



EMPLOYMENT TRIBUNALS

Claimant: Mr. Harvey Platt

Respondent: Powell and Barns Group trading as Powell and Barns Media Limited

Heard at: Nottingham ET via CVP

On: 5 August 2022

Before: Employment Judge Omambala QC

Representation

Claimant: In person

Respondent: Mr. R Clement, Counsel

RESERVED JUDGMENT

1. By consent the name of the Respondent is amended to: Powell and Barns Group trading as Powell and Barns Media Limited.
2. The Claimant's claim for breach of contract in respect of work done by him between 13 May 2021 and 3 June 2021 is dismissed.
3. The Claimant's claim for unlawful deduction from wages is upheld in respect of (i) wages (ii) holiday pay (iii) notice pay. His claim in respect of unpaid commission is not well founded and is dismissed.
4. The Respondent is ordered to pay to the claimant the sum of £218.00.

REASONS

1. The Respondent is a marketing and public relations company. The Claimant was employed by the Respondent as a Marketing Executive.

The Claimant represented himself at the hearing. The Respondent was represented by Mr. R Clement of counsel.

Claims

2. By a claim form dated 8 November 2021 the Claimant brought claims in respect of: unpaid notice pay, holiday pay, wages and commission against a Respondent he identified as Marcelline Powell.
3. By a form ET3 dated 24 April 2022 the Respondent denied all claims brought by the Claimant. The Respondent also asserted that if any sums were due to the Claimant, then it was entitled to set off the sum of £40 which it alleged was an overpayment of wages.

Issues

4. At the start of the hearing the parties agreed the following list of issues: -
 - (1) What is the correct name of the Respondent?
 - (2) When did the Claimant's employment with the Respondent commence?
 - (3) When did the Claimant's employment with the Respondent come to an end?
 - (4) What provisions did the Claimant's contract contain in relation to:
 - (a) pay
 - (b) commission/bonus
 - (c) holiday pay
 - (d) recovery of overpayments?
 - (5) What sums were properly payable to the Claimant under his contract?
 - (6) Did the Respondent pay those sums to the Claimant?
 - (7) If not, was any deduction required or authorised by a written term of the contract?

Procedure, Documents and Evidence heard

5. The Tribunal heard oral evidence from the Claimant and read an unsigned witness statement from Ms. Annmarie Mead, a former employee of the Respondent which was dated 20 July 2022.
6. The Tribunal heard oral evidence from Ms. Powell who is a director and founder of the Respondent company. Ms. Powell also prepared a written witness statement which was unsigned and undated.
7. The Tribunal considered an agreed bundle of documents containing 98 pages.
8. The Tribunal sought to clarify the correct name and address for the Respondent to the Claimant's complaints. Ms. Powell confirmed that the registered name of the correct Respondent was "Powell and Barns Group Limited trading as Powell and Barns Media Limited. The Respondent's registered address according to the Claimant's wage slips and his P45 is 39 Blyth Avenue, Melton Mowbray LE13 0HF.
9. The Claimant applied to amend his claim to correctly identify the Respondent in these proceedings. The Respondent did not oppose the application to amend. Accordingly, the Tribunal granted the amendment application and directs that the Tribunal records are amended.

Fact Finding

10. On 29 April 2021 the Claimant attended an interview on Zoom for a role as a Marketing Executive with the Respondent. On 13 May 2021 the Claimant attended an induction meeting which also took place on Zoom.
11. The Claimant contends that between 13 May 2021 and his dismissal on 2 September 2021 he was undertaking work for the Respondent pursuant to the terms of a contract of employment for two days a week.
12. The Claimant worked remotely. He logged on to the Respondent's system to work. He characterised the work which he carried out as carrying out research into and scheduling meetings with prospective clients. This entailed the Claimant making telephone calls and sending emails as well as making notes.
13. The Respondent regarded the time spent by the Claimant between 13 May and 3 June 2021 as a period of unpaid induction. During this time the Claimant was set up on the Respondent's system and provided with some information about organisations which the Respondent worked with or hoped to work with in the future. The Claimant was asked to explore these links and to make notes of any potential opportunities.
14. On 3 June 2021 the Claimant signed a written statement of terms and conditions of employment. The statement of terms and conditions provided that the Claimant's employment commenced on 3 June 2021. The contract contained the following relevant provisions:

§5 Salary

Your basis salary is £10 per hour and you are entitled to bonuses ranging between 10% (on paid orders above £10,000 and 20% of each sale on paid orders below £10,000. Salary and bonuses are payable by credit transfer into your bank account on the 28th day of each month. Bonuses are paid on cleared funds received on orders up to 20th of each month...

The Company has the right to deduct from your pay any sums which you may owe the Company or any Group Company including without limitation any sum to which you have previously consented in writing, any overpayments, advance or loans made to you, or losses suffered by the Company or any Group Company for which you may be liable as a result of your unlawful or negligent act or failure. This is an express written term for the purposes of section 13 of the Employment Rights Act 1996.

§6 Probationary period

The first six months of your employment will be treated as a probationary period.

Your employment under this Contract may be terminated by your giving the Company one week's notice or the Company giving you one week's notice, in line with statute at any time during or at the end of the probationary period...

§7 Hours of Work

Your normal hours of work are flexible between 9.00am until 4.00pm Tuesday, Wednesday, Thursday inclusive with a one-hour unpaid lunch break per day.

§8 *Holidays*

The Company's holiday year runs from 1 January to 31 December. Your holiday entitlement is 3.3 weeks of paid holiday per holiday year; this includes the usual bank and public holidays in England, Wales and Scotland.

.... Upon the termination of your employment, you will receive payment in lieu of any holiday entitlement which has accrued but not been taken. In the case of a full-time worker the amount of the payment in lieu shall be calculated on the basis that each day of paid holiday is equal to 1/260 of your salary."

15. In August 2021 Ms. Powell arranged a meeting with the Claimant to discuss her concerns that he had not been able to generate any business for the Respondent.
16. On 2 September 2021 Ms. Powell arranged a further meeting with the Claimant at which his employment was terminated.
17. The Respondent produced pay information which had been provided to Ms. Powell by Samantha Powell. Ms. Powell explained that the information as to the Claimant's working hours was taken from the system operated by the Respondent. That system also generated information necessary to make commission payments to employees.
18. Ms. Powell told the Tribunal that when a booking was made the employee who made the booking would fill in a booking form and submit it using the Respondent's system. The employee was then expected to log in to the Respondent's payment portal and take a payment over the telephone or to request an invoice. The invoice would be sent out to the client the next day and when it was paid the employee would be notified by email. Orders taken in these circumstances were "paid orders" per the contract of employment and would generate commission payments.
19. Data drawn from the Respondent's system was used to calculate commission payments. Ms. Powell told the Tribunal that there were no circumstances in which an employee could receive a commission payment without completing a booking form.
20. During the course of his employment with the Respondent the Claimant did not complete a booking form or book any orders. He did not generate any "paid orders" himself although he did work which may have assisted others to book orders. He received £1,866 from the Respondent in wages. Ms. Powell told the Tribunal that she believed that sum was made up the Claimant's wages and accrued holiday pay. However, she alleged that £40 of that sum was an overpayment of wages.

Law

21. Section 13(1) of the Employment Rights Act 1996 ("ERA") provides that:

“An employer shall not make a deduction from wages of a worker employed by him unless –

*(a) the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”*

22. There is no dispute between the parties that the Claimant is a worker within the meaning of section 230(3) of the ERA. There is also no dispute that types of payment claimed by the Claimant, namely, weekly pay, holiday, and bonus or commission fall within the definition of wages in section 27(1) ERA.
23. A deduction for the purposes of a claim under section 13 of the ERA is defined in subsection (3) and can be characterised as a complete or partial failure to pay what is properly payable on a particular occasion.

Conclusions

Correct Respondent

24. The correct Respondent in these proceedings is the Claimant’s employer. The contract of employment identifies the Claimant’s employer as Powell and Barns Group Ltd. Its trading address is 39 Blyth Avenue, Melton Mowbray LE13 0HF. Its registered address according to Ms. Powell is 6 David Lane, Nottingham NG6 0JU.

Dates of Employment

25. Both parties signed a contract of employment which identified the start of the Claimant’s employment as 3 June 2021. The Claimant signed this document on 10 June 2021. He is bound by its terms in the absence of any evidence of an agreement that he would work and be paid by the Respondent prior to that date.
26. The Claimant was dismissed on 2 September 2021 with immediate effect. His contract of employment provided that he was entitled to one week’s notice and the Respondent was entitled to require him to remain at home during the notice period in its sole and absolute discretion.

Contractual Provisions

27. The relevant contractual provisions are set out at paragraph 14 of these reasons.

Sums Properly Payable Under the Contract

Wages

28. The Claimant worked from 3 June 2021 to 2 September 2021. The information provided by the Respondent to the Tribunal did not include hours worked by the Claimant in the week of 3 June 2021. The Claimant worked two eight-hour days in that week. Ms. Powell accepted in evidence

that he carried out work on those days. She said that an error must have been made in relation to that week which she was unable to explain further.

29. The total number of hours the Claimant worked under his contract of employment was 176 hours as opposed to the 160 hours contended for by the Respondent. The Claimant was entitled to be paid for those hours at a rate of £10 per hour. He should have received £1760 in respect of the hours that he worked. He in fact received £1600.

Commission

30. The Claimant told the Tribunal that he did not complete a sale and did not submit a booking form in respect of any order during the course of his employment by the Respondent. The Tribunal accepted the evidence of Ms. Powell that in these circumstances the Claimant was not eligible for a commission payment. The Tribunal therefore finds that the Claimant was not entitled to receive any commission payments pursuant to his contract of employment.

Holiday Pay

31. The Respondent told the Tribunal that it had calculated the Claimant's holiday pay entitlement using the government's holiday pay calculator. The Respondent used the correct employment start date but failed to reflect the Claimant's entitlement to accrue holiday pay during his notice period. Accordingly, the Respondent relied on an employment end date of 2 September 2021 whereas a week's notice would have taken the Claimant to 9 September 2021. The Respondent therefore calculated that the Claimant's statutory entitlement to holiday for the relevant period was 22.6 hours. In fact, his statutory entitlement was 24.4 hours.
32. The Claimant was entitled to be paid at the rate of £10 per hour in respect of his holiday pay. He was entitled to receive £244 in respect of accrued holiday pay. He in fact received £226. A shortfall of £18.00.

Notice

33. The Claimant was entitled to receive one week's notice pay in the sum of £80. He did not receive any sum in respect of his notice period.

Summary

34. The Claimant was entitled to receive a total sum of £2084 during the course of his employment with the Respondent: -

$$£1760 + 244 + 80 = £2084.00$$

35. It is common ground that the Claimant in fact received £ 1866.00 during the course of his employment with the Respondent: -

$$£1600 + 226 + 0 = £1866.00$$

36. The Tribunal finds that the Claimant has not received the sums properly payable to him on the termination of his employment. It finds that there is a shortfall of £218.00 in the payments made to the Claimant by the

Respondent. It finds that this shortfall is a deduction within the meaning of s.13(3) ERA.

37. The deduction is not required by statute nor has it been made pursuant to a relevant provision of the Claimant's contract of employment. The deduction is not one to which the Claimant has previously signified his agreement in writing. It is not an exempt deduction within the meaning of section 14 of ERA. The Tribunal has found that there was no overpayment of wages to the Claimant.
38. The Tribunal has therefore concluded that the deduction in the sum of £218 is an unauthorised deduction from the Claimant's wages.

Employment Judge Omambala QC

Date 17 August 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....

.....
FOR EMPLOYMENT TRIBUNALS