



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Lynn

v

SLM Rescue Services Ltd

Heard at: Watford

On: 19 May 2022

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant: Not present or represented

For the respondent: Mr Steve Hobbs, director.

JUDGMENT

The respondent owes the claimant a total of £527.50 gross (i.e. before the deduction of income tax) by way of unpaid accrued holiday pay (in the sum of £455.00) and 7.25 hours' wages at the rate of £65 gross per day (i.e. £72.50).

REASONS

- 1 In these proceedings, the claimant claims unpaid wages. The nub of his claim was stated in box 9.2 of the claim form in this way:

“i just want what i am owed - which includes 1 week of full pay, one week of sick pay, holiday pay accrued (11 days) plus £90 unlawful deduction from wages.”

- 2 The claim was resisted in part on this basis (stated in box 4.3 of the ET3 response form):

“The Claimant Was Engaged On A Self Employed Basis To Provide Maintenance To The Site, Yard Clearance And Other External Site Based Duties. The Claimant Did Not Have A Job Title As He Was Never Employed By The Respondent”

3 At the top of the next page of the ET3 form, it was said that the claimant worked 30 hours per week.

4 In box 4.1 of the ET3 form, this was said:

“The Claimant Was Not Actually Employed By The Respondent. Tasks Were Allocated To The Claimant, Namely Yard Work, Building Maintenance And Other Assorted Duties For The Claimant To Complete In A Timely Manner.”

5 On 15 November 2021 the parties were notified that Employment Judge (“EJ”) Manley had directed that there be a preliminary hearing, which was to take place on 19 May 2022, to “determine a preliminary issue of whether the Claimant was an employee or a worker for the Respondent”.

6 On 10 May 2022, the tribunal sent the parties an email about the hearing of 19 May 2022, informing them that the hearing was to “remain listed as an in-person hearing”. On the next day, the claimant sent an email in the following terms:

“hello,

i have received an email regarding my preliminary hearing against and [sic] ex employer for the date 19 may, i will not be able to attend this due to work commitments and i ask if i could get a postponement for a later date, any monday or tuesday would be absolutely fine as these are predominantly my free days and the rest of the week i am committed to work”.

7 At 12:57 on On 18 May 2022, the tribunal sent a letter by email informing the parties that that application for a postponement had been refused by EJ George.

8 I conducted the hearing of 19 May 2022. The claimant did not attend it. Mr Hobbs attended on behalf of the respondent. Rule 47 of the Employment Tribunals Rules of Procedure 2013 (“the 2013 Rules”) applied. That provides:

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”

9 I could therefore have dismissed the claim without further ado. However, it appeared to me to be in the interests of justice to decide the whole of the claim in so far as it was fair to the respondent (who had not come with notice that I might determine the claim finally rather than just determine the preliminary

issue), and on the basis that the claimant could apply for a reconsideration of my decision on the merits of the claim if he had good reason to do so (which is why I have given my reasons in writing in full here).

- 10 I therefore asked Mr Hobbs whether he was willing to have me determine the issue at the hearing of 19 May 2022, and he was enthusiastic about the possibility of me doing so. He was happy to pay the claimant such sums as were due to him, although the claimant had, he said (as was stated in the ET3 form), caused damage which it had cost at least £4,000 to repair by causing a flood at the premises of the respondent.
- 11 Mr Hobbs then told me (at my request) about the way in which the claimant was engaged to work for the respondent and the work which he in fact did. As a result, I made the following findings of fact.

The facts

- 12 The respondent's business is that of vehicle recovery. The respondent has, for example, a contract with the Thames Valley Police force for the recovery of vehicles. The respondent has 13 recovery vehicles, and a depot in which there might at any one time be up to 100 vehicles.
- 13 The claimant was engaged to do work relating to the maintenance of the respondent's depot, namely work in the nature of building and site maintenance. The respondent agreed to pay (and did pay) the claimant at the rate of £10 per hour, without deducting income tax or national insurance contributions, on the assumption or basis that the claimant was self-employed.
- 14 The claimant supplied his own tools to do the work which he in fact did, which included filling some potholes in the depot's yard, mending some of the depot's fences, and redecorating the respondent's offices.
- 15 The claimant worked an 8-hour day for the respondent, but with an hour and a half for lunch. That hour and a half was unpaid. Accordingly, the claimant was paid at the rate of £65 for every full day that he worked for the respondent.
- 16 The claimant started working for the respondent in the first week of March 2021. The claim form stated a start date of 2 March 2021, and Mr Hobbs did not take issue with that as the start date of the engagement.
- 17 On the day before the claimant's final day of work (and the final day was Tuesday 1 June 2021), the claimant was doing some decorating work on the respondent's offices. He was instructed to turn off the water supply to the offices at the end of the day, but he failed to do so. As a result, there was a flood at the offices overnight. The next day, the claimant attended the respondent's offices at 8.30am. Mr Hobbs was there and said to the claimant that they needed to clear up the mess, including by taking up the carpets. The

claimant agreed to do that but then, 45 minutes later, at 9.15am, complained of a bad back and left the premises. He never returned to work for the respondent.

- 18 The claimant was paid a week in arrears. He was not paid a fixed sum, but only for the hours that he had actually worked during the week in question. His final pay from the respondent was paid at the end of the week commencing on Monday 24 May 2021. He had by the time of the final day of his employment been employed for precisely a quarter of a year. The claimant was not paid for the work which he did on Monday 31 May 2021 and Tuesday 1 June 2021. The hours for which he had worked on those days and for which he had not been paid were 6.5 plus 45 minutes, i.e. 7.25 hours.
- 19 Mr Hobbs told me, and I accepted, that the respondent had not deducted £90 from the claimant's pay at any time.

My conclusions on the claim

- 20 I concluded that the claimant was a worker within the meaning of section 13(1) of the ERA 1996 and within the meaning of the Working Time Regulations 1998.
- 21 The question whether the claimant was entitled to statutory sick pay was outside the jurisdiction of the employment tribunal: that is a matter which is determinable by the Secretary of State only.
- 22 The claimant was entitled to holiday pay under the Working Time Regulations 1998. He had received no such pay. He was therefore entitled to a quarter of the annual entitlement under those regulations, namely a quarter of 28 days' pay, i.e. 7 days' pay. That was $7 \times 6.5 \times £10 = £455.00$.
- 23 I also concluded that the claimant was owed only 7.25 hours' pay, i.e. £72.50. Thus in total the claimant was owed £527.50 gross, and I awarded the claimant that sum.

Employment Judge Hyams
Date: 24 May 2022

JUDGMENT SENT TO THE PARTIES ON

11/6/2022.

N Gotecha

FOR THE TRIBUNAL OFFICE