



2206651/2021

EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Mr Danut Bojian

Respondent: Ardmore Construction Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: in person

Respondents: Mr S Mac Labhrai (In-house legal advisor)

REASONS

For judgment signed on 25/8/22

1. These were claims of Unfair constructive dismissal, Breach of contract and unauthorised deduction from wages.
2. I heard evidence from the Claimant as per his undated witness statement and then from the Respondent's witness James Byrne. The documents were in a bundle of 1232 pages. I was also sent a copy email exchange dated 13/9/2019.
3. The Claimant was employed by the Respondent, a building contractor, as a Construction Manager. He was a self-employed contractor until 1 August 2018, when his employment started. The Claimant resigned on 30/7/21 with effect from 31/8/21. Early conciliation started on 1 September 2021 and ended on 13 October 2021. The claim form was presented on 13 October 2021.
4. The main dispute of fact was whether or not the Claimant agreed with the Respondent that he would be paid a percentage bonus relating to his work at a project called 27 Commercial Rd.
5. The Claimant put the matter this way in his ET1 form *"From March 2017 to October 2019 I was on a project called 27 Commercial Road on my own for 24 months, the job went well and my owner promised me verbally and via email that they will look after me."..... "During the project I took notes of my ideas that brought time and money and by the end of the project I had 1.6mil savings on my list. Being promised a 5% of this amount (verbally)"*
6. In fact the evidence shows that in April 2019 the Claimant met with James Byrne a director and asked him to agree to pay the Claimant a bonus of 5% of the sum of over £1.65 million which the Claimant had calculated he had saved on 2 sites on which he had been working. He handed some pages to James Byrne showing these figures.
7. James Byrne said that he *"thought that 5% was not a bad figure"* but he also said that he would have to discuss this with the other owners and other directors of the Respondent. James Byrne did discuss the subject with the family members including his uncle Pat Byrne (one of the owners of the Respondent) who in an email dated on 13/9/21 made it clear that this was not agreed.
8. Mr P Byrne's email of 13/9/2019 to the Claimant reads in part *"....., the increase you mentioned to James not me has not been agreed , I am sure we will look at your role and salary soon, I did say I would do something for you at the end of the job , I am not the wages guru anymore, done by others on a more formal basis ...Looking ahead and at the role , I am expecting you to move up and take on new challenges to suit the number ."*
9. The Claimant's reply to Mr P Byrne on 13/9/2019 was as follows: *"I didn't ask James for a rise, I told James exactly what I told you , I asked for a percent of 5% from the attached he said 5% is not bad number but he also said that he will need to speak to others and look into it . I don't*

mind taking more on board as long as I get the support needed. I know you are not dealing with wages , but I know that you guys talk to each other in cases like this therefore I emailed Pearce too yesterday as I know he`s the money man see attached. I only expect you guys to hear me out and don`t always trust that PM`s and QS`s only work hard and looking for the company interests. Rewarding me for what I did in the last 2 projects I leave it with you guys to pick the best number to motivate me even more. I want justice , recognition and motivation , this are my 3 words in my head day by day , they written even on my desk , keeps me focused too...`

10. The Claimant also in his witness statement and in his oral evidence acknowledged that he realised that he did not have a contract for a particular bonus at the meeting in April 2019. At the best he had a hope and expectation that the Respondent would prove willing to pay him a large bonus, - in which however he was disappointed. In the event he was paid only a £5000 bonus at the end of 2021.
11. The Claimant worked well and hard at the Commercial Road site and at a subsequent Old War Office site - where he moved in October 2010 and stayed until his resignation. He did not complain at the time that he was overworked at either site and appears to have enjoyed his work and to have been appreciated by many of his colleagues. While there is evidence in the bundle that he did much work and had varied responsibilities, and took on 5 work packages at Old War Office, there is no evidence that he was overworked.
12. In mid 2021 he eventually became disappointed by the level of his bonus and salary package which fell below his hopes and expectations and only then, and only because of this disappointment, he started to resent the amount of work he had been doing happily until then. He resigned because of this disappointment.
13. No breach of contract has been proved and the Claimant is not owed any wages or any other sums by the Respondent. Hence also the resignation which ended his employment did not amount to an Unfair Constructive Dismissal.

J S Burns Employment Judge
London Central
24/09/2022

For Secretary of the Tribunals
Date sent to parties: 26/09/2022
