



EMPLOYMENT TRIBUNALS

Claimant: Mr S Sharazi

Respondent: Greater Manchester Football Club Limited

Heard at: Manchester

On: 24 November 2022

Before: Employment Judge Slater

REPRESENTATION:

Claimant: In person

Respondent: Not present (application to postpone hearing refused)

JUDGMENT having been sent to the parties on 28 November 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The respondent did not attend the hearing.
2. The respondent renewed a postponement application in writing. I refused that application for postponement for the following reasons. I did not consider that the application showed the circumstances had changed since Employment Judge Allen refused the previous application for a postponement. I, therefore, had no power to vary the order of Employment Judge Allen. Even if I had had that power, I would have refused the application for a postponement. The applications were made on the basis that Mr Haroon (Ishtiaq) had resigned in the previous week and there was no directorship or senior management in place. I was not satisfied from what the respondent had written: either that Mr Ishtiaq was indeed no longer in control of the

respondent company; or, if he had left, that there was no-one else who could deal with the matter. The emails from the respondent did not identify who was writing to the Tribunal, and the respondent provided no evidence that Mr Ishtiaq had left the company. Companies House records showed Mr Haroon Mohammed Ishtiaq and one other director as active directors of the respondent company and that Mr Ishtiaq is the person with significant influence or control of the respondent company. The respondent's email of 21 November 2022 referred to the club having decided on certain action after the alleged departure of Mr Ishtiaq, so there was clearly someone at the respondent company making decisions.

Evidence

3. I had a witness statement and bundle of documents from the claimant. I heard oral evidence from the claimant in response to questions from me. I also looked at additional Whatsapp messages on the claimant's phone and listened to a voice note left by Mr Ishtiaq for the claimant.

4. I also considered details of the Kickstart Scheme which applied at the relevant time, available on the gov.uk website.

5. I have taken into account what the respondent has written in its response as written representations in the claim.

Claims and issues

6. The claimant claimed unauthorised deductions from wages in respect of his period of employment with the respondent. He also claimed breach of contract in relation to failure to reimburse him for the £10 expense he incurred in obtaining a DBS certificate and failure to provide him with "employability support".

7. The respondent, in its response and correspondence, had asserted that the claimant was not employed under a contract of employment. The respondent's position on whether the claimant was a worker within the meaning in the Employment Rights Act 1996 was not clear.

8. I needed to decide whether the claimant was a worker or an employee. If he was neither, the Tribunal would not have jurisdiction to consider his complaint of unauthorised deduction from wages. If he was not an employee, I would not have jurisdiction to consider a complaint of breach of contract.

9. If the claimant was an employee or worker, I needed to decide when his employment or engagement with the respondent ended.

10. If I found that the claimant's employment ended before the end of the six month term, the claimant made an application to amend the claim to include a complaint of breach of contract, seeking damages for bringing the contract to an end before the end of the term.

11. If I found that the claimant's employment did not end until the end of the six month period, since he presented his claim on 8 August and the contract term would have ended 13 August 2022, I needed to consider whether to allow the claimant to amend his claim to claim unpaid wages for the period 9-13 August 2022.

The Facts

12. The claimant was taken on by the respondent under a contract for which funding was provided by the Department for Work and Pensions (DWP) under the Kickstart Scheme. According to information on the gov.uk website, the Kickstart scheme provided funding to create new jobs for 16-24 year olds on Universal Credit who were at risk of long-term unemployment. Under the terms of that scheme, funding was provided for 100% of the National Minimum Wage for 25 hours per week for a total of six months, associated employer national insurance contributions and minimum automatic enrolment pension contributions. The employer also received £1,500 funding per job to be spent on set-up costs and supporting the young person to develop their employability skills. An example of the latter was training and “employability support” provided by the employer, a Kickstart gateway or other provider.

13. The claimant was one of a number of young people taken on by the respondent with funding from the scheme. The claimant thinks there were possibly as many as 15 people taken on by the respondent under the scheme.

14. The claimant had a written contract with the respondent. Unfortunately, he does not have a copy of this because it was on his work email account to which he no longer has access. The respondent has not disclosed any documents to the claimant although they were required to do so in preparation for this hearing. I accept the claimant's evidence as to certain terms of the contract based on his recollection of the contract. The details about pay and hours of work given by the claimant accord with the information on the gov.uk website about what funding was provided under the Kickstart Scheme.

15. Under the contract, the claimant was employed for 25 hours a week for a period of six months beginning 14 February 2022. At the end of the six months, there would be the possibility of permanent employment. The claimant was to be paid at National Minimum Wage rate for 25 hours a week. There was no provision for the contract to be terminated early unless the claimant was guilty of gross misconduct. There is no suggestion that the claimant was guilty of gross misconduct in this case.

16. At first, the claimant went into the respondent's premises three times a week but, after about a month, Mr Ishtiaq told the claimant and others to work from home. At first Mr Ishtiaq gave tasks to the claimant; later he delegated this to another of the Kickstart employees. The claimant attended weekly meetings by Zoom during which another employee handed out tasks. I find that the claimant did all the tasks he was asked to do. These did not fill 25 hours per week, but I find the claimant was available and willing to work for 25 hours per week.

17. At some point, no later than mid April 2022, the claimant stopped being asked to attend Zoom meetings and was no longer given any tasks. By this time, the claimant was in ongoing discussions with Mr Ishtiaq about pay.

18. The claimant began work on 14 February 2022. At the end of March, he was paid £710.64. He did not receive any other payments from the respondent. The claimant showed me a series of WhatsApp messages between him and Mr Ishtiaq

where the claimant was asking about his pay. Mr Ishtiaq told the claimant on 3 May that the DWP was notified on 8 April that the claimant had left the club and that was why the claimant was no longer on the respondent's payroll. The claimant asked "by who?" and Mr Ishtiaq wrote "We've asked to check".

19. In a series of messages, Mr Ishtiaq told the claimant that he was trying to sort out the situation. Mr Ishtiaq suggested a meeting but then did not make arrangements for this. Mr Ishtiaq did not send the claimant any further messages after 5 June. The claimant came to believe that Mr Ishtiaq was lying to him and stringing him along. The claimant believes that the information Mr Ishtiaq gave him about the DWP was false.

20. The respondent continued to report to the DWP that it was paying the claimant after March 2022. This caused difficulties for the claimant in claiming Universal Credit. In a notice dated 20 September 2022, the DWP changed their decision about Universal Credit, writing that they were satisfied that the earnings they had previously considered for the period 24 March 2022 to 23 August 2022 were incorrect. It appears from this that the DWP found the information to have been supplied by the respondent about amounts paid by the respondent to the claimant to have been incorrect.

21. I find that the respondent never did anything to bring the claimant's employment to an end and the claimant did not resign. The claimant put on his claim form that his employment had ended on 8 April 2022. I accept his explanation that he put this because he did not know when and if his employment had come to an end, and this was the date on which Mr Ishtiaq had said he had been incorrectly removed from the system. I find that the claimant's employment did not end on 8 April 2022. I find that his employment came to an end at the end of the six month contract i.e. on 13 August 2022.

22. The claimant paid £10 for his DBS certificate. I find that the respondent had agreed to reimburse employees, including the claimant, for that expense but did not do so.

23. The claimant presented his claim to the Tribunal on 9 August 2022. ACAS conciliation took place between 28 June and 8 August 2022.

24. The respondent presented a response to the claim on 9 September 2022. Mr Ishtiaq was given as the contact for the respondent. In the response, the respondent asserted that the claimant should have worked 25 hours per week but did not do this, not carrying out tasks he was asked to do. The respondent also wrote: "He is not under employment contract. It was a DWP placement." The respondent did not set out how much the respondent claimed to have paid the claimant but denied owing anything to the claimant.

25. In an email to the Tribunal dated 7 November 2022, Mr Ishtiaq wrote that they had been speaking to ACAS and were looking to come to a solution prior to the hearing, hence the reason for not having sent any documentation.

26. By a letter dated 21 November 2022, the respondent requested a postponement of the hearing until after Christmas, asserting that "the former CEO"

had stepped down the previous week “following a sudden and unexpected change of personal circumstances.” The writer of the letter, who did not identify themselves, wrote that the club had decided to suspend all footballing and business activities for a minimum period of 6 weeks while new directors and a new board were selected. They asked for time to appoint new directors and prepare for the case. The application for a postponement was refused by Employment Judge Allen for reasons set out in a letter dated 22 November 2022, unless the claimant consented to the application. The claimant did not consent to a postponement.

27. An unidentified person at the respondent sent a further request to the Tribunal on 23 November 2022 to postpone the hearing. In a letter dated 23 November 2022, the parties were informed that Regional Employment Judge Franey had directed that he had no power to overturn the decision of Employment Judge Allen and that the application to postpone could be made afresh at the start of the hearing.

28. The respondent’s letter of 23 November 2022 included the assertion that the claimant was not under an employment contract and was instead on a work placement.

29. The respondent wrote again on 23 November 2022, writing that someone from the club “purely from an administrative role” would ring the Tribunal the next morning to request a postponement again. On my instructions, an email was sent to the respondent at 8.59 a.m. on 24 November 2022, writing that, if the respondent was not intending to attend, but renewing their application for a postponement, this should be put in writing. A further written application for postponement was made at 9.21 a.m. on the day of the hearing. I considered this application at the hearing and refused it for the reasons set out above.

30. The claimant was born on 19 February 2001. He was 20 when he started employment with the respondent, and he became 21 on 19 February 2022.

Law

31. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

32. A “worker” is defined in the Working Time Regulations 1998 as being “an individual who has entered into or works under ... (a) a contract of employment; or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.”

33. An “employee” is defined by section 230(1) Employment Rights Act 1996 as being “an individual who has entered into or works under (or, where the employment

has ceased, worked under) a contract of employment.” “Contract of employment” is defined as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider relevant factors in considering whether someone is an employee. An irreducible minimum to be an employee will involve control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered.

34. The Tribunal has jurisdiction, under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 to consider complaints of breach of contract brought by employees whose employment has ended.

Conclusions

Employment/worker status

35. I conclude that the claimant was an employee of the respondent. This is consistent with the Kickstart Scheme as explained on the gov.uk website and with the evidence of the claimant, which I accept. The information on the gov.uk website wrote of providing jobs, payment of NMW rates, payment of national insurance employers' contributions and automatic enrolment pension contributions, all of which is more consistent with employment status than any other type of arrangement. The contractual terms as described by the claimant were more consistent with employment status than any other type of arrangement. The claimant was to make himself available for work for 25 hours per week and, in return, would be paid at NMW rates. The claimant was under the control of the respondent in relation to what he did at work and where he did it. It was the employer's responsibility to provide work. If, as appears may be the case, the respondent took on more people under the Kickstart Scheme than it could provide work for, this did not affect the claimant's employment status.

36. The respondent asserted in its response that the claimant did not have a contract of employment, describing his role as a “DWP placement”. However, the respondent has not provided any information to cast doubt on the claimant being an employee. The respondent has failed to comply with case management orders which required it to disclose relevant documents to the claimant. These would have included the claimant's contract.

37. If I had not found that the claimant was an employee, I would have found that he was a worker, which would be sufficient for his claim for unauthorised deduction from wages. The claimant was required to provide his services personally for up to 25 hours per week.

38. I have found that the claimant was employed by the respondent for the full six months of the contract. The contract was not brought to an end in any way during its term. This claim was presented shortly before the end of that contract. I allowed the claimant to amend his claim to include a complaint of unpaid wages in relation to the period between presentation of the claimant (8 August 2022) and the end date of the contract (13 August 2022). I considered the respondent would suffer no prejudice from this amendment whereas the claimant, if the amendment was not granted, would not have been able to claim wages for the full period of his contract.

39. I conclude that the claimant was entitled to be paid for 25 hours per week at the applicable National Minimum Wage rate for his age. The claimant received one payment of £710.64 during that time. He did not receive any other pay from the respondent.

40. The applicable rates of National Minimum Wage in the period until 31 March 2022 were for age 18-20 £6.56 an hour, and for age 21-22 £8.36 an hour, and then from 1 April 2022 the rate for 21-22 year olds was £9.18 per hour. During the first week of his employment, the claimant was entitled to pay at the rate of £6.56 per hour. After that, he was entitled to be paid at the NMW rate for 21-22 year olds.

41. The calculation of the amount due to the claimant is as follows.

Claimant was employed for 6 months (26 weeks), 25 hours per week.

Week 1 (14-20 Feb) (age 20):	$£6.56 \times 25 =$	£164
Weeks 2-6 (21 Feb to 31 March)	$5 \times £8.36 \times 25 =$	£1045
Weeks 7-26 (1 April to 13 Aug)	$20 \times £9.18 \times 25 =$	<u>£4590</u>
Total due for contract period		£5799
Less amount paid		<u>£710.64</u>
Amount of unauthorised deduction		£5088.36

Breach of contract

42. Since I have found that the claimant was employed to the end of the six month term, there is no need to consider the application to amend the claim to include a complaint of breach of contract in respect of failure to give notice.

43. The claim includes a complaint about failure to reimburse the claimant for the DBS certificate. This is a complaint of breach of contract rather than about unpaid wages. The respondent was in breach of contract by not reimbursing the claimant the £10 fee and I order the respondent to pay this amount to the claimant as damages for breach of contract.

44. The claim includes a complaint of breach of contract in respect of failure to provide employability support. I accept that it was an expectation, as part of the Kickstart Scheme, that the employer should have provided something in the way of employability support and the respondent failed to do this. However, the claimant has not been able to satisfy me that it was a contractual obligation that the respondent should provide “employability support” or, if it was, what the respondent was required to do. The claimant has not satisfied me that the respondent was in breach of contract by not providing any particular form of support and I conclude that this complaint of breach of contract is not well founded. Even if the claimant had succeeded in this breach of contract claim, the claimant has not provided me with

information which would allow me to assess in monetary terms what the damages for such a breach would be.

Employment Judge Slater

Date: 6 December 2022

REASONS SENT TO THE PARTIES ON

7 December 2022

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