



EMPLOYMENT TRIBUNALS

Claimant: Mr Guru Sharma Mahankali
Respondent: World Shirdi Baba Organisation UK (a Charity)

Heard at: East London Hearing Centre

On: 26, 27 and 28 July 2022

Before: Employment Judge Burgher
Members: Ms J Henry
Ms P Alford

Appearances:
For the Claimant: Dr Narayanan (Friend)
For the Respondent: Ms McGhee (Counsel)

JUDGMENT having been sent to the parties on 2 August 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Issues

1. At the outset of the hearing the Tribunal identified the issues and carefully assessed the matters that Dr Narayanan wished to advance by reference to his email sent to the Tribunal on 22 July 2022. The matters that were within the Tribunal's jurisdiction to address were clearly specified as follows:

- 1.1 Unfair dismissal for asserting statutory rights pursuant to section 104 of the Employment Rights Act 1996 (ERA) (automatic unfair dismissal claim).
- 1.2 Failure to provide written contract of employment and payslips.
- 1.3 Significant change in Claimant's duties revealed only after arriving in the UK. This involved an assessment of the contractual terms that were alleged to have been changed.
- 1.4 Forced to work excess hours, more than what was mentioned in the

contract and certificate of sponsorship.

1.5 Failure to pay wages on time and reduction in pay without agreement or consultation. This translated to an unlawful deduction of wages claim. When looking at unauthorised deductions clarified by Dr Narayanan stated that the Claimant was either claiming the sum of 20 hours each week at £8.21 per hour wage, alternatively an additional £350 per month that the Claimant says she was promised in January 2020 having taken up additional duties. Following review of the evidence clear Mr Periasamy conceded that the Claimant had not been paid salary for May or June and that the relevant calculations were referred to in the letter that was sent to the Claimant dated 3 August 2020.

1.5.1 The Claimant alleges that there was a failure to pay an additional £350 per week that he was promised in January 2020 for taking on additional duties. It is alleged that this was an ongoing failure that continued until the end of his employment.

1.5.2 The Claimant alleges that only £550 was deposited in his bank account for the month of May 2020 even though he was working full time hours.

1.5.3 The Claimant alleges that no salary was deposited into his bank account for the month of June 2020.

1.6 Failure to conduct proper investigation on unfounded allegations made against the Claimant; failure to follow ACAS code, perverting the course of justice were all matters that may have been relevant had the Claimant had two years continuous employment. However, we made it clear at the start and throughout the hearing that the Tribunal was not able to consider an ordinary unfair dismissal claim and as such the criticisms that Dr Narayanan was eager to make regarding the way the allegations against the Claimant were dealt with were not directly relevant to the matters we had to decide.

1.7 Loss of statutory rights and loss of earnings were matters that would be considered, if appropriate, should the Claimant succeed in his automatic unfair dismissal claim.

1.8 Failure to address the grievances on unauthorised deductions in pay were matters that could be assessed in compensation for alleged failure to follow the ACAS code on resolving grievance procedures.

2. The Claimant's following allegations were not matters that the Tribunal had jurisdiction to determine:

2.1 That the Respondent failed to implement furlough scheme and made the Claimant work for the respondents during the furlough period; and

2.2 That it subjected the Claimant to mental stress causing a severe damage to mental health during the meeting on 23 June 2020.

3. The Claimant's alleged asserted statutory rights for the automatic unfair dismissal claim were:

3.1 On 8 March 2020, he challenged the Respondent's contention that he had to work for an additional 20 hours each week so as not to be charged for his accommodation. His contention was that he was promised that he would receive accommodation in addition to his agreed salary. The Claimant also stated that he had not been given payslips.

3.2 On 27 May 2020 complaining that he had only received 50% of his contractual salary. Following questioning on the factual basis of this allegation the Claimant withdrew this as an allegation of asserting a statutory right and the Tribunal did not consider it.

3.3 On 17 June 2020 asking why he had not been provided with a payslip.

3.4 On 9 July 2020 complaining that no salary had been paid for June 2020 and that there had been serious discrepancies in relation to previous salary payments.

3.5 On 24 July 2020 setting out an eight-page letter of complaint detailing pay discrepancies and threatening to report the Respondent to the Charity Commission. If so, the Claimant will be regarded as unfairly dismissed.

4. The Claimant also claimed that he was entitled to one months' notice pay following summary dismissal. The Respondent's primary position was that the Claimant resigned with immediate effect in a WhatsApp message on 27 June 2020. The Tribunal considered that WhatsApp message and had regard to the law, that there must be clear and unequivocal words of resignation in considering the contextual circumstances. It was clear to the Tribunal from an ordinary reading of the Claimant's 27 June 2020 WhatsApp message that he did not give an unequivocal communication to resign. The text is outlined in full in the findings below. Therefore, the Tribunal did not conclude that this case involved the Claimant's resignation and we considered the matter as one involving termination by the employer.

5. Alternatively, the Respondent contended that the Claimant was in fundamental breach of contract in absconding without permission, such that if the Respondent subsequently terminated the contract it was entitled to do so forthwith. It asserts that the Claimant absconding was a reason related to his conduct or a substantial reason capable of justifying dismissal. Consequently, the Respondent argues that the Claimant had no entitlement to notice pay.

Evidence

6. The Claimant gave evidence on his own behalf. He gave evidence and attended remotely, as he was in the USA. Dr Sathya Narayanan, the Claimant's representative and friend gave evidence on the Claimant's behalf.

7. The Claimant also wished to call Mr Jagadesh Janarthanan, former priest of the Respondent. However, the Tribunal could not hear from him because he was in India and there was no approval from India to the UK Foreign Office to allow witnesses to give their evidence from abroad. Dr Narayanan expressed concern that the Claimant would be put at a disadvantage by not being able to call Mr Janarthanan. The Tribunal concluded that it was in accordance with the overriding objective to proceed in the absence of Mr Janarthanan. His evidence would have had limited relevance to the matters that the Tribunal were required to determine. However, we read his evidence and gave very limited weight to it be placed on it given that we were unable to hear from him and be subject to cross examination.

8. The Respondent called two of its trustees namely Mr Vinayagan Periasamy and Mr Teagu Vannu Gopal to give evidence.

9. The Tribunal were referred to relevant pages in an agreed hearing bundle consisting of 388 pages and an additional supplementary bundle that was sent by Dr Narayanan on the second day of the hearing consisting of 25 pages.

Facts

10. The Tribunal has found the following facts from the evidence.

11. The Respondent is a registered charity and religious organisation which runs the London Sai Baba Temple which follows and promotes the teachings and philosophy of Shri Shirdi Sai Baba.

12. The Respondent employs approximately six staff and has approximately 50 volunteers. It employees priests on fixed term contracts who are assisted by religious workers and volunteers.

13. On 24 October 2019 Mr Periasamy met with the Claimant in India with a view to securing the Claimant's attendance as a priest at the Respondent's London Temple. The discussions that took place were summarised in a text dated the 24 October 2019 setting out key terms as follows:

13.1 The Claimant would be paid a salary of £14,942.20 and tax and National Insurance.

13.2 He would get a monthly net pay of £1076.

13.3 His working hours would be 35 hours a week on a flexible schedule.

13.4 He would be required to pay flight costs of £600, an estimated application processing fee of £700, solicitors costs fee of £600 and his own solicitors costs fee of £500. Therefore, there would be £2400 that the Claimant would have to pay back to the Respondent. It was stated that this sum would be deducted from his salary over a period of two years.

14. At that stage discussions were amicable, and the Claimant was enthused in

progressing his application to become a priest for the Respondent in London.

15. On 13 November 2019, the Respondent contacted the UK immigration and visa authority and stated at that the Claimant would be '*maintained and accommodated*' by the Respondent during his stay in the UK.

16. Further contractual discussions were meant to take place in India on 9 December 2019 and the Claimant travelled significant distance through India for such discussions only to discover that the contract was not ready and that there were still ongoing questions about the financial provisions that would be finally offered. Curiously, the Claimant was informed that he would be given his contract to sign when he arrived in United Kingdom.

17. The Claimant arrived in London on 24 December 2019 and, on the 28 December 2019, he had a meeting with the trustees of the Respondent. He was taken through an agreement letter and a separate appointment letter and he signed both of those and documents.

18. The key terms of the documents specified, as far as the Tribunal is concerned, as follows:

18.1 The Claimant was required to work 35 hours a week.

18.2 His contract was for a two-year fixed term period.

18.3 He would be paid £14,942 annually before tax.

18.4 He would be required performing all duties as may be assigned to him from time to time.

18.5 He should follow the instructions and the orders of the trustees.

18.6 The contract enabled the Respondent to terminate before the expiry of the two year period by giving notice period of one month in writing. The contract could also be terminated earlier if the employee is found guilty of any misconduct bring the organisation into disrepute.

18.7 The Claimant was required to pay back employment fees of approximately £1918 at the end of the contract term.

19. The Claimant was taken line by line through the agreements and signed both of them. However, the parties accepted that the Claimant was not sent a copy of the agreements. Mr Periasamy stated that the Claimant had taken a photograph of the agreements for his records. The Claimant denies this. We accept the Claimant's evidence and find that Mr Periasamy was mistaken in that it was the other priest in attendance, Mr Janarthanan, who took photographs of the contracts. In any event the Claimant was not given as required by section 1 of the Employment Rights Act 1996, copy of his written terms and conditions.

20. The Claimant was provided with a schedule of duties and considered those duties to be tangentially related to being in a priest. What concerned the Claimant were additional duties such as cleaning toilets, clearing bins and other non-priestly duties which he says were not consistent with his role. The Claimant also alleged that there was a contractual change and he was required to work an extra 20 hours a week in lieu of the accommodation provided to him. This meant that he was working 55 hours a week. We accept the Claimant's evidence and there was no contractual basis to expect him to work on a further 20 hours a week, whether on a volunteer basis or otherwise. However, on the facts before us, we find that to the extent that he was working 55 hours a week, this ceased by 18 March 2020 when the Government lockdown took place. The Respondent's London Temple was closed during lockdown and the Claimant was asked to undertake other duties on a volunteer basis but this was 55 hours a week or not full time.

21. The Claimant's contract also provided him with £150 per month food allowance and this was paid to the Claimant during his tenure.

22. The Claimant was unhappy about the size and status of his accommodation at the Respondent's Temple. He had a discussion on 8 March 2020 with the Respondent's trustees and sought to put in place measures to move out of the Temple to get his own accommodation so that his wife could join him from India. The Claimant enquired whether he could get the 20 hours extra he was working in lieu of accommodation to be paid to him as a cash sum. The Respondent's trustees stated that it could not guarantee that it could pay 20 hours extra work and his earnings would fluctuate. The Claimant expressed concern about how he would be able to pay for alternative accommodation if the 20 extra hours could not be guaranteed. This concern did not engage a statutory right under the Employment Rights Act 1996 as it was a discussion about possible changes to contractual arrangements.

23. However, we find that during March 2020 the Claimant raised concern about not having payslips but we do not find that him raising such concerns was in any way causative to his dismissal.

24. The Claimant also asked for payslips on 17 June 2020 and was duly sent them following request for a clearer copy. We do not find that him raising these concerns was in any way causative to his dismissal.

25. By May 2020 the Respondent was in a very difficult financial situation. In discussions on 27 May 2020 and 3 June 2020 the Trustees invited the Claimant to return to India on holiday and if possible make a financial contribution to the Temple. The Claimant indicated that it was very difficult and expensive to secure a flight to India at that time during Covid lockdown.

Sexual harassment allegation against the Claimant

26. A key matter for the Tribunal consideration was the complaint by Mrs S alleging sexual harassment against the Claimant. Having considered the evidence we accept Mr Periasamy's evidence and the chronology of events that he relayed about the complaint.

- 26.1 On 21 May 2020 Mrs S spoke to Mr Periasamy's wife and raised allegations of serious sexual harassment against the Claimant.
- 26.2 Mrs Periasamy informed Mr Periasamy about this on 23 May 2020 and this led to a meeting on 6 June 2019 where Mr Periasamy met with Mrs S and her husband to discuss the complaint.
- 26.3 On 6 June 2019 the Tribunal accepted that Mrs S and her husband stated to Mr Periasamy that they would take the matter to the police unless the Claimant agreed that sexual harassment took place and apologised to them. They stated to Mr Periasamy that if the Claimant was willing to admit sexual harassment and confirm that it would not be repeated they would not escalate matters with the police.
- 26.4 Mr Periasamy was very concerned about the potential reputational on the Temple if this was publicised and requested Mrs S to put a formal complaint in writing. This was done on 16 June 2020 and a two-page statement in this regard was sent to Mr Periasamy.

27. On 20 June 2020 the government lifted lockdown restrictions and a meeting was held with the Claimant on 23 June 2022 with Mr Gopal and Mr Periasamy. There is dispute about the meeting notes. Generally, we find that Mr Gopal's notes were not verbatim and that there were inaccuracies within them, but that they were made contemporaneously and were not fabricated. We find that Mr Gopal's notes record the gist of what was said during meetings held. Importantly for the purposes of 23 June 2020 notes we conclude that the handwritten notes are a record of two parts of the conversation, one with two priests present, including the Claimant, and one only with the Claimant. Dr Narayanan states that the transcript of the covert recording that the Claimant made of that meeting was emphatic evidence of what was discussed. However, we conclude that the recording does not provide the full record and this is clear that the end of the transcript which states meeting ends on the basis of the Claimant and Mr Periasamy saying please wait a minute "*I will come back*" with no further entry.

28. From Mr Gopal's notes and the transcript of 23 June 2020 meeting we are able to find that both Mr Gopal and Mr Periasamy were very concerned about the nature of the allegations and find that they had formed a clear opinion that the sex harassment allegations were well-founded. During the meeting Mr Gopal and Mr Periasamy were seeking to get the Claimant to accept the sexual harassment allegations so that they could try and manage it internally without the reputational fallout. They made it clear to the Claimant that if he did not accept the allegations the matters would be referred to the police and the police would investigate. They stated that they would not be the appropriate people to investigate and if the police were involved the Respondent would terminate the Claimant's employment. They expressed this position a number of times and stated that, if the Claimant maintained that he did nothing wrong the police would be involved and he would be terminated immediately.

29. It is obvious that the way in which this meeting was held was not compliant with an ACAS code and good employment practice. It was not compliant with a fair or reasonable procedure. However, we accept that the Respondent did not want the reputational fallout or potential damage of managing this very serious sexual

harassment complaint. They made it clear to the Claimant that he should leave the country to avoid a potential police investigation and failing that there would be a police investigation which would inevitably limit the Claimant's options. The pressure that the Claimant was put under in this meeting was undeniable. However, it is also undeniable that the Respondent trustees were trying to manage, in wholly inappropriate way, the concern it had about sexual harassment and sought to try and avoid the matter escalating. Mr Periasamy stated that the allegations were of a serious nature and they posed reputational risk to the Temple. There were prior scandals of involving organised religions and publicised incidents of sexual harassment towards women in India, including sexual harassment and physical groping. There was potentially serious damage to the Temple if matters were publicised. We do not doubt that Mr Periasamy had this in mind and he sought to cauterise any potential problem by giving the Claimant a clear steer to leave the Temple.

30. Perhaps unsurprisingly, the Claimant did leave the Temple. On 27 June 2020 he sent a Whatsapp message stating:

“My sincere apologies to inform that I have left the temple and London and came to India without giving prior notice to you as my ticket for the evacuation flight has got confirmed yesterday and I had to rush to airport. There are few reasons that I made me to take this step as per our previous conversations where you asked me to think on return plan for India and I had deep home sick and some of my personal reasons to come back to India. Considering this, I had to take this step. Hope you understand and I regret for any inconvenience caused.

I would also request to consider my entry and work back at temple in London. I will definitely come back to temple in couple of days or in a month to serve.

Kindly keep my profile for considering to (back at work) in temple I will definitely looking forward to back at work in temple.”

31. We do not construe this WhatsApp message as the Claimant stating that he was permanently resigning his role, as the Respondent contended.

32. The Claimant had a conversation on 1 July 2020 with Mr Gopal. The focus of the conversation was for the Claimant to prove that he was out of the country. Mr Gopal did not believe that the Claimant was out of the country given the previous expressed difficulties and costs of flights to India at the time. We find that the Respondent was seeking to get the Claimant prove that he was out of the country so that they could cancel his visa and end their liability for his continued employment. As far as the Respondent was concerned they wanted the Claimant out of the country to avoid the potential reputational damage of the sexual harassment allegations. Curiously, the Claimant did not provide the documentation to prove that he was out of the country.

33. On 6 July 2020 the Respondent took the step to remove the Claimant from the WhatsApp group for the Temple evidencing its decision that the Claimant was no longer going to be part of the organisation.

34. On 9 July 2020 the Claimant wrote to the Respondent emphatically outlining his

concerns about the failure to provide an payslips an failing to pay proper salary, outlining the shortfall in salary.

35. The Respondent replied on 11 July 2020 writing that the Claimant had absconded, was in serious breach and that they had a meeting on the 23 June 2020 regarding the serious sexual allegation and follow up meeting would be held.

36. The Claimant next wrote on 24 July 2020 reiterating his serious concerns about payments and payslips and raised other allegations and regulatory shortfalls. He requested a response within 14 days.

37. The Respondent did not engage with the Claimant's letter of grievance but wrote to the Claimant on 3 August 2020 terminating the Claimant's employment on the basis that he had absconded and that he was subject to serious sexual allegation. The Claimant received this letter on 11 August 2020.

Law

38. The Tribunal has considered Employment Rights Act 1996 (ERA) sections 1 (payslip), 8 (itemised payslips), 13 (unlawful deduction of wages) and section 104 (automatic unfair dismissal for asserting a statutory right).

39. Section 104 ERA states:

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal,

Conclusions

40. When considering whether there has been the assertion of a statutory right, we conclude that the Claimant asserted a statutory right to payslips in March 2020, on 17 June 2020 and on 9 and 24 July 2020. The Claimant also asserted a statutory right in respect of non-payment of salary of 9 and 24 July 2020.

41. For the Claimant to succeed in his automatic unfair dismissal complaint, the dismissal must be by principal reason of asserting those statutory rights. Dr Narayanan made forceful submissions about the poor way in which the Claimant had been treated. We accept a number of those submissions, how the Claimant was cornered on 23 June 2020 meeting was neither reasonable nor appropriate. It was very poor employment practice to challenge the Claimant in that way. Having said that the nature and strength of opinion expressed by the trustees during the meeting on 23 June 2022 lead the Tribunal to conclude that the key reason for the Claimant's termination was that sexual harassment allegations. The Respondent simply did not wish to properly engage with them and they wanted the Claimant out of the Temple to avoid the potential reputational issues.

42. The Respondent was not concerned at all by the Claimant's request for payslips and his requests for this did not feature in the reason for his dismissal. The Claimant's letters of 9 and 24 July 2020, written whilst he was allegedly out of the country, were sent after he had been asked to leave on 23 June 2020 and after he had been taken off the WhatsApp group on 6 July 2020. Whilst we find that these letters provided the catalyst for the Respondent to confirm dismissal they were not the reason for dismissing the Claimant.

43. By its letter dated 3 August 2020, the Respondent confirmed that the reasons for dismissal were the Claimant absconding and the sexual harassment allegations. On the evidence before us we do not accept that absconding was a valid reason for dismissal given what was said on the 23 June 2020 (that the Claimant should leave) and the Claimant's Whatsapp message on 27 June 2020 contradicted a conclusion of absconding. However, we conclude that the sexual harassment allegations were the principal reason for dismissal.

44. The Tribunal hypothetically considered what would have happened had the Claimant not made the assertions he did on the 9 and 24 July 2020 and concluded that the Respondent would not have allowed the Claimant to return back to his role in the Temple because of the sexual harassment allegations.

45. We therefore conclude that the Claimant has not established that the reason for his dismissal was the assertion of statutory rights. His claims for automatic unfair dismissal therefore fail and are dismissed.

Unpaid salary

46. The Respondent accepts that the Claimant was not paid his salary in full for the period of May and June 2020. The Claimant's claims in this regard therefore succeed

and he is entitled to be paid the unpaid sums.

47. Further the Claimant was not paid salary for July 2020 or for August to 11 August 2020 when he received notice of termination of his employment. The Claimant is entitled to be paid these sums.

Unpaid notice

48. Given our findings regarding the investigation the Respondent has not followed any fair process to conclude that the Claimant was guilty of gross misconduct. The Claimant denied such allegations. Before us the Respondent referred to the internal statement of Mrs S to indicate sexual harassment had taken place. However, given the prejudged approach that the trustees took at the time, the Respondent has not established that the Claimant committed gross misconduct to forego his notice entitlement. The Claimant is therefore entitled to be paid one months' notice taking him to 11 September 2020.

49. We do not conclude that the Claimant has established that he was entitled to pay for the extra 20 hours he worked in lieu of accommodation. There was no contractual entitlement for extra pay. The Claimant has not established how many hours extra he worked each week although we accept there were occasions when he worked 20 hours extra up to 18 March 2020. Whilst the requirement to work additional hours in lieu of accommodation was imposed upon the Claimant this was discussed in March 2020 when the Claimant sought to move out and be paid for extra hours worked in cash so he could rent elsewhere. The Claimant has not established that he was contractually entitled to any sum for extra hours worked.

50. The Claimant has not established that he was entitled to £350 a month for extra work. This allegation contradicted his primary case that he expected to be paid minimum hourly wage for extra hours he worked.

51. The Claimant was not provided with a written statement of terms and conditions of employment. We conclude that a sum of 2 weeks pay is an appropriate award given that he was taken through it line by line at the commencement of his employment.

52. Given our conclusions, the Claimant is entitled to the following sums:

Shortfall in May 2020 (including food allowance)	£676.00
Non payment in June 2020 (including food allowance)	£1226.00
Non payment for July 2020 (no food allowance)	£1076.00
Non payment for 2 weeks in August 2020 (no food allowance)	£496.61
One months contractual notice (no food allowance)	£1076.00
Subtotal	<u>£4550.61</u>
2 weeks pay for failing to provide written particulars	£496.61
Subtotal	<u>£5047.22</u>

25% ACAS uplift for not addressing grievance	£1261.81
Total	<u>£6309.03</u>

53. The Respondent is therefore ordered to pay the claimant the total sum of £6309.03.

Employment Judge Burgher

11 October 2022