



EMPLOYMENT TRIBUNALS

Claimant: Mr L Timms

Respondent: Semantic Business Services Limited

Heard at: London Central Employment Tribunal **On:** 19th April 2022 at 10am

Before: Employment Judge Hopton

Appearances (by video):

For the Claimant: Represented himself

For the Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that:

1. The respondent has made an unlawful deduction from the claimant's wages and is ordered to pay to the claimant the gross sum of **£2,275** in respect of the amount unlawfully deducted.
2. The claimant's claim for unfair dismissal fails and is dismissed.

REASONS

Preliminary matters

1. The respondent has not filed a response to the claim and did not attend the hearing. I considered whether to postpone the hearing as it was unclear whether the respondent had received the notice of claim. Although the notice of claim and other tribunal correspondence had been sent to the respondent's registered address, the tribunal had also received an email from the landlord of that address saying that the respondent was unknown at the address. However, given that the address at which the tribunal correspondence was received was the registered address of the respondent according to Companies House, and the claimant was present and ready for the hearing, I considered it was in accordance with the

overriding objective to deal with cases fairly and justly and to avoid delay, to continue with the hearing.

2. The claimant requested written reasons at the end of the hearing.

The claims

3. The claimant brings claims of unfair dismissal and unlawful deduction from wages.

The facts

4. The claimant was employed as an Operations and Sales Associate with the Respondent from 5th August 2021 until his employment was terminated without notice on 10th September 2021.
5. The claimant was part of the Department of Work and Pensions 'Kickstart' scheme whereby companies provide training and employment to those enrolled on the scheme, and the government pays a proportion of the salary participants initially receive.
6. On 31st July the claimant received an email offering him the role of Operations and Sales Assistant on a contract of 35 hours a week at a rate of £13 per hour. There was to be a trial period of six months, and if the claimant made sufficient progress, he would be made a full time employee and given a permanent role. The claimant accepted this offer by email on 1st August 2021.
7. On 2nd August 2021 the claimant received an email from the respondent which said, *"Thank you for accepting the position with Semantic Business Services. ... we intend to onboard you with the company for a start date of 5th August 2021 at which point you will become a paid employee."* This email explained the respondent's plan to enrol Kickstart participants in August so that they could be paid from August, although due to many participants taking holiday in August, the whole Kickstart contingent start date would be in September.
8. On 5th August 2021 the claimant was sent a contract of employment which confirmed the employment and pay details set out in the offer letter of 31st July.
9. Clause 1.2 of the contract states:

Your employment with us under this contract will start on 5th August 2021 (the 'Start Date'). Your period of continuous employment with us will start on the Start Date, and no period of employment with any previous employer counts as part of your period of continuous employment with us.
10. Clause 5.1 of the contract states:

We will pay you an hourly wage of £13 per hour, on a 35 week contract (Salary'), which will be paid in equal instalments in arrears on or about the last working day of each calendar month by automated bank transfer and will accrue on a daily basis. The first payment will be due on 5th September 2021 due to the need to enrol you onto the Government scheme with HMRC.

11. The claimant accepted this contract by email on 5th August 2021.
12. The claimant was therefore employed by the respondent and was due wages from 5th August 2021, even though the respondent only intended to provide work for him from September 2021.
13. Between 5th August and 6th September the claimant was in contact with the respondent asking for confirmation that the placement was going ahead. He was assured all was well.
14. On 6th September 2021 the respondent wrote to the claimant and told him that his start date had been deferred to 13th September 2021. It explained that this was due to some difficulties contacting a few other participants. The email said that, *"I've also been asked regarding salary payments which are being actioned. Let me know if there are any changes to bank accounts etc."* The Respondent therefore intended and expected to pay the claimant for the period from 5th August 2021 onward.
15. On 10th September 2021 the respondent emailed all the Kickstart participants to tell them that the respondent was withdrawing from the Kickstart programme. The respondent confirmed to the claimant by email on 12th September that that meant *"the work is cancelled"*. The claimant's employment therefore terminated on 10th September 2021.
16. The claimant asked for his salary to be paid for the five weeks from 5th August to 10th September. The respondent has not made any payments to him.

The law

17. Unlawful deduction from wages: section 13 Employment Rights Act 1996

(1) an employer shall not make a deduction from wages of a worker employed by him...

(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

18. Unfair dismissal:

Section 94(1) Employment Rights Act 1996

An employee has the right not to be unfairly dismissed by his employer

Section 108(1) Employment Rights Act 1996

Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

Conclusion

19. The claimant was employed by the respondent for five weeks. He does not therefore have the length of service required by s. 108(1) ERA. His unfair dismissal claim therefore fails and is dismissed.
20. The claimant had a contract of employment which entitled him to wages from 5th August 2021, even though he was not due to be provided with work until early September. In its correspondence with the claimant the respondent made several references to the claimant being paid from August, including the reference in its 6th September email to salary payments being actioned, which demonstrates the respondent's understanding that the claimant was due wages for that period.
21. The claimant's wages from 5th August 2021 to 10th September 2021 were therefore properly payable. He was due five weeks' wages at a gross rate of £13 per hour for 35 hours a week. He was paid no wages for that period. The respondent therefore made a deduction from his wages in the sum of £13 x 35 hours x 5 weeks amounting to £2,275 gross.

Employment Judge Hopton

_19th April 2022

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

20/04/2022.

FOR THE TRIBUNAL OFFICE