



EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen Carr

Respondent: Brookson Solutions Limited t/a Brookson One

Heard at: Liverpool (remotely, by CVP)

On: 15 November 2021

Before: Employment Judge Robinson
(Sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Miss L Belfield, HR

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unlawful deduction of wages contrary to section 13 of the Employment Rights Act 1996 and claim for breach of contract both fail and are dismissed.

REASONS

Claims and Issues

1. The claimant's claim suggested that he was due arrears of pay. The claimant claimed that he had a claim for unlawful deduction of wages and breach of contract on the basis that the respondent had broken his contractual agreement. He resigned from his post.

2. The claimant's claim was in two parts. Firstly, whether he should be paid for eight hours when he worked on 10 and 11 December 2020, and secondly whether he should be paid right through to the end of the contract on 31 March 2021. In short, the first part relates to two days the claimant says he worked for a full eight hours when a subcontractor did not show up on site when he was working for the client, Derbyshire County Council, and the second part relates to the claimant's view that he had an agreement with the respondent for a six month contract which was not completed and which ran through to the end of March 2021.

The Facts

3. The claimant is a contract engineer and has worked around the world on various contracts. He was asked to work in December 2020 on a cycle trail programme. The main contract was between a company called Matchtech Limited and Derbyshire County Council and relates to work being done in a countryside park. The contract was in four parts. Firstly, the County Council wanted work done at the park, Matchtech were to supply the workers, Mr Carr, an employee and agent of this respondent, would oversee the work.

4. The respondent is in the business of employing the likes of the claimant who provide services to clients. The claimant's employment started in March 2020 under a contract dated 20 March 2020. The claimant was required to obtain work for the respondent, and it was this work at the countryside park which the claimant secured via Matchtech group. The assignment was to end initially in December 2020 but was extended to 31 March 2021.

5. The claimant and the respondent signed up to a contract of employment with the claimant's remuneration set out at clause 4 of the document which gave the hourly rate of pay to the claimant as the national minimum wage. It was made clear at paragraph 4.3 that the total invoice amount received by the respondent for each of the claimant's assignments would not be the amount that the respondent would pay the claimant. The contract then went on to set out how the claimant's pay would be calculated. The new pay rate for the contract was £29 per hour but from that sum various deductions were made as per the contract with the claimant.

6. Throughout the claimant's evidence he referred to Nottingham Council being the end client whereas, in fact, the contract seemed to suggest that it was Derbyshire County Council that was the end client.

7. The dispute between the claimant and the respondent relates to two days when the claimant set off for the Midlands from his home and attended the site on 10 and 11 of December 2020. No other contractor turned up on site on either day and the claimant suggested he drove an hour and a half each way on both days to get there. The claimant discussed the issue on the phone with the project manager and he was told ultimately that the subcontractors had gone to another site but would be there on 11 December. Again the claimant drove three hours in total, there and back, but the council only agreed to pay him for the two hours that he attended site and the two hours travelling on each of the days. The claimant felt he was due the full 8 hours pay for each day.

8. Because of this the claimant resigned and would not continue to work for the council and was upset because he was not being paid a full day's rate because of the non-attendance of subcontractors. He accepted that there was no travel agreement in his contract and suggested that he was on £29 per hour, which is incorrect.

9. The four parties tried to resolve the situation and the respondent confirm that the contract did not give guaranteed hours. The claimant's position was that he wanted payment from December to the end of March when the assignment was to end.

10. The claimant therefore left the assignment on 15 December 2020 because of non-payment of the monies he felt were due to him on 10 and 11 December.

11. The respondent was content to acknowledge that the claimant is still employed by it but no assignments have been given to him under the contract it has with the claimant. The claimant is only paid when he is actively on an assignment.

12. Brookson are not culpable in terms of the events of 10 and 11 December 2020 but investigated the situation on behalf of the claimant in order to attempt to resolve the differences between the Council and the claimant.

13. When investigating the issue they concluded that on 10 December 2020 the Council had informed the claimant that there would be a lack of materials on site and therefore no work for the claimant both for that day and 11 December 2020. The claimant then left site on 10 December at midday and took an hour and a half to get home. The claimant, despite knowing that there was no materials on site, still attended again on 11 December 2020 before again returning home mid-morning. He could give no reasonable explanation as to why he attended site on that second day.

14. When the claimant put in his timesheet for 10 and 11 December the Council disputed it but agreed to pay the claimant for the time he was on site plus his travel home. The claimant was not satisfied with that as he contends that he was guaranteed payment for eight hours per day. Consequently, he resigned on 15 December 2020.

15. The respondent was in a difficult position because the dispute was between the claimant and the Council and not the respondent. The terms of the contract did not give the claimant guaranteed work or pay. Nor was there any guarantee that he would be paid to the end of the assignment whatever the circumstances. The contract is clear that he was only entitled to payment for services completed and he received the full amount with regard to the services he provided up to 11 December 2020.

16. The contract made it clear that the claimant would only be paid for services performed during the assignment and, if the claimant did not carry out work, then he could not be paid. The claimant did not provide any services after 15 December 2020.

17. The contract for services (which is a contract between the respondent and the recruitment agency) did anticipate that it would continue until 31 March 2021 but again there was no guarantee given to the claimant, firstly, of any daily work and secondly that the contract with him would continue to 31 March 2021. Furthermore, if the contract between the Council and Matchtech ceased, then the assignment would also cease. Consequently, the respondent could not guarantee anything to the claimant and certainly no payment to 31 March 2021.

18. Although the relationship between the claimant, the respondent, Matchtech, as the recruitment company, and the County Council started in March 2020, it was only in July that the actual work commenced on site. The claimant accepted that the contract under which he was working anticipated that he would only be paid when he attended work. The clear example of this (and Mr Carr agreed with this contention today) was that he was not paid in the early months of the contract eight hours a day

between March and July because he did no work. He was paid, however, for the hours spent at meetings, surveying the site in question, and when he finished his work each week between July 2020 and December 2020 he put in a timesheet to Brookson.

19. The parties accept that Brooksons were paid £29 an hour for the work done but would make agreed deductions and pay the claimant the appropriate net balance. The claimant has made no complaint about that arrangement until December 2020.

20. The contract between Brookson and Matchtech is clear. Namely that it could be ended by either party at any time. The agreement was ended on 15 December 2020 because Mr Carr refused to proceed any further because of his dispute over the said short payment.

21. The claimant therefore has an hourly paid contract and for each hour he worked. At no time between July and December did he dispute that that was the agreement he had entered into freely. The claimant accepted that he could have continued to work after 15 December 2020 on the contract if he had so wished but it was he who terminated the assignment between Matchtech and this respondent.

22. Although as set out above, the employment of the claimant by Brookson still continues, no work has come the claimant's way and Mr Carr does not expect to be paid whilst he is doing no work for the respondent even though he is still on their books. He is not carrying out work as required by the contract and assignment.

23. During the course of giving his evidence the claimant confirmed that he had been paid for the hours he had actually worked on 10 and 11 December. Indeed he was also paid for his travel but he believes he should be now paid for four days per week at eight hours per day until 31 March 2021. That was never agreed between the parties.

The Law

24. With regard to the breach of contract claim, I had to consider what the terms of the contract between the claimant and the respondent were. Here the employment contract was in writing therefore the terms are clear. I had to consider whether either party had broken any of the terms of the contract. The claimant was not arguing that there was an implied term in his contract but wished me to consider the express terms of the contract.

25. With regard to unlawful deduction of wages, section 13 of the Employment Rights Act 1996 requires that an employer shall not make a deduction from wages of an employee 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. I must consider whether 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.

Conclusion

26. Applying that law to the facts of this case, the contractual arrangement between the four parties (the claimant, the respondent, Matchtech and the Council) is complicated, but in terms of the agreement between the claimant and the respondent the claimant's rate of pay is clearly set out in clause 4 of the contract between the parties and in particular at 4.3. In short, the rate of pay for the claimant is based on the actual work he does and is an hourly rate. The claimant did not complain prior to December 2020 about being paid an hourly rate when he simply attended meetings. The simple fact is that the claimant was irritated that the Council would not pay for eight hours on 10 December and eight hours on 11 December 2020. However, he was paid for the hours spent on site for those two days and his travel time which normally he would not have been paid. Once the claimant resigned then his pay stopped as he was not working on the assignment and consequently there has been no breach of contract by the respondent. The claimant has not been working and there was no guarantee that he would have work made available to him for eight hours per day through to 31 March 2021. The claimant is fully aware that that was the agreement.

27. Furthermore, with regard to the first part of his claim that he should have been paid for the full eight hours on the December days he turned up on site, that claim also fails because he did not work 16 hours over those two days. He simply travelled down to the site, found out that the subcontractors were not on site, nor were there materials available to do the work, and went home. On 11 December the claimant knew that the subcontractors would not be on site and yet decided to attend work. Why he did that was never explained to this Tribunal's satisfaction.

28. Consequently, the conclusion I came to was that the claimant has been paid all monies up to the time of his resignation and has been paid the full hourly rate under his contract. He now accepts, at this hearing, that he received the right amount for the hours he actually attended on site in December. Secondly, the claimant cannot expect to be paid for eight hours per day to the end of March 2021 because he did not work at all from 15 December 2020 to 31 March 2021 and it was he who brought the contract and the assignment to an end. Ultimately, the claimant knew he could only claim remuneration if he actually attended on site.

29. All the claimant's claims are therefore dismissed as he has been paid all monies properly payable and has been paid all monies under his contract of employment.

Employment Judge Robinson

Date: 19 April 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 22 April 2022

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