, the COMPANY will be waived of any and all responsibility towards the EMPLOYEE. In the absence of COMPANY receiving a signed waiver from EMPLOYEE prior to the travel deviation, the EMPLOYEE will be deemed to be in breach of this Agreement.

8. Under Clause XVIII headed "GOVERNING LAW" the following is stated:

"A Exclusively the laws of the United Kingdom shall govern the interpretation and enforcement of this Agreement.

B The formation, validity, interpretation, performance and dispute settlement of or in connexion with this agreement, and all rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of Singapore without regard to its choice of law or foreign provisions, and the parties hereby submit to the jurisdiction of the courts of the United Kingdom.

9. The Appendix to the contract records that the claimant will be employed as an Electronic Technician for "28 days or as required" in Thailand from the 20th March 2021 at a day rate of $400.

10. Following a period of three days quarantine, the claimant began work on the 23rd March 2021 as an Electronic Technician on an oil rig in Thailand.

11. On the 15th April 2021, the respondent emailed the claimant stating that they had received confirmation of his de-mobilisation date. The email goes on to state that the client will need the claimant to complete the assignment on the 27th April to cover until their Electronic Technician has finished his quarantine.

12. On the 16th April 2021, there was then an email exchange between the claimant and the respondent. The claimant stated that he had fulfilled his obligations and would be leaving on the 20th April 2021. The respondent replied saying that they needed him to finish the job. The claimant replied to that email stating that he had made plans and could not stay longer than the 4 weeks agreed in the contract. The claimant stated that he might consider it if he was paid double time. The respondent replied referring the claimant to the contract's appendix which stated that the assignment is for "28 days or as required". The claimant then replied stating that he had committed to 4 weeks and would not stay any longer. A further email is sent by the respondent asking the claimant to be professional and to fulfil his commitment but the claimant replies stating that he will not stay longer than the 20th April 2021.

13. The claimant finished work on the 19th April 2021 and he went into quarantine for a day on the 20th April 2021.

14. The claimant produced a signed timesheet showing that he had worked for 28 days and had spent four days in quarantine. There was no dispute between the parties that the claimant did work for 28 days as per the timesheet and therefore I find that the claimant did work for 28 days.

15. Between the 30h April 2021 and the 1st June 2021, the claimant sent a series of text messages to a representative of the company chasing payment for the work he had done.

16. On the 23rd June 2021 the claimant emailed the respondent requesting his pay. The respondent replied on the 24th June 2021 stating that they would check with accounts and revert shortly.

17. The claimant was never paid for the 28 days he worked for the respondent.

The Law

Jurisdiction

18. In the case of *Serco Ltd v. Lawson* [2006] UKHL 3, the House of Laws considered the issue of jurisdiction in circumstances where employees worked outside of the UK. In that case, Lord Hoffmann said that that there would have to be 'unusual' or 'exceptional' circumstances for an employee who works and is based abroad to be protected under British employment law. At paragraph 38, Lord Hoffmann states that one example of a case where an employee would be protected would be where an employee was posted abroad by a British employer for the purposes of a business carried on in the UK. At paragraph 39, Lord Hoffmann states that a second example would be an expatriate employee of a British employer who is operating within a British enclave within a foreign country. Then at paragraph 40, Lord Hoffmann stated there may be other examples but that he had not been able to think of any and they would have to have equally strong connections with Great Britain and British employment law.

19. In the case of *Duncombe v Secretary of State for Children, Schools and families (no 2)* [2011] UKSC 36, Lady Hale considered whether there might be examples other than those given by Lord Hoffmann in *Serco Ltd v. Lawson*. She stated at paragraph 8, "The principle appears to be that the employment must have stronger connections both with Great Britain and with British employment law than with any other system of law. There is no hard and fast rule and it is a mistake to try and torture the circumstances of one employment to make it fit one of the examples given, for they are merely applications of the general principle."

20. In the case of *Ravat v Halliburton Manufacturing Services Ltd* [2012] UKSC1, Lord Hope stated at paragraph 27 that "…the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works." Then at paragraph 28, Lord Hope stated: "The case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them."

Redundancy payment

21. The claimant has brought a claim for failure to give him a redundancy payment. To be entitled to claim a redundancy payment, the claimant would have had to have been employed for a period of not less than two years under section 155 of the Employment Rights Act 1996.

Unauthorised Deduction of Wages

22. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by them unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

23. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

Conclusions

Jurisdiction

24. The respondent points out that the claimant was working in Thailand and had a work permit with a Thai company. The respondent further claims that the claimant was only subcontracted to the respondent. I also note that the claimant lives in Denmark and was paid in US dollars rather than in pounds sterling. These matters support the respondent's claim that the Employment Tribunal has no jurisdiction to hear the claim.

25. However, there are other features to the case that I must consider. Whilst not determinative, one of the factors that I take into account is what is stated in the contract.

26. Clause XVIII headed "GOVERNING LAW" of the contract of employment states at 'A':

    "exclusively the laws of the United Kingdom shall govern the interpretation and enforcement of this Agreement."

27. In 'B' it is stated:

    "the formation, validity, interpretation, performance and dispute settlement of or in connexion with this agreement, and all rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of Singapore without regard to its choice of law or foreign provisions"

28. However, 'B' also states:

    "the parties hereby submit to the jurisdiction of the courts of the United Kingdom."

29. The wording of the contract suggests that the parties to the contract, namely the claimant and the respondent, intended themselves to be bound by the laws of the UK.

30. The respondent is a British company based in London which is further evidence to support the contention that the claimant's employment does have an especially strong connection with Great Britain and British employment law.

31. On balance, when I consider the above factors, and in particular the wording of the contract and the fact that the respondent is a British company based in London, I find that the claimant's employment does have an especially strong connection with Great Britain and with British employment law rather than with any other system of law.

32. I therefore find that the Employment Tribunal does have jurisdiction to deal with the claim.

Failure to Make a Redundancy Payment

33. The claimant was employed for 28 days between the 23rd March 2021 and the 20th April 2021. In order to succeed in his claim for a redundancy payment, he would have to show that that he was employed by the respondent for a period of not less than 2 years. However, the claimant was employed by the respondent for a period less than two years and therefore this claim cannot succeed.

Unauthorised Deductions

34. The claimant was employed by the respondent for 28 days between the 23rd March 2021 and the 20th April 2021.

35. The respondent had asked the claimant to work on the oil rig for more than 28 days, namely up until the 27th April 2021 but the claimant refused to do so and left the oil rig on the 20th April 2021.

36. The respondent has not paid the claimant for the 28 days' work that he did between the 23rd March 2021 and the 20th April 2021.

37. The respondent's case is that the claimant was not entitled to payment because he was in breach of his contract by not remaining on the oil rig until the 27th April 2021.

38. The respondent argues that the employment contract had no defined time duration and makes reference to the Appendix where it is stated the assignment was for "28 days or as required".

39. The respondent states that this was a fundamental breach of contract and notes that under Clause VI C, the following is stated:

    "The EMPLOYEE agrees to follow the COMPANY'S or CLIENT'S travel arrangements made unless alterations are approved by COMPANY or CLIENT.

    If the EMPLOYEE alters the schedule for any reasons without any authorization from the COMPANY, the COMPANY will be waived of any and all responsibility towards the EMPLOYEE. In the absence of COMPANY receiving a signed waiver from EMPLOYEE prior to the travel deviation, the EMPLOYEE will be deemed to be in breach of this Agreement."

40. The respondent argues that the implication of the words "*the COMPANY will be waived of any and all responsibility towards the EMPLOYEE"* is that the respondent company does not have to pay the claimant for the work he has done.

41. I do not accept that interpretation of this clause. Firstly, the words ""*the COMPANY will be waived of any and all responsibility towards the EMPLOYEE"* is so widely drafted that I find it impossible to understand what it means in reality. Secondly, this specific clause is underneath the heading "Work Schedule, Travel and Training". This clause does not relate to the rate of pay and does not absolve the respondent from paying the claimant for work that it is agreed that he has done. There is a separate clause headed "Compensation" and an Appendix which states that the claimant will be paid $400 per day. In neither the section headed "Compensation" nor the Appendix is it suggested that the claimant will not be paid what he is owed if he does not work any additional days as requested by the respondent.

42. Therefore I find that the failure of the respondent to pay the claimant was an unauthorised deduction from his wages because the deduction was not required by a relevant provision of the claimant's contract and because the claimant did not previously signify in writing his agreement or consent to the making of the deduction.

43. It is agreed that the claimant worked for 28 days for the respondent and it is further agreed that the day rate was $400 per day. The claimant is therefore entitled to be paid for 28 days at a rate of $400 per day. That amounts to $11,200. It was agreed between the parties that this was the equivalent of £8047.02 at the time that the claimant left his employment. I therefore award the claimant £8047.02.

Date: 01/04/22

_____

Tribunal Judge J E Plowright acting as an Employment Judge

Sent to the parties on:

01/04/2022

For the Tribunal: