



THE EMPLOYMENT TRIBUNAL

Claimant: Mr M. Verma

Respondent: Score Genius Technology Limited

Heard at: London South Employment Tribunal

On: 21 February 2022

Before: Employment Judge A. Beale

Representation
Claimant: In person
Respondent: Did not attend

JUDGMENT

1. The Claimant's employment ended on 14 December 2020, and his final salary and holiday payments were due on 25 December 2020. The Claimant's claims were brought within time.
2. The Respondent made unauthorised deductions from wages by failing to pay the Claimant his salary for the month of December, including in respect of his notice period, and his accrued holiday pay.
3. The Respondent is ordered to pay the Claimant the following gross sums, being the sums deducted, which will be subject to taxation:
 - 3.1 the sum of £1,923.10 in respect of 10 days' salary for the month of December 2020;
 - 3.2 the sum of £640.39 in respect of 3.33 days' accrued and unpaid holiday pay.

REASONS

1. By a claim submitted on 23 March 2021, the Claimant brought claims in respect of accrued and unpaid wages, including unpaid notice pay, and accrued and unpaid holiday pay.
2. On 27 April 2021, the Respondent requested an extension of time in which to file its response, on the basis that it had only just received the documentation, which had been sent to its old office. It submitted an ET3 which included only the Claimant's name, and the Respondent's name and contact details. On 28 May 2021, EJ Keogh granted an extension of time to submit the response, until 14 June 2021. No response was received thereafter. That being the case, the Employment Tribunal wrote to the parties to inform them that a two-hour hearing would be listed, and that the Respondent would be notified of the hearing, but as there was no valid ET3, the Respondent would only be entitled to participate in the hearing to the extent permitted by the Employment Judge hearing the case.
3. On 10 September 2021, the Employment Tribunal wrote to the Claimant stating that his claims appeared to be out of time, as they should have been presented within 3 months of the termination of his employment. The Claimant responded on 27 September 2021, explaining why he did not consider his claims to be out of time.

The Hearing

4. The full hearing of this claim was conducted by CVP on 21 February 2022. The Claimant attended and gave evidence under oath. The Respondent did not attend. I had access to, and considered, the documents on the Employment Tribunal file, including the Claimant's contract of employment, and email exchanges between the Claimant and the Respondent between December 2020 and March 2021.

Reasons

5. By email dated 7 March 2022, the Respondent requested written reasons for my judgment given orally at the hearing on 21 February 2022.

The Issues

6. The issues I have to determine in this claim are:
7. Was the Claimant's unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996? In particular:
 - Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

- If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
8. Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?
9. Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when his employment ended?

Findings of Fact

10. The Claimant was employed by the Respondent under a contract dated 15 October 2020, which gave the date of his commencement of employment as 14 October 2020. The Claimant was employed as Digital Marketing Manager. His basic salary was £50,000, accruing at a rate of 1/260 per working day (working Monday – Friday). Salary was to be paid monthly in arrears in equal instalments on or about the 25th of the month. He was entitled to 28 days holiday, to include all English and Welsh public holidays, in a holiday year starting on 1 January. His contract entitled him to payment in lieu of holiday not taken but accrued in the holiday year at a rate of 1/260th of his full-time equivalent salary for each accrued holiday day.
11. The Claimant's employment progressed normally and he was paid in full for the months of October and November 2020, albeit later than the date of 25th of the month given in the contract.
12. The Claimant worked as normal from 1 – 4 December 2020. On 7 December, he attended work and was told that, due to the pandemic, the revenue streams were not strong, and that the Respondent would have to let him go. He was told he did not need to come in the following day. The Claimant wrote an email to Damon Hirschl of the Respondent on 8 December 2020 pointing out that his contract contained a seven day notice period during probation (which is indeed the case) and thus he assumed that his last day would be 14 December. He set out his accrued holiday pay and requested payment to his bank account.
13. During his notice period, the Claimant says, and I find, that he did continue to perform work for the Respondent. He wrote several follow-up emails to the Respondent asking if there was any work he could do during his notice period, and did some work of his own accord. He received no response from the Respondent. On 15 December, the day after his notice period had ended, he was contacted by the Respondent who told him that they wished to offer him work on a contractor (rather than employment) basis. They also said that as he had not had sufficient work to do whilst serving his notice, he should work some days in lieu of that notice period.

14. Although he disagreed that he had carried out no work in his notice period, in order to preserve good relations, the Claimant was willing to do this, and I have seen emails, including an email of 17 December 2020 into which Mr Hirschl is copied, showing that the Claimant continued to carry out work over this period. The Claimant says, and I accept, that he fully expected to be paid in respect of the outstanding December salary, his notice period and his accrued holiday pay.
15. The Claimant continued to carry out work for the Respondent in January, February and March 2021, but received no payment. The Claimant reminded the Respondent of the outstanding sums arising from his employment on 1 February, 19 February and 8 March. On 10 March Mr Hirschl agreed to a call, and a call took place on 11 March 2021. During that call, the Claimant was told for the first time that the Respondent would “draw a line” under what had happened, and would not be paying the Claimant the amounts he had asked for. The call was ended and the Claimant’s return calls were not accepted.
16. The Claimant responded by email on the same day setting out his position and explaining that, contrary to the Respondent’s position, he had continued to work in his notice period.
17. Mr Hirschl responded by email the same day as follows:

“Your summation here is not correct. You were required to work whilst your notice was served. As we have discussed numerous times, no work was produced, and your reason for this was that you were waiting for instruction from me, which had already been clearly communicated. When we spoke about this before, you said that you were happy to work those hours not worked, apparently now it’s a different story.”
18. The Claimant again responded, explaining that he had carried out work during his notice period and was not “working off” that time when he did work thereafter. He detailed the work he had done since 15th December. He received no response. The Claimant sent further emails asking for his final salary payment on 15 March and 16 March, but again received no response.
19. It was at this point that the Claimant realised no payment would be forthcoming. He told me, and I accept, that he had only arrived in the UK 1 – 2 years prior to this, and that he had no knowledge of English law. He therefore “Googled” to see if he could find any recourse, and came across the ACAS website. He made an EC notification on 16 March and received his certificate on 17 March. He had hoped to obtain legal advice but he did not have sufficient funds to do so, so he submitted his claim by himself on 23 March 2021.

The Law

20. Section 13 Employment Rights Act 1996 provides as follows, so far as is relevant:

(1) An employer shall not make a deduction from wages of a worker employed by him unless -

(a) 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

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

.....

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

21. "Wages" are defined in s. 27 Employment Rights Act 1996, as meaning any sums payable to the worker in connection with his employment, including (under s. 27(1)(a)) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.

22. Section 23(1)(a) Employment Rights Act 1996 provides that a worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages in contravention of section 13. Under section 23(2)(a), an employment tribunal shall not consider such a complaint unless it is presented before the end of the period of 3 months beginning with (in the case of a complaint relating to a deduction by the employer) the date of payment of the wages from which the deduction was made. Section 23(2) is expressly made subject to s. 23(4), which provides that where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under s. 23 to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

Conclusions

Time Limits

23. It is necessary for me first to consider whether the Claimant's claim has been brought out of time, and if so whether time should be extended, before proceeding to determine the substantive complaints.
24. In order to deal with the question of time limits it is necessary for me to make a finding as to when the Claimant's employment ended, and when any payments were due.
25. I find that the Claimant's employment ended at the end of his notice period on 14 December 2020. Although the Claimant was informed that he was being "let go" on 7 December, and that he need not come in the next day, I find on the balance of probabilities that both he and his employer regarded him as continuing in employment until the date on which his seven day contractual notice expired, on 14 December 2020. I make this finding on the following bases:
- (a) There is no suggestion that the Claimant was told on 7 December that his employment would end immediately, in breach of contract.
 - (b) The Claimant wrote an email on 8 December stating that he understood his last day would be 14 December and this was not contradicted by his employer.
 - (c) The telephone conversation on 15 December was conducted on the premise that the Claimant had served his notice, and thus that his employment ended on 14 December.
 - (d) The same is true of the email exchange between the Claimant and the Respondent on 11 March 2021, in which Mr Hirschl explicitly says "*you were required to work whilst your notice was served*".
26. The Claimant's employment was not therefore terminated in breach of contract and he does not have to claim damages for breach of contract. He remained employed during his notice period, and salary, falling within the definition of wages in s. 27 ERA 1996, is payable in respect of that period.
27. The Claimant's employment contract states that payment of salary is due on the 25th of each month. For the purposes of s. 23 ERA 1996, I therefore find that any payments of salary, to include holiday pay, that were due on the termination of the Claimant's employment would have been payable on 25th December 2020. No payments were made on that date and no payments

have been made since. As the Claimant submitted his Early Conciliation Notice on 16 March 2021, received his certificate on 17 March and submitted his claim on 23 March, I find that his claim has been brought within time, and that he is entitled to pursue it.

28. Even had I found that the Claimant's claim had been brought out of time (on the basis that time ran from the effective date of termination), in the unusual circumstances of this case, I would have concluded that it was not reasonably practicable for the Claimant to bring his claim within time. The Respondent told the Claimant that he had not carried out sufficient work in his notice period, and asked him to work additional days in lieu, with the promise of further contract work. The Claimant accepted this in good faith, although he did not agree that he had not done work in his notice period. It was only on 11 March 2021 that the Respondent told him that he would not be paid for that work, despite repeated chasing by the Claimant. This was almost three months, less three days, after the end of C's employment. I accept that the Claimant, having recently moved to the UK, was not familiar with UK law. He acted commendably quickly in researching the issue and notifying ACAS of his claim, and then brought his claim in under a week. Had it been necessary, I would have found that it was not reasonably practicable for the Claimant to bring his claim in time, and that the time within which the claim was brought was reasonable.

The Claims

29. Having heard evidence from the Claimant, I find that he received no payment in respect of the days worked in December, including his notice period, and accrued holiday. I accept that he took no holiday over the period of his employment.

30. I find that the Claimant is owed the following gross sums:

(a) 10 days' pay in respect of the days worked in December, including his notice period. I have calculated this sum based on the contractual mechanism of a day's pay accruing at 1/260th of the annual rate of £50,000. The daily rate is £192.31, and the sum owing in respect of those 10 days is therefore £1,923.10 gross.

(b) 3.33 days' accrued holiday pay. I have calculated this on the basis of 20 days' annual entitlement excluding public holidays (as there were no public holidays over the period of the Claimant's employment); 1.666 days per month, thus 3.33 days for 2 months' employment. The total sum owing, again using the contractual mechanism of 1/260th of the annual rate per day accrued, is £640.39 gross.

31. The total gross sum owing to the Claimant is therefore £2,563.49.

Employment Judge A. Beale
Date: 05 April 2022