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EMPLOYMENT TRIBUNALS

Claimant: Mr E Bedzo
Respondent: ISS Facilities Services Limited
Heard at: East London Hearing Centre
On: 13 May 2022
Before: Employment Judge Barrowclough
Representation:
For the Claimant: Mr K Ibekwe (Union Representative)
For the Respondent: Mr P Tomison (Counsel)

JUDGMENT

The Claimant is ordered to pay the Respondent the of sum £498.46, being the sum due under the Respondent's successful contract claim.

REASONS

- 1 This is a remedy hearing following the entry of judgement on the Respondent's contract claim, entered by the Tribunal on 19 October 2021. This was a remote hearing via the Cloud Video Platform, the Respondent being represented by Mr Tomison of counsel and the Claimant (who was in attendance) by Mr Ibekwe, his union representative. Employment Judge Massarella had, in his letter to the parties dated 16 October 2021, indicated that it was in the interests of justice that the Claimant be permitted to participate at the remedy stage of these proceedings, notwithstanding that his defence to the Respondent's contract claim had been struck out.
- 2 I heard evidence from Mr Robert Osorio, the Respondent's regional operations manager, who was also the Claimant's line manager during the period of his employment with the Respondent. Mr Osorio identified, verified and confirmed his witness statement, signed and dated 1 November 2021, which he adopted as his evidence in chief. Mr Ibekwe cross-examined Mr Osorio on the Claimant's behalf and

I asked him a number of questions as well. Mr Osorio's was the only evidence I heard. Both I and Mr Ibekwe were provided with a hearing bundle by the Respondent, and I heard closing submissions from the parties' representatives.

- 3 The Respondent's contract claim arises out of the Claimant's failure to return safely to them at the conclusion of his employment the tablet and mobile telephone with which he had been provided on induction. The sum originally sought by the Respondent was £520, being the cost of acquiring appropriate replacements as at June 2020, although as Mr Osorio makes plain in his witness statement the cost of replacements as at November 2021 (which he confirmed would still be current) had reduced slightly to a figure of £498.46.
- 4 In his oral evidence, Mr Osorio accepted that whilst the tablet provided to the Claimant on his induction was new, the mobile telephone was second-hand, in the sense that it had been previously used by another of the Respondent's employees, such provision being the Respondent's usual practice when appropriate items were available. Mr Osorio confirmed that no problems or issues with the equipment provided to him had been raised by the Claimant during the course of his employment. Additionally, the Respondent has a contractual arrangement with their suppliers whereby if any electronic equipment provided malfunctions or develops a fault, it will be replaced immediately on demand with a new alternative. Mr Osorio said that the Respondent provides its employees with up-to-date devices which are in good working order, although he accepted that inevitably the value on the open market of second-hand items of equipment was bound to be less than that of comparable brand new replacements. Mr Osorio referred the Tribunal to pages 66 to 68 in the bundle, which are the documents concerning the provision of a mobile phone and a tablet to the Claimant at the commencement of his employment by the Respondent, that being dealt with by Mr Osorio's colleague Mr Rhoan Coote, since Mr Osorio was then absent due to ill health.
- 5 Having heard the representatives' submissions, I came to the following conclusions. I accept Mr Osorio's evidence that the equipment which was supplied to the Claimant would have been in good working order and condition, particularly since as he indicated the Respondent has an arrangement in place whereby all faulty electronic devices will be replaced immediately at no cost to themselves. Additionally, it obviously makes good commercial sense for the Respondent to provide their employees with reasonably up-to-date equipment in good working order. Finally, there was no evidence of any complaint or problem having been raised by the Claimant during his employment concerning any of the equipment with which he was provided.
- 6 I also accept, as Mr Ibekwe submitted on the Claimant's behalf, that the open market value of the goods which the Claimant should have returned to the Respondent, namely a second-hand tablet and a third hand mobile telephone, was bound to be less than brand new replacement items. Mr Ibekwe invited me to assess the value of the items which his client had failed to return to the Respondent as being in the region of £200-£250, which seems to me to be a not unreasonable figure, and to limit any liability to such a figure.
- 7 Notwithstanding Mr Ibekwe's creditable efforts on his member's behalf, I accept Mr Tomison's submission to the effect that the cost to the Respondent, and therefore the loss they have suffered and seek to recover in these proceedings, would be the

price of providing replacement equipment for another of their employees, whereas, had the Claimant not breached his contract in failing to return the mobile telephone and tablet at the conclusion of his contract, those items would have been passed to and used by another such employee. Accordingly, I find that the loss suffered by the Respondent is the cost to themselves of providing alternative equipment in the absence of such items being returned by the Claimant, and I accept the figure put forward by Mr Osorio for such replacements as being £498.46. There will be judgment for that sum.

- 8 Mr Tomison sought interest on that sum from 24 June 2020, when the equipment should have been returned, until the date of this hearing, apparently 688 days, at 8% or 11p per day, giving a total of £75.17. The Employment Tribunal has no power, so far as I am aware, to award interest as a remedy in its own right, rather than as accruing on an award which remains unpaid. In any event and in case I am mistaken in that view, I would not award interest as requested. Interest must be a discretionary remedy, and I would not make any award in the circumstances of this case, where the hearing of the proceedings had been delayed not only by the pandemic, but also due to a bereavement suffered by the Claimant's representative, which had prevented the remedy hearing proceeding as scheduled on 8 December 2021.

Employment Judge Barrowclough

Date: 20 May 2022