



EMPLOYMENT TRIBUNALS

Claimant: Mr M Wolny
Respondent: Marsand Bespoke Furniture Ltd
Heard at: East London Hearing Centre
On: 27th September 2021
Before: Employment Judge Peter Wilkinson

Representation

Claimant: In person
Respondent: Not represented and did not attend

JUDGMENT having been sent to the parties on 28 September 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. The Claimant was employed by the Respondent from 21st October 2020 to 6th January 2021 when his employment ended following his resignation. At the time of the termination of his employment, the Claimant was working as a stonemason. Following a period of ACAS Early Conciliation, the Claimant presented an ET1 on 13th February 2021 He has brought the following claims:

- 1.1. A claim for unpaid wages in the sum of £732 for work carried out in December 2020, which the Claimant asserts was due to him for overtime worked.

The Issues

2. This was a single issue matter. It was accepted that the monies in question had not been paid. The tribunal had to decide whether the Claimant was entitled to be paid the sums in question for work done.

The hearing

3. The case was listed for two hours via BT MeetMe, commencing at 10:00 on 27th September 2021. The Claimant was on the call at 10:00, but the Respondent was not.

4. Efforts by the Tribunal staff to contact the Respondent by telephone at 10:00 were unsuccessful. The call was made to the mobile telephone number provided by the Respondent as recorded on the Tribunal file. There was no reply.

5. The Tribunal decided that it was in the interest of justice to proceed with the hearing notwithstanding the absence of the Respondent. In reaching that decision, the Tribunal had regard to the following factors:

- 5.1. On 24th September 2021, Regional Employment Judge Taylor had refused an application by the Respondent, made by email of 23rd September 2021, to postpone the hearing on medical grounds, due to a lack of medical evidence.
- 5.2. It appears that the application with which REJ Taylor was concerned was supported by a hospital appointment letter dated 24th August 2021 but no medical evidence per se.
- 5.3. The Tribunal further noted that despite the terms of the refusal by REJ Taylor being a lack of medical evidence, it remains the case that the only evidence sent to the Tribunal was a photograph of an appointment letter dated 24th August 2021. That letter expressly provides for the Respondent to contact the hospital within 14 days if he wishes to rearrange the appointment. There was no evidence as to any attempt to do so or any reason why he could not. Such medical evidence as has been provided is not sufficient to establish whether the surgery was urgent or even what it was for.
- 5.4. The hearing listed to deal with the claim was already some 9 months after the wages were allegedly due and the claim was a simple and straightforward one, involving a small sum of money.
- 5.5. The Tribunal noted that the Notice of Hearing listing the final hearing was sent to the parties on 25th February 2021 and the Respondent had known of his hospital appointment since at least 24th August 2021 but had not made an application to postpone until 23rd September 2021, by email, which application had been refused.
- 5.6. The Tribunal had regard to the guidance on adjournment on medical grounds provided by the Court of Appeal in *Emojevbe v Secretary of State for Transport* [2017] EWCA Civ 934 and *TBO Investments Ltd v*

Mohun Smith and another [2016] EWCA Civ 403, which appeared to the Tribunal to be helpful in determining the approach to such an application and to the adequacy of the medical evidence required to persuade the Tribunal to deny the Claimant the right to have this hearing proceed and to have a determination of this matter without further delay.

5.7. The Tribunal also had regard to the fact that postponing this hearing would lead to a very significant delay in determining the claim.

5.8. The Tribunal considered that it would be wasteful of resources and unfair to other Tribunal users to postpone the hearing and re-list the matter for a later date.

6. The Tribunal heard evidence on affirmation from the Claimant in support of his claim. He gave evidence as to the terms of his employment insofar as they related to overtime, to his hourly rate and to the process in place for him to record his working hours.

7. At 10:37am the Tribunal received a call from the Respondent's partner stating that he would not be attending because he had a hospital appointment. At this point the hearing had been concluded and Judgment had been delivered, finding for the Claimant.

The evidence

8. The Claimant gave evidence to the effect that he was expected to work the hours required to complete jobs and that this would often involve him working overtime. His evidence was that he did not have to have prior authorization for work beyond his normal hours, but was simply expected to stay on the job to get it finished and that this was particularly true in the run up to Christmas, when there was a lot of pressure to complete jobs.

9. The Claimant gave evidence that the work which is the subject of this claim was carried out under the same arrangement and was all on work for the Respondent which he was instructed to do.

10. The Claimant stated that he kept a record of the hours worked and the record of relevant overtime is as set out in his claim form.

11. The Claimant gave evidence that he had not been paid for this work

Decision

12. The Tribunal accepted the accuracy of the evidence given by the Claimant.

It was entirely credible and was consistent with the material already provided in support of his claim.

13. In particular, the Tribunal accepted the Claimant's evidence as to the hours worked and the applicable rates of pay for that work.

14. On the basis that there was an established practice of the Claimant working overtime to finish jobs and being expected to claim for the additional hours, without having prior authority, the Tribunal concluded that the Claimant was entitled, under the terms of his employment contract, as established by practice, to be paid for the work he had carried out on his employer's jobs.

15. The Tribunal accepted (which did not seem to be actively disputed) that the Claimant had not been paid for the work which formed the subject of this claim.

16. Given the above, the Tribunal found that the Claimant was entitled to unpaid wages in the sum of £732.00.

17. The Tribunal was satisfied that the wages fell due for payment on 06/01/2021 and on that basis awarded interest at 8% per annum, amounting to £42.36.

18. I conclude that the Respondent has unlawfully deducted the Claimant's wages as claimed.

19. The Judge apologises to the parties for the delay in providing these reasons, which has arisen as a result of illness.

Employment Judge Peter Wilkinson
Date: 21st October 2022