



EMPLOYMENT TRIBUNALS

Claimant: IDRIS ILYAS

Respondent: PMP RECRUITMENT LIMITED

Heard at: Exeter (by VHS) **On:** 18 October 2022

Before: Employment Judge Oldroyd (sitting alone)

Appearances

For the Claimant: In Person

For the Respondent: Mr Brill (Solicitor)

JUDGMENT

1. The claim for unfair dismissal is struck out pursuant to Rule 37(1) Employment Tribunal Rules of Procedure on the basis that it has no reasonable prospect of success.
2. The claims for breach of contract are dismissed.
3. The claims for unlawful deduction from wages were presented in time and shall be determined at a final hearing.
4. A final hearing with a time estimate of 2 days shall be listed on the first available date 1 February 2023 and the parties shall provide the Tribunal their dates of unavailability by **4.00pm on 1 November 2023**.
5. The final hearing will take place remotely.
6. The Respondent has permission to serve amended Grounds of Resistance to be served and filed by **4.00pm on 18 November 2023**.
7. Not less than 8 weeks before the final hearing, the parties shall exchange with each other any further documents that they wish to refer to at the hearing or that

are relevant to the case, including any witness statements that have already been served by any party and which any party wishes to rely upon.

8. Not less than 6 weeks before the final hearing, the Respondent shall prepare a single and paginated bundle of the documents that each party relies upon and provide an electronic copy to the Claimant. The documents shall be in a logical order. Not less 3 days and not more than one week before the hearing, the Respondent shall provide an electronic copy of the bundle to the Tribunal at bristolet@justice.gov.uk
9. Not less than 4 weeks before the hearing, the parties shall serve on each other any additional witness statements setting out the evidence that they and their witnesses intend to give at the hearing and add those to the bundle. No additional witness evidence may be allowed at the hearing without the permission of the Tribunal.

REASONS

1. In this claim, the Respondent asserts that the Tribunal does not have jurisdiction to deal with claims brought by the Claimant for unfair dismissal, breach of contract and unlawful deduction of wages or else that the claims should be struck out on the basis that:
 - a. All of the claims were presented out of time; and
 - b. In the case of the claims for breach of contract, the Claimant remains an employee of the Respondent; and
 - c. In the case of the claim for unfair dismissal, the Claimant did not have two years of continuous employment.
2. These issues were the subject of a preliminary hearing that took place remotely on 18 October 2022.
3. The Claimant represented himself and the Respondent was represented by Mr Brill.
4. I had the benefit of an agreed bundle and a witness statement prepared by the Claimant. The Claimant also gave oral evidence.

Facts

5. The Respondent is an employment agency that sources staff for its clients.
6. The Claimant entered into a contract of employment with Respondent on 17 November 2021 (the **Contract**). The relevant clauses provide as follows:
 - a. Clause 3.2: the Respondent agreed to offer the Claimant opportunities to work for its clients, each opportunity being defined as an “assignment”.

- b. Clause 5.1: the Claimant remained an employee of the Respondent whilst on assignment. Further, whilst on assignment it was the Respondent who would remunerate the Claimant (at a rate that was not below the national minimum wage). The Contract provided for payment of remuneration to be weekly, in arrears.
 - c. Clause 7.1: there was no entitlement to contractual sick pay, but eligibility for statutory sick pay.
 - d. Clause 10.1: any assignment was capable of being terminated without notice (albeit that would not lead to termination of the Contract). The Contract was expressed to be terminable by the Respondent upon statutory notice and by the Claimant upon one week's notice.
7. On 17 November 2021, the Respondent arranged for the Claimant to be placed on assignment with the well known on-line retailer Amazon at one of its sorting centres.
8. The terms of the assignment were set out in a letter dated 17 November 2021 (the **Assignment Terms**). The Claimant's duties were to involve sorting and loading parcels for which he was to be paid, by the Respondent, £10 per hour (which increased slightly for night work). The assignment was anticipated to last 39 weeks.
9. At this time, Amazon appears to have had a great need for staff and so it appears to have offered, to at least some of its workers, a signing on bonus of £3,000.
10. The Respondent says that the bonus was not a contractual entitlement to which it was bound, but that it was payable at the instigation of Amazon. The Claimant says that it was explained to him, by the Respondent, that the bonus would be paid by the Respondent in two equal tranches; tranche 1 after 45 days and tranche 2 after 90 days. Any dispute in respect of the contractual entitlement to this bonus is not one I am tasked to resolve in this Judgment.
11. The Claimant commenced work at Amazon on 22 November 2021.
12. On 23 November 2021, the Claimant says that he suffered a back injury whilst lifting heavy boxes. On medical advice, the Claimant did not return to work and was signed off work by his GP until 17 December 2021. This is evidenced by a medical certificate that is dated 3 December 2021.
13. The Claimant actually says that he remained incapacitated by reason of his injury for a period of 12 weeks and until about 16 February 2022. It is accepted that, following his injury, the Claimant never returned to work for Amazon and has carried out no further assignments for the Respondent.
14. By e mail dated 7 December 2021, the Claimant terminated the ongoing assignment with Amazon and notified the Claimant. I accept the Claimant's evidence that this was the first the Claimant knew of the termination of his assignment. As I have indicated, the effect of terminating the assignment did not mean that the Claimant's employment with the Respondent was at an end. This is the clear effect of clause 10.1 of the Contract.

15. The Claimant explained in evidence (but not in any written statement that was before me) that he did not wish for his assignment to be at an end and that he contacted with the Respondent by telephone. The Claimant says that the Respondent advised him, on the telephone, that his assignment was at an end and also that the Contract had also been terminated.
16. The Respondent's position is that the Contract (and by extension the Claimant's employment) remains in full force and was not terminated. To this end, Mr Brill for the Respondent points to the fact that:
 - a. No P45 has been issued; and
 - b. No documentary evidence of termination exists, such a termination notice.

The Respondent also might point to the fact that, on the Claimant's evidence, the Claimant was not provided with due notice of any termination as provided for by the Contract and statute.

17. In terms of being paid for the nearly two days' work that the Claimant carried out on assignment, the Claimant was provided with a pay slip dated Friday, 3 December 2021 (in accordance with the Contract and the Assignment Terms). The Claimant said in evidence that he was actually physically paid on 2 December 2021.
18. The pay slip shows that the Claimant was paid for 20 hours being £280.99 gross. The Claimant denies that this payment included any form of sick pay or receiving any sick pay at all.
19. The Claimant subsequently intimated an employment claim against the Respondent in which he alleged that:
 - a. he was unfairly dismissed.
 - b. he was not paid a contractual "signing on" bonus of £3,000 by the Respondent.
 - c. he was not paid sick pay during the period 28 November 2021 and during the 12 weeks of his incapacity, being about £1,156.
20. The dispute was referred to ACAS on 4 March 2022 and ACAS issued a certificate under Employment Tribunals Act 1996 18A (the **ETA**) on 15 April 2022.
21. ET1 was presented on 15 May 2022.
22. On 24 May 2022, the Tribunal wrote to the Claimant and indicated that his claim for unfair dismissal rested on a period of employment that was less than 2 years and so would be struck out unless the Claimant provided reasons why it should not be by 30 May 2022. The Claimant provided no such reasons albeit that claim has not, as yet been struck out.

23. ET3 was presented on or about 21 June 2022. The Respondent argued that:
- a. The claim for unfair dismissal should be struck out for reasons set out by the Tribunal on 24 May 2022.
 - b. The claims for breach of contract and unlawful deduction of wages were brought out of time such that the Tribunal has no jurisdiction to deal with them (the **Jurisdiction Issues**).
24. In respect of the claim for breach of contract, I note that the Respondent did not suggest in its ET3 that it was not open to the Claimant to pursue that claim on the basis that he remained an employee. In this regard, Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 only entitles the Tribunal to deal with breach of contract claims if the period of employment in which the breach took place has ended. However, Mr Brill argued that this was the case during the course of the hearing and it is a further jurisdictional issue that I must now consider.
25. By order dated 21 June 2022, EJ Bax ordered the hearing of a preliminary issues in respect of Jurisdiction Issues (which at this time did not include the issue that arises in respect of Article 3 but which I now deal with in this Judgment).
26. At that time, it is worth noting that Claimant was ordered to provide witness evidence and documents in support of matters relating to the Jurisdiction Issues by 18 July 2022. The Claimant only served a statement on the day of the hearing itself (although this caused no difficulty to the Tribunal or the Respondent). The statement was not signed, but the Claimant verified that its contents were true before me.
27. I shall now deal with the Jurisdictional Issues and the Respondent's additional argument that arising out of Article 3. Before doing so though, I shall address the issue of the Claimant's claim for unfair dismissal.

The claim for unfair dismissal

28. Section 108 of the ETA provides that a right to claim unfair dismissal only arises if an employee has been in employment continuously for a period of two years. That does not apply in this case, the Claimant's employment not having even begun 2 years ago. The Claimant accepted that this was the case during the course of the hearing.
29. In light of this, it is clear that the claim for unfair dismissal, even taken at its height, has no reasonable prospect of success and should be struck out pursuant to Rule 37(1) of the Employment Tribunals (Constitution and Rules of Procedure) 2013.

The claims in respect of a signing on bonus

30. I proceed on the basis that the Claimant will say that the failure of the Respondent to pay or procure his signing on bonus proceeds is either a breach of contract or else an unlawful deduction of wages (although plainly I do not propose to reach any view on the merits of those claims).

Breach of contract

31. As far as any breach of contract claim is concerned, the starting point must be to consider whether the Claimant remains and employee of the Respondent. As I have said, Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 only allows the Tribunal to consider claims for breach of contract once employment has come to an end.
32. In this case I am satisfied that the Claimant's employment relationship with the Respondent is not at an end. Principally, I am satisfied that the Contract was not terminated, essentially for the reasons relied upon by Mr Brill in the course of his closing arguments; the absence of a P45, a termination notice or the provision of any contractual or statutory notice.
33. I do accept that the Claimant made contact with the Respondent shortly after 7 December 2021 (when he was told that his assignment had ended) and believed that he was told that his Contract had been terminated. However, on the balance of probabilities, it is more likely than not that the Claimant conflated the termination of the assignment with termination of the Contract.
34. I do note that there has been no meaningful contact between the Claimant and Respondent since the end of last year and the Claimant has not carried out work for the Respondent which might suggest termination by mutual agreement or else effluxion of time. The absence of contact is not, though, unusual in this particular context, given the nature of the Respondent's business.
35. In light of the fact that the Contract remains in force, the Tribunal has no jurisdiction to entertain the claim for breach of contract, and will enjoy no such jurisdiction unless or until the Contract comes to end.
36. In light of this too, it is not necessary for me to consider the time limits within which any breach of contract must be brought.

Unlawful deduction of wages

37. To the extent that the failure to pay a signing on bonus is said to be an unlawful deduction from wages, S23 of the ETA provides that the claim must be presented within 3 months of the date of the payment of wages to which the deduction relates.
38. The provisions of Section 207B of the ETA also apply. Section 207B of the Act has the effect of suspending time during the period that the claim was under conciliation by ACAS, which in this case was between 4 March and 15 April 2022 (provided of course the referral was made within 3 months). Section 207B further provides that, when conciliation ends, the Claimant has a further calendar month within which to present a claim.
39. On the Claimant's case, he was due to be paid the first tranche of his bonus 45 days after the commencement of the assignment and so on about 24 January 2022. The referral to ACAS was made well within 3 months of that date (on 4

March 2022) and ET1 was then presented within one month of ACAS issuing a certificate of conciliation, on 15 May 2022.

40. Accordingly, the claim for unlawful deduction of damages is brought within time.
41. It remains for the Claimant to establish at a final hearing that this payment is lawfully due to him and non-payment amounts to an unlawful deduction of wages.

The claim for statutory sick pay

Breach of Contract

42. For reasons I have already given, to the extent that the Claimant asserts that the failure to pay him sick pay amounts to a breach of contract, the Tribunal does not have jurisdiction to consider that claim because the Claimant's employment relationship with the Respondent is ongoing.

Unlawful deduction of wages

43. Turning to any claim for unlawful deduction of wages, and having already set out the requirements of Section 23 ETA, the crucial issue to determine is when the last deduction that is the subject of complaint was made.
44. In this context, where the complaint relates to a series of deductions, time only begins to run from the last of those deductions in accordance with Section 23(3) ETA. A series in this context means deductions of "*sufficient frequency of repetition*" such that they are factually and temporally related (Per Langstaff P in **Bear Scotland -v- Fulton [2015] IRLR 16**)
45. On the Claimant's case he was eligible to be paid statutory sick pay until at least 7 December 2021 (when the Claimant first learnt that his assignment was terminated) but potentially for much longer and until he ceased to be incapacitated at some point in February 2022.
46. Even if 7 December 2021 is taken as the last date of a series of deductions, then the claim was presented in time. To this end:
- a. The Claimant ordinarily would have had 3 months less a day to present his claim, so by 6 March 2022.
 - b. The Claimant notified ACAS on 4 March 2022, with two days to spare.
 - c. ACAS issued its certificate on 15 April 2022 giving the Claimant a further month to present his claim.
 - d. The Claimant duly presented his claim on 15 May 2022 and within time.
47. Accordingly, the claim for unlawful deduction of damages is brought within time.
48. Again, it remains the for Claimant to establish at a final hearing that the alleged

non payment of sick pay amounts to an unlawful deduction from wages.

Employment Judge Oldroyd

19 October 2022

Judgment Sent to Parties on

24 October 2022 By Mr J McCormick

For the Tribunal Office