



EMPLOYMENT TRIBUNALS

Claimant: Mr M Sadiq

Respondent: Dr Christopher JDBR Ireland Ph.D.

Heard at: Manchester (by CVP) **On:** 4 February 2022

Before: Judge Cowx (sitting alone)

REPRESENTATION:

Claimant: Unrepresented

Respondent: Did not attend

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a final hearing conducted remotely by CVP on 21 December 2021. The parties did not object to the case being heard remotely.
2. By a claim form presented on 11 July 2021 the claimant brought a claim against the respondent for notice pay and arrears of pay.
3. By a response form presented on 13 August 2021 the respondent resisted the claims for notice pay and arrears of pay on the basis all wages were paid in accordance with the contract of employment and that the claimant terminated his employment unilaterally without giving notice and was therefore not entitled to notice pay.
4. The claimant, Mr Sadiq, is a solicitor and represented himself. The respondent did not attend and was not represented at the hearing.

5. I read the evidence that was lodged by the claimant with the Tribunal and I heard live evidence from the claimant Mr Sadiq.

Facts

6. In making my findings of fact, I have taken into account the submissions made by the claimant at the hearing and the documents I was referred to during the hearing.

7. I confirmed the basis of claim with the claimant at the start of the hearing. A schedule of compensation provided by the claimant included reference to a claim for 4-days holiday pay. I informed the claimant that holiday pay was not included in the claim form ET1 and that without an earlier application to amend the claim a late amendment on the day of the hearing was not fair or just, especially in the absence of the respondent, and that an adjournment would be required to allow the respondent to consider such an additional head of claim. I decided it was not proportionate to adjourn the case to allow an amendment to be made. The hearing proceeded to deal with the wages and notice pay elements only.

8. The claimant was first employed by the respondent on 7 June 2021 as the respondent's in house solicitor.

9. I find that a written contract of employment was entered into by both parties, which was signed by the claimant before he started his employment with the respondent. That contract states the claimant would receive an annual salary of £34,814.

10. I find that the claimant's monthly salary was £2901.17, having divided his annual salary by 12.

11. I find that the contract of employment stated that wages would be paid once per month and one month in arrears. I find the contract is consistent with a letter from the respondent to the claimant dated 26 May 2021 confirming the offer of employment and including the remuneration details.

12. The contract did not specify on which day of the month wages were to be paid but the claimant produced an email from the respondent in which the respondent stated it was his practice to pay all employees on the 28th day of each month. I find therefore that it was the respondent's practice to pay its employees on that date.

13. The claimant gave oral evidence that it became known to him that another employee expressed a concern that he would not be paid on the 28th of the month as agreed. It was this that caused him to raise the issue with the respondent.

14. The claimant advised the respondent that if he did not pay all employees on the 28th of the month then he would have to pay each employee on the day of each month which coincided with their start date. I find that the claimant did advise the respondent in those terms, and I find the respondent did not pay the claimant's first month's wages on 28 June 2021 (which would have been reduced *pro rata* given his start date of 7 June 2021).

15. I find that the claimant sent the respondent an email on 4 July 2021 putting the respondent on notice that he, the claimant, expected to be paid his first full month's wages no later than on 7 July 2021.

16. I find that the respondent replied to the above email at 09:15 on 5 July 2021 stating the respondent would pay the claimant's wages on 28 July 2021. I find the claimant responded at 11:44 the same day telling the respondent that if he was not paid his wages on 7 July 2021 then he would regard the employment contract as repudiated, consider himself to be constructively dismissed and entitled to notice pay.

17. I find that according to the claim form ET1 the claimant terminated his employment on 5 July 21, that is two days before he indicated to the respondent that he would consider himself to be dismissed.

18. The respondent in its form ET3 asserts that all wages owed (£2100.25 net) were paid to the claimant. The claimant gave evidence on oath that he provided the respondent with his correct bank details for salary purposes and no wages have been paid into that account by the respondent. I find therefore that the respondent did not pay any wages due to the claimant for the period he was employed by the respondent.

19. The claimant relied upon clause 66 of his employment contract which states that time is of the essence. The claimant submitted that he understood that clause to mean that if his wages were not paid on time then his employer was in breach of the employment contract. I find that if the respondent did not pay the claimant's wages on time, then the respondent would have been in breach of contract. I find that "on time" was not defined in the contract but the claimant was prepared to accept 7 July 2021 as being on time.

20. In evidence the claimant said he could not recall any discussions with the respondent on the subject of wages and the date they would be paid other than the email exchange on 4 and 5 July 2021. I therefore find there were no other discussions between the claimant and the respondent on the wages issue before the claimant notified the respondent of his resignation with immediate effect on 5 July 2021.

The Law

21. The relevant law on wages is to be found in the Employment Rights Act 1996 at Section 13(1), which bestows upon an employee or worker the right not to suffer unauthorised deductions from wages.

22. The claimant worked for the respondent for less than one month. The relevant law on notice pay in this case is the common law of contract. In the claimant's case both employer and employee agreed in the contract of employment to a minimum of 4 weeks' notice.

Applying the law to the facts

23. What I have to determine is whether the respondent unlawfully withheld payment of the claimant's wages for the period 7 June 2021 to 5 July 2021 and whether the claimant was entitled to notice pay.

24. The claimant was entitled to be paid his salary for the month he was employed by the respondent. The respondent had no lawful reason for withholding the claimant's wages. Indeed, by asserting that the wages had been paid I find is an admission on the part of the respondent that the claimant was lawfully entitled to the month's wages claimed. I find that the respondent did not pay the wages into the claimant's bank account and the sum of £2901.17, less tax and National Insurance, is still owed to the claimant.

25. The issue of notice pay is less straightforward. It is the claimant's case that he was constructively dismissed because the non-payment of wages by 5 July 2021 was a repudiatory breach of the contract of employment which entitled the claimant to terminate his employment without notice. However, the claimant did not bring a claim for constructive dismissal, and I have no jurisdiction to consider or decide on such an additional head of claim.

26. The circumstances in which the claimant terminated his employment, which he accepts he did, and I find he did, are relevant to the issue of notice pay. It was a term of the contract of employment that 4-weeks' notice was required from both employer and employee. It was the claimant who terminated the contract of employment with immediate effect. He did not work or offer to work the 4-week notice period and therefore has no entitlement to 4-weeks' notice pay.

27. The claimant contends that he was constructively dismissed from the respondent's employment. In principle constructive dismissal may apply in notice pay claims where the complainant was forced into resigning by a repudiatory breach of contract and where the claimant accepted the breach as terminating the contract immediately. In this case the claimant contends that he was entitled to terminate his employment because the respondent did not pay his wages, which, according to the claimant was a repudiatory breach of contract. The date upon which the wages were to be paid was not specified in the contract. The custom or practice appears to have been that wages were paid on the 28th day of the month, but I find that the claimant's email to the respondent on 4 July 2021, in which the claimant told the respondent that he expected to be paid his first full month's wages no later than on 7 July 2021, was an acceptance by the claimant that he would not treat the contract as repudiated if his wages were paid on or before that date.

28. The claimant did not wait until 7 July 2021 but instead decided to leave the respondent's employment with immediate effect on 5 July 2021. Under such circumstances the contract of employment did not allow for the payment of notice pay claimed by the claimant.

29. I have taken into account the fact that at 09:15 on 5 July 2021 the respondent emailed the claimant stating the wages would be paid on 28 July 2021 and the fact the claimant responded at 11:44 the same day warning the respondent that he would

regard the employment contract as repudiated if his wages were not paid on 7 July 21. But the claimant did not wait until the date he indicated in his 5 July 2021. He also did not enter into any other discussions or correspondence with the respondent to try to resolve the issue. The claimant may have accurately judged that further discussion was pointless. Nevertheless, it was the claimant who terminated his employment, without notice and is not therefore entitled to the 4-weeks' notice pay claimed.

30. For the above reasons, the claimant's claim for unpaid wages succeeds, and the respondent is ordered to pay the claimant the sum of **£2901.17**. This figure has been calculated using gross monthly pay and the respondent is to deduct from that amount the required sum payable to HM Revenue and Customs for Income Tax and National Insurance.

31. The claim to notice pay is dismissed. The claimant was not entitled to notice pay because he, not the respondent, terminated the contract of employment and therefore did not serve the 4-week notice period expressed in the employment contract.

Judge C J Cowx

20 April 2022

REASONS SENT TO THE PARTIES ON
21 April 2022

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FOR THE TRIBUNAL OFFICE