



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Leonid Waliejew

**Respondent:** Quest Employment

**Heard at:** Nottingham Employment Tribunal via CVP

**On:** 16 August 2022

**Before:** Employment Judge Omambala QC

## Representation

**Claimant:** In person

**Respondent:** Ms. S Younis, Litigation Consultant

# JUDGMENT

1. The Claimant was due the sum of £93.60 wages and £10.30 accrued holiday pay upon the termination of his employment with the Respondent on 1 November 2021.
2. The Respondent failed to pay those sums upon termination of the Claimant's employment and therefore made an unlawful deduction from his wages in the said sums.
3. On or about 3 December 2021 the Respondent paid to the Claimant all sums due to him under his contract of employment.
4. The Claimant's claim in respect of unpaid bonus is not well-founded and is dismissed.
5. The employment tribunal has no jurisdiction to make an award in respect of injury to feelings for breach of contract and/or unlawful deductions from wages.

# REASONS

## Introduction

1. The Claimant, Mr. Waliejew was briefly employed by the Respondent as a Sortation Associate from 29 October 2021 to 1 November 2021 when he was informed that his employment had been brought to an end.

2. By a Claim Form dated 8 January 2022 the Claimant brings claims in respect of arrears of pay. He alleges that there has been unlawful deduction from wages contrary to section 13(1) of the Employment Rights Act 1996 and/or in the alternative a claim for breach of contract. The Claimant alleges that the Respondent has failed to pay him:
  - (1) wages due for hours worked;
  - (2) a bonus of £3,000; and
  - (3) injury to feelings of £2,000.

### Preliminary Matters

3. The Claimant is originally from Ukraine. He asked for and the Employment Tribunal Service arranged for an interpreter to assist him during the course of the hearing.
4. The Tribunal took periodic breaks during the hearing to ensure that the interpreter was able to provide an effective interpretation service.
5. The Claimant confirmed that since the end of his employment he has received payment from the Respondent in respect of his wages and holiday pay in the sum of £93.60 and £10.30 respectively. Accordingly, claims in relation to those sums are no longer pursued.

### Issues for the Tribunal to Decide

6. The Tribunal identified the following legal issues: -
  - (1) Were the wages paid to the Claimant following the end of his employment all the wages that he should have been paid?
  - (2) Did the Respondent fail to pay the Claimant a bonus of £3,000?
  - (3) If so was that a breach of the Claimant's contract of employment?
  - (4) If so, how much compensation should the Claimant be awarded as damages?

### Documents and Witnesses

7. The Tribunal was provided with an agreed bundle of documents consisting of 79 pages.
8. The Tribunal heard evidence from the Claimant in support of his claims. It heard evidence from Mr. Ashley Smith, National Operations Manager, Mr. Silviu Desaga, Team Leader, National Recruitment Team. It also received a witness statement from Mr. Jubad Miah, Senior Regional Manager who attended the hearing but was not called to give evidence.
9. It was agreed between the parties that the Tribunal would need to determine the following factual issues:
  - (1) What were the terms of any bonus payments offered under the Claimant's contract of employment with the Respondent?

- (2) Were those terms communicated to the Claimant and if so, how?
- (3) Was the Claimant entitled to receive any bonus

### Findings of Fact

10. The Respondent, Quest Employment, is a recruitment agency. The Respondent recruits and employs workers. The workers are then supplied to the Respondent's clients on assignments.
11. Since 2004 the Respondent has been recruiting and managing an onsite service for Amazon. At the relevant time the Respondent managed 16 locations within the Amazon network.
12. The Claimant responded to an advertisement to work for the Respondent at an Amazon site at Lutterworth. The particular advertisement the Claimant responded to was not included in the material before the Tribunal. However, the Claimant alleges, and the Tribunal accepts, that the advertisement to which he replied made reference to a £3,000 sign on bonus for full time shifts.
13. Mr. Smith told the Tribunal and it accepts that during Q3 and Q4 of 2021 Amazon was one of a number of clients who were offering incentives to attract and retain people in work due, in part to constraints in the labour market. In order to be eligible for a bonus payment the candidate would have to start work and complete 45 days of work. That would entitle the candidate to 50% of the incentive. If the candidate remained in post for a further 45 days the candidate would become entitled to the remaining 50% of the incentive payment.
14. The Respondent's recruitment process was conducted by telephone, text message, email and remotely.
15. Having completed an application form on 23 October 2021 the Claimant was contacted by text message to his mobile phone and informed of a telephone interview scheduled for 28 October 2021. The text message advised him of the available shift patterns, the rates of pay and of a £3,000 hiring incentive which ended on 30 October 2021.
16. The Claimant was successful at interview and on 28 October 2021 he received an email which provided him with information about a mandatory background check process. The email stated that, "*if no background check is complete, you won't be able to continue working for Amazon Logistics and your temporary contract will be terminated.*" The email told the Claimant that he would receive an invitation link to a secure website where the background check could be completed.
17. The Claimant attended an induction session via a video link on 29 October 2021. The Claimant recalls that the quality of the video link was poor but does not specifically recall whether he and other prospective employees were reminded of the need to complete background checks before they started work.

18. For the Respondent Mr. Smith stated that it was made very clear to candidates at registration, by email and during the virtual induction, that, if they did not complete the checks, they would not be able to start work. Mr. Desaga gave evidence to confirm that this was the process and that it was carried out.
19. The Tribunal notes that neither of the Respondent's witnesses are able to give direct evidence as to the process followed in this particular case. However, the Tribunal finds that it is more likely than not that the Claimant was advised that he would need to complete the background check process in order to be assigned to the Amazon contract.
20. The Claimant told the Tribunal that he had successfully completed a background check with Amazon on 29 September 2021. He said he thought that it was unnecessary to complete a second background check because both checks were in respect of work at Amazon. He said he considered that he did not have to do the checks again. The Claimant argued that the information he had previously provided could and should have been asked for by the Respondent.
21. The Tribunal finds that the Claimant was informed and understood that he was required to successfully complete the Respondent's background checking process in order to be employed and assigned to the Amazon contract.
22. The Tribunal is satisfied that the Claimant did not attempt to complete the Respondent's background check before he started work or on his first day of work. He believed that it was not necessary that he do so because he had already passed a background check to work at Amazon.
23. The Claimant attended work on 30 October 2021 and the Respondent permitted him to complete a shift. On 1 November 2021 the Claimant was contacted by the Respondent and advised that he would not be permitted to continue working because there were issues with his background check. The Claimant did not return to work for the Respondent.
24. The Respondent has produced email evidence to demonstrate that emails were sent to the onsite team to chase the Claimant to complete his background check. There is no evidence that those messages were in fact passed on to the Claimant and he denies having received them.
25. After he was advised that his employment had been terminated the Claimant wrote to the Respondent seeking details of the terms and conditions of the incentive scheme for new workers at the Lutterworth Amazon facility and later to inform the Respondent that he had successfully completed a background check on 29 September 2021. The Claimant alleges and the Tribunal accepts that he did not receive a response to his emails.

## The Law and Conclusions

### *Wages and Holiday Pay*

26. It is common ground that the wages paid to the Claimant at the end of his

employment with the Respondent were not all the wages that he should have been paid. The Claimant was not initially paid for the hours that he had worked (9 hrs. at £10.40 per hour) or for holiday pay which had accrued (0.99 at 10.30 per hour). However, that deficit was remedied before this hearing and the Claimant accepts that there are no sums due to him in respect of unpaid wages or holiday pay.

### *Bonus*

27. It is common ground that the Respondent did not pay the Claimant a signing-on bonus of £3,000.
28. There are no documents setting out the Respondent's operation of its bonus incentive scheme. The Respondent contends that all communications in relation to the bonus scheme and payments under it were made orally. There is no evidence in writing before this Tribunal of the terms of the scheme the Respondent operated at the material time.
29. The Tribunal is therefore required to consider whether there is any sufficient evidence of an agreement in principle to pay a bonus to the Respondent's employees who were recruited at this time.
30. The Tribunal is satisfied that there is sufficient credible evidence that the Respondent did operate a hiring incentive bonus scheme at the material time. It is persuaded by evidence from the Claimant to this effect as well as evidence from Mr. Smith that more than 1951 of its associates across 16 Amazon locations received a bonus payment.
31. The Tribunal accepts the Respondent's submission that payment of an incentive bonus was subject to a number of conditions being fulfilled. These were that (1) the candidate successfully completed the Respondent's onboarding process which required the successful completion of the background checking process; (2) that the employee was employed on day 45 of their contract to receive 50% of the incentive; (3) the employee remained employed on day 90 or on 24 December 2021, whichever was the sooner.
32. The evidence before the Tribunal makes clear that none of the conditions necessary for payment of the bonus were fulfilled in the Claimant's case. The Tribunal therefore concludes that the Respondent's failure to pay the Claimant a bonus was not a breach of any express or implied term of his contract of employment.
33. Given that the Tribunal has concluded that there has been no breach of the Claimant's contract of employment and no unlawful deduction of wages in relation to a bonus payment it follows that the Claimant is not entitled to be awarded damages.
34. As to compensation for injury to feelings, even if the Tribunal had concluded that there had been a breach of contract, it is well established that no compensation can be awarded for the manner of the breach of contract. The Tribunal has no jurisdiction to make an award in respect of injury to feelings in relation to any of the claims brought by the Claimant.

---

Employment Judge Omambala QC

Date 16 August 2022

JUDGMENT SENT TO THE PARTIES ON

06 September 2022

.....

.....  
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.