



EMPLOYMENT TRIBUNALS

Claimant: Mr U Dutta

Respondent: Revmo Europe Limited

Heard via CVP (London Central) On: 21, 22 November 2022

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: Mr O Holloway, Counsel

RESERVED JUDGMENT

The claimant's unfair dismissal is struck out for want of jurisdiction.

The claimant's claim for breach of contract (stock option claim) is struck out for want of jurisdiction.

The claimant's claim for unlawful deduction from wages fails and is hereby dismissed.

REASONS

Unfair dismissal

1. The unfair dismissal claim is struck out as the tribunal does not have jurisdiction since the claimant had less than two years' service at the date of termination.

Breach of contract (stock options)

2. The tribunal does not have jurisdiction to hear the claimant's breach of contract claim in respect of his stock options for the following reasons.

- a. The claim does not fall within the jurisdiction of the employment tribunal as it was not outstanding at the date of termination of employment. The matters that the claimant complains of, in particular, not being told of the way to exercise his options, arise after the date of termination. By that time, the employment contract between the claimant and the respondent no longer existed. In any event, the claim against the respondent for this failure does not fall within the scope of the tribunal's jurisdiction as it is not damages for breach of an employment contract (or connected contract) nor is it recovery of a sum due under such a contract.
- b. To the extent that the claim relates to the damages or recovery of the stock option benefit, the claimant has not identified a breach. Further, the stock option agreement was with the respondent's parent company, not the respondent, and the respondent would not be the correct respondent.

Unlawful deductions from wages

Issues

3. The unlawful deductions from wages claim as it relates to pay, arises from the pay arrangements made between the claimant and the respondent. The issue for the tribunal is to determine what the contractual terms were in relation to remuneration and whether these have been breached.

Evidence

4. The tribunal heard evidence from the claimant on his own behalf and from Frederic de Sibert (co-founder and Chief Executive Officer) on behalf of the respondent. The tribunal had before it a bundle of documents comprising 566 pages together with further documents disclosed part way through the hearing.

Facts

5. The tribunal found the following facts on the balance of probabilities. The tribunal has only made findings of fact in relation to the matters which are necessary to determine the issues in the case.
6. In their initial discussions relating to salary, the parties agreed that the claimant would work for free until the company had raised \$500,000 in a seed fundraising round, following which he would be paid a salary of £60,000 going forward. This was recorded in an email dated 8 December 2020.
7. In agreeing to these terms, the claimant took into account information provided to him including the following:

- a. an Investor pitch presentation in which the 'Milestones' section referred to 'boot-strap funding by founders' in Q3 2020 and 'opening \$2mm seed round' in Q4 2020;
 - b. offer of 'sweat equity' by way of stock options of 1.25% stake in the parent company;
 - c. his understanding of the financial position of the business at the time as being short of cash;
 - d. his assessment of the likely future success of the business;
 - e. the advantage to him of accepting the position for the purposes of his application for a Global Talent Visa to replace his existing visa which came to an end in March 2021.
9. The claimant suggested that it had been represented to him that the company already had \$200,000 which would mean the company would only have to raise a further \$300,000 for him to meet the threshold. I do not accept that this is correct. He was unable to show where that figure came from and the documents do not show any monies received other than £80,000 from the investors.
10. On drawing up the contract to record these terms in December 2020, the respondent was advised that the claimant was entitled to national minimum wage and it would be unlawful to employ him on zero salary. When the contract was presented to the claimant on 21 December 2020, it included a salary from the outset of £20,000 with a pay review once the seed fundraising threshold of \$500,000 had been met. The salary would accrue but not actually be paid until the seed fundraising threshold had been met, or the payroll date in December 2021, whichever was the earlier. The contract stated that there was no obligation to award a salary increase following the pay review. The revised contractual terms, therefore, did not specify that the salary going forward would be £60,000 nor was this change to the earlier agreement explained to the claimant. However, it is clear that he had read the contract carefully and raised a number of issues about its terms but did not question the salary arrangements.
11. The contract also included an 'entire agreement' clause so that the previous discussions regarding salary were superseded by the contract.
12. The claimant's main focus in terms of his remuneration was his stock option benefit and his primary objective at that time was to sort out his visa.
13. The Global Talent Visa is not sponsored by the employer but the claimant asked Frederic de Sibert to write a letter in support of the application. The claimant provided a first draft and this was amended by Frederic de Sibert with input from the claimant's immigration advisers. The letter, dated 18 February 2021 addressed to the Home Office, included the following:
- a. confirmation that the respondent had already received \$150,000 in seed funding and had secured further funding of approximately

\$7500,00 [assumed to be an error and should read \$750,000] - \$1,000,000 through a SAFE note.

- b. confirmation that the claimant had been awarded a competitive compensation package, in line with the top of the market compensation for early state startups globally, and a notable stake in the company through a stock option plan that vested over the following three years. The letter went on to state that the claimant will earn performance based bonuses in cash and stock options as well as commission on business development and fund-raising activities he is involved with.
14. The respondent prepared an Investor presentation document dated February 2021 which included a 'Roadmap and Fund-raising' section with the entry for March 2021 showing 'SAFE round \$0.75 - \$1.0m' with 'SAFE closing 12 March 2021 (55% committed)'.
 15. SAFE is a Simple Agreement for Future Equity and is a form of agreement often used by start-ups to raise capital in seed financing rounds. It gives an investor the right to receive equity when certain 'trigger' events happen, such as investment by an institutional investor.
 16. The tribunal was shown a document entitled 'Funding timeline' which showed the funds received by the respondent, together with a cumulative total and a cumulative total of 'seed fundraising'. At the time the claimant started working, the company had received \$89,000 from founders but no seed fundraising. At the time of the termination of his employment on 27 September 2021, the total funds received were \$526,259.60, of which \$437,356.40 fell within the definition of seed fundraising round. The amounts received were cross-referred to the bank statements.
 17. The bank statements show that the respondent also received the sum of £9,500 from Frederic de Sibert which was repaid to him the following month. This sum does not appear in the Funding timeline. Frederic de Sibert confirmed that this was a temporary loan to cover payroll. I accept this evidence and find that this sum does not form part of the seed fundraising round.
 18. The claimant complains that a US Government loan of \$12,500 was returned and not put towards the seed fundraising total. I accept the respondent's evidence that the loan from the US Government had been paid under a misunderstanding and it would have been fraudulent not to repay the money.
 19. The claimant's employment terminated with effect from 27 September 2021. He received £20,000 from the respondent by way of pay after his employment had ended.

Claimant's case

20. The claimant contends that, based on the content of the letter to the Home Office, the seed fundraising threshold had been met at this point and he should have received a salary of £60,000 from then.
21. He also relies on the absence of reference in the Home Office letter to his salary being conditional or the amount of the salary as implicitly constituting a variation to his contract.
22. The claimant also relies on the Investor presentation document dated February 2021 to support his contention that the seed-funding threshold had been reached by virtue of 'commitment' amounting to 'receipt'.
23. He therefore claims the sum of £35,000 based on pay at £20,000 for January 2021 and pay at £60,000 for February to September 2021, totalling £55,000, of which he has received £20,000.
24. He accepts that he did not raise the issue of salary at the time, despite being aware of the content of the letter and the investor presentation document.
25. The claimant also claims that he is entitled to a fair wage for the work that he did on a 'quantum meruit' basis.

Respondent's case

26. Frederic de Sibert accepted that he had signed the letter to the Home Office, and took responsibility for its content, although it had not all been drafted by him. He went on to confirm that the letter drew a distinction between funds received and funding secured but he confirmed that the detail in the letter was not correct. He added that the letter had been written to assist the claimant in his visa application and for no other purpose.
27. The respondent denies that the letter either indicates that the seed fundraising threshold had been met or that this was a variation to the original employment contract.
28. Frederic de Sibert explained that, by funds being 'committed', he meant that there had been interest from potential investors but without obligation on their part. If all these expressions of interest had resulted in investment, they would have achieved 55% of the target. He stated that there is a distinction between an investment being committed and the funds being received.
29. The respondent relies on the bank statements over the relevant period together with a document summarising fund raising receipts to support its position that the claimant never met the threshold and therefore the salary review clause in his contract was not triggered. The respondent also relies on the contractual provisions to contend that, even if the threshold had been

met, the claimant was not entitled to a pay rise, only to a pay review and the respondent would have had no contractual obligation to increase his pay to £60,000.

Determination of the Issues

30. In determining the issue before me, the starting point is the contract of employment. Seed Fundraising is defined as 'an investment of at least USD 500,000 received by the Company as part of a seed investment round'. Seed investment round is not defined.
31. This requires examination of the meaning of 'seed investment round'. In the absence of a specific definition either in the contract or in any associated or connected document, the tribunal will have regard to the usual meaning of the words and any context or background which assists in interpretation where there is uncertainty.
32. I find that the term 'round' indicates there will be a fundraising campaign to potential investors and I find that any funds received prior to that exercise do not form part of the proceeds of the fundraising round.
33. I also find that 'seed fundraising round' suggests funding from outside investors, rather than sums provided by the founders, which would more likely be referred to as 'boot-strap' funding. This conclusion accords with the internet research conducted by the claimant, which he included as part of his documentation.
34. I find that a sum which has been 'committed' by a potential investor cannot count towards sums 'received' by the company for the purpose of establishing whether the threshold for payment of salary has been reached. I have had regard to the bank statements to show what sums have been received. The claimant expressed doubts regarding the reliability of this information but was unable to identify what was unreliable.
35. I therefore find that the threshold in the claimant's contract of employment has not been met and he is not owed any further sums by the respondent.
36. Although not part of his original case, the claimant suggested during the course of the hearing that his employment contract was automatically varied when the seed fundraising target was reduced. He argued that the \$500k threshold was a proportion of the \$2m target and, when the target was subsequently reduced, the threshold was automatically reduced proportionally. I reject this contention. If he thought that the threshold should be adjusted, he would have had to raise this with the respondent and agree a variation to the contract. Such a variation would not happen automatically.
37. He also argued that the terms of the letter to the Home Office, which were not in identical terms with his contract of employment, thereby constituted a

variation to the contract. I reject this contention. The letter to the Home Office was sent to support the claimant's visa application, at his request. It did not constitute a renegotiation of his contract and, indeed, is not inconsistent with the contractual terms.

38. The issue before the tribunal does not include a claim for quantum meruit, which does not fall within the scope of an unlawful deduction from wages claim.
39. In conclusion, I find that the claimant was not entitled to any further salary and his claim for unlawful deductions from wages and is hereby dismissed.

Employment Judge Davidson
Date 7 December 2022

JUDGMENT SENT TO THE PARTIES ON

.07/12/2022

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.