



EMPLOYMENT TRIBUNALS

Claimant: Mr B Katani
Respondent: Bright Idea Education Ltd
Heard at: East London Employment Tribunal
On: 7 October 2022
Before: Employment Judge Illing

Representation

Claimant: Mr K Katani (Father, lay person)
Respondent: No representation

JUDGMENT having been sent to the parties on **7 October 2022** and reasons having been requested 25 October 2022 in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013.

REASONS

Procedural history

1. The Respondent has failed to respond and did not attend the final hearing. The Tribunal had forwarded correspondence to the address listed on Companies House for the Respondent, but it still did not reply or attend. There is no obligation on the parties to attend and the hearing continued in the Respondent's absence pursuant to rule 47 of the ET rules, there being no reason provided by the Respondent for its non attendance
2. The Claimant has filed a bundle of 62-pages and a witness statement of 3-pages.

The hearing

3. Bundle of 62 pages including the employment contract, the emails from the Claimant to the Respondent regarding his unpaid wages and the emails in reply from the Respondent.
4. Witness statement of the Claimant.

5. Oral evidence from the Claimant, Mr Babak Katani.

The Issues

6. At the outset of the hearing, the issues in the case we determined and agreed to be as listed in Schedule 1.

Findings of fact

7. The Respondent is a company engaged in the development of business and domestic software and education support services.
8. Having completed a period of internship, the Claimant commenced employment with the Respondent on 24th August 2021. The Respondent provided the Claimant with a contract of employment with effect from that date.
9. The Claimant was a junior game designer and quality assurer. He was not in a client facing role but did have some client contact.
10. During his employment, the Claimant was engaged in the development of a mobile game for children aged 6 – 9 years old. The children would follow a story and play mini games which had a simple primary school educational purpose. This was in line with the key stage 1 and 2 curriculums. I am satisfied that from the Claimant's evidence that there were no concerns raised regarding the Claimant's work during his employment.
11. The Claimant was based at the Respondent's offices at We Work Hoxton and would work 1-day a week from home and the balance of 4-days a week in the office.
12. The Claimant's contract specified that he was employed on a salary of £26,500 per annum and that he was entitled to 30-days annual leave, including public holidays, per year. The leave year ran from 1 January to 31 December.
13. The Claimant worked from 24th August 2021 and the expected pay date was 24th September 2021.
14. The Claimant and several of his colleagues did not receive their pay on 24th September as expected.
15. Having not been paid, the Claimant and his colleagues met with the Respondent's CEO, Mr Ibrahim Farook. Mr Farook assured them all that they would be paid. In the coming 2-weeks, the Claimant did not receive any pay, although his colleagues did.
16. On 4th October 2021, the Claimant met with his manager and raised his concerns. His manager told him to stop work and to go home. The Claimant continued to work as he felt that he would be paid as he was in contact with Mr Farook and that he had been assured that he would be paid.
17. On 5th October 2021, the Claimant informed the CEO that he couldn't afford to travel and would therefore work from home. The CEO agreed to this.
18. The Claimant continued to work until 8th October 2021.

19. On 8th October the Claimant emailed Mr Farook at 11:53 and raised his concerns about his outstanding pay (page 43 of the bundle). He did not receive a reply to this email.
20. On 11th October 2021, at 16:31, the Claimant emailed Mr Farook raising a formal grievance with regards to the outstanding pay, payslips and handbook at page 44 of the bundle.
21. On 11th October 2021, at 22:51, the Claimant received an email from Mr Farook with an attached letter. The letter was a letter of dismissal (page 45). The letter stated:

“It fills me with a heavy heart to be sending you this; upon further review of overall business goals and strategy, we have decided to terminate your employment with Bright Idea Education.”
22. The email and letter from Mr Farook also stated that the final pay would include any outstanding holiday. He would be paid a week in lieu of notice and that he should take his outstanding holiday of 2.5-days during the notice period.
23. The Claimant found that he was removed from the access to Teams and the shares drives the following day. He attended the office on 13th October 2021, but found that his access to the building had been revoked.
24. The Claimant did no further work for the Respondent.
25. The Respondent did not contact the Claimant in relation to the grievance. Nor did the Respondent discuss the grievance with him.
26. The Claimant submitted the above in his witness statement and in evidence. He further submitted in oral evidence that there was no reason to dismiss him, that had been no issue in the workplace, nor were there any personality clashes. He further submitted that new colleagues had been employed since his dismissal.

The law

Unlawful deduction of wages:

27. Part 2, sections 13 to 27B, Employment Rights Act 1996, sets out the statutory basis for a claim of unauthorised deduction from wages. Employment Rights Act 1996, section 13, provides in particular as follows:
 - (1) *An employer shall not make a deduction from wages of a worker employed by him unless—*
 - (a) *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*
 - (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*
 - (2) *In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—*
 - (a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct

Holiday Pay (Working time Regulations)

28. The basic entitlement to holiday pay is given by WTR [SI 1998/1833 reg 16](#). Regulation 16(1) entitles the worker to be paid in respect of any period of annual leave to which he or she is entitled under reg 13, and additional annual leave under reg 13A, at the rate of a week's pay in respect of each week of leave.

29. Reg 15(2) provides:

(2) A worker's employer may require the worker -

(a) To take leave to which the worker is entitled under [regulation 13] [or regulation 13A]; or

(b) Not to take such leave or (as the case may be) [(subject, where it applies, to the requirement in regulation 13(12)], on particular days, by giving such notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2) -

(a) may relate to all or part of the leave to which a worker is entitled in a leave year;

(b) Shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration, and

(c) Shall be given to the employer or, as the case may be, the worker before the relevant date.

1. *The relevant date for the purposes of paragraph (3) is the date =*

2. *In the case of a notice under paragraph (1) or (2)(a) is twice as many days in advance of the earliest specified in the notice as the number of days or part-days to which the notice relates.*

30. Notice pay

31. S. 86 of the ERA 1996 provides the following:

(1) *The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more -*

(a) is not less than one week's notice if his period of continuous employment is less than 2-years,

32. Unfair dismissal

33. The Employment Rights Act at s. 104 ERA – is the relevant legislation in relation to the assertion of a statutory right. This is to be guided by **Mennell v Newell & Wright (Transport Contractors) Ltd [1997] ICR 1039 CA.**

S.104 ERA 1996 provides:

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an [employment tribunal],

Submissions

34. The Claimant had no further submissions raising only his concerns as to the Respondent's conduct.

35. There was no written response or submission from the Respondent.

Conclusions

36. In concluding taking each issue in turn:

Unauthorised deductions:

37. Having heard evidence from the Claimant and reviewing the contract of employment within the bundle of documents, I am satisfied that the Claimant was employed on an annual salary of £26,500.

38. I am satisfied that the Claimant expected to be paid for the period of 24th August 2021 to 18th October 2021, such period to include a period of 1-week of notice.

39. There is no deduction authorised by statute, nor any deduction required or authorised by the contract of employment.
40. I find that the Claimant is due to be paid for his salary for the period of 25th August to 11th October. A period of 1-month and 1-week and 1-day.

Holiday pay

41. The Claimant was entitled to 30-days of annual leave per leave year, including public holiday.
42. It was not disputed that the Claimant had accrued 2.5-days of holiday during his period of work.
43. The Respondent gave notice to the Claimant on 11th October 2021 to take the 2.5-days of outstanding holiday. This was to be taken prior to 18th October 2021, being the Termination Date.
44. I am satisfied that the Claimant did not work during his notice period. I am also satisfied that the Respondent gave sufficient notice to the Claimant to require him to take his annual leave during the period of notice.
45. In concluding, I find that the Claimant was required to take holiday during the notice period and therefore no additional payment for holiday is due.

Notice Pay

46. I am satisfied that the Claimant was entitled to receive 1-week of notice in accordance with his contract of employment. This notice was given by the email and letter from the Respondent dated 11th October 2021. This notice would therefore expire on 18th October 2021.
47. I am satisfied that the Claimant was not paid for this period.
48. I am also satisfied that the Claimant did not do anything so serious that the Respondent was entitled to dismiss without notice. The dismissal letter is not disputed. The dismissal was with notice.
49. I conclude that the Claimant is entitled to be paid for his 1-week of notice.

Unfair dismissal

50. The email and letter from the Respondent to the Claimant on 11th October 2021 are unambiguous in the content. This is correspondence dismissing the Claimant with 1-week of notice in accordance with the contract of employment. This has not been disputed by the parties and I find that the Claimant was dismissed.
51. Turning to what the reason for the dismissal was. The Claimant raised a formal grievance at 16.31 on 11th October 2021 and received an email and letter dismissing him at 21:41 the same day. I am satisfied that there were no other circumstances influencing the decision made by the Respondent at that time. The Claimant gave credible and reliable evidence throughout and I am satisfied with his oral testimony and evidence.
52. In determining whether the Claimant was dismissed for asserting a statutory right, I am mindful of Mennell V Newell & Wright in that it is for the employee to make

it reasonably clear what right he claims has been infringed and that the claim is made in good faith, whether or not the right was in fact infringed.

53. The Claimant has stated in his grievance that he was seeking outstanding pay and pay slips.
54. The relevant statutory rights are those protected by s. 104 ERA. This includes those rights at s.104(4). I refer to s.104(4)(a):

The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal,

55. The right to be paid wages is a right conferred by this Act for which the remedy is a complaint to the employment tribunal.
56. I am satisfied of the following:
 - 56.1. That the reason or principal reason for dismissal was that the Claimant asserted a statutory right.
 - 56.2. I am satisfied that the Claimant did assert a right and that the right asserted was a statutory right falling within s.104(4) ERA
 - 56.3. I am satisfied that the right was infringed in that the making of the allegation in the Claimant's grievance regarding his pay to the Respondent was the reason or the principal reason for his dismissal. I am satisfied that that reason was made clear to the Respondent in the Claimant's grievance.
 - 56.4. It is specifically provided in s.104(2) that if the employee's claim is made in good faith, it does not matter whether or not he had the right or it was infringed. I am further satisfied that the allegation to the Respondent was made in good faith. I accept the Claimant's evidence that he had the right to be paid and that that right had been infringed as he was unpaid and sought to recover the outstanding monies due to him.
 - 56.5. It is my conclusion that the Claimant will be regarded as unfairly dismissed.
 - 56.6. In considering the financial losses to the Claimant, I am satisfied that he has used a reasonable endeavour to mitigate his losses. He has taken reasonable steps to replace his lost earnings by seeking alternative work for a period of 6-months.
 - 56.7. I am of the opinion that the Claimant should be compensated for a period of 6-months from the date of his dismissal. The Claimant provided evidence of his endeavours to find work within the bundle and that he was seeking similar work to that from which he was dismissed. This is a reasonable period in order to seek alternative similar work.
 - 56.8. No further losses are awarded to the Claimant. Credit is given to the Claimant for the employment he did obtain, however I am of the opinion that it was reasonable for him to widen his search for employment,

including seeking temporary employment. From the oral evidence of the Claimant, he did not widen his search. It is not just or equitable in the circumstances to award any further losses.

- 56.9. There is no contention that the Claimant would have been dismissed in any event or any submission that his compensation should be reduced in any way.
- 56.10. I am satisfied that the Acas code of practice on disciplinary and grievance procedures did apply. The Respondent failed to address the concerns raised by the Claimant in his grievance at any time.
- 56.11. I am satisfied that the failure to address the Claimant's grievance was unreasonable and that it is just and equitable to increase the award payable to the Claimant. I am of this opinion that this increase will be 10%.

Remedy

- 57. The Claimant was earning an annual salary of £26,500.
- 58. His monthly gross pay was £2,208.33.
- 59. His gross weekly pay was £509.62
- 60. His gross daily pay was £101.92
- 61. The Claimant was subjected to an unauthorised deduction of wages. For his unauthorised deductions for the non-payment of salary up and until 11th October 2021 the Claimant is awarded £2,819.87 Gross. The calculation is the amount of payment on a gross basis and the Respondent shall make any deductions which are due for tax and national insurance contributions before payment is made to the Claimant.
- 62. The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £509.62 gross. The calculation is the amount of payment on a gross basis and the Respondent shall make any deductions which are due for tax and national insurance contributions before payment is made.
- 63. The Claimant was automatically unfairly dismissed for asserting a statutory right. The Respondent is ordered to pay damages to the Claimant and the award is 6-months' salary, less any earnings during this period.
 - 63.1. 6-months' salary is the amount of £13,250 gross.
 - 63.2. Between the period of 18 October 2021 and 18 April 2022, the Claimant received a total of £644.15.
 - 63.3. The Respondent is ordered to pay the Claimant (£13,250 - £644.15) £12,605.85 gross. This sum is to be paid net and the Respondent shall make any deductions that are due for tax and national insurance contributions before payment is made to the Claimant. This is the compensatory award.

63.4. An uplift for the breach of the Acas code of practice for disciplinary and grievance procedures is 10% on the compensatory award. This amounts to £1,260.56.

64. The claim in respect of holiday is not well founded and does not succeed.

65. There are no benefits or recoupment to take into account.

66. A summary table of the awards are as follows:

Claim	Gross award	Gross Total Award
Unauthorised deduction of wages	£2,819.87	
Damages for breach of contract	£509.62	
Automatic Unfair Dismissal	£12,605.85	
Uplift for the breach of Acas code	£1,260.56	
Holiday Pay	£0	
Total Gross Award:		£17,195.90

67. The total gross sum awarded to the Claimant is the sum of £17,195.90.

**Employment Judge Illing.
Dated: 14 February 2023**

SCHEDULE 1
LIST OF ISSUES

1. Unauthorised deductions

- a. Were the wages paid to the Claimant less than the wages he should have been paid?
- b. Was any deduction required or authorised by statute?
- c. Was any deduction required or authorised by a written term of the contract?
- d. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- e. Did the Claimant agree in writing to the deduction before it was made?
- f. How much is the Claimant owed?
- g. Has there been a previous payment and is there evidence of this?

2. Holiday Pay (Working Time Regulations 1998)

- a. Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended?
- b. What was the Claimant's leave year?
- c. How much of the leave year had passed when the Claimant's employment ended?
- d. How much leave had accrued for the year by that date?
- e. How much paid leave had the Claimant taken in the year?
- f. Were any days carried over from previous holiday years?
- g. How many days remain unpaid?
- h. What is the relevant daily rate of pay?

3. Remedy

- a. How much should the Claimant be awarded?
- b. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- c. Did the Respondent or the Claimant unreasonably fail to comply with it?

- d. Is it just and equitable to increase or decrease any award payable to the Claimant?
- e. By what proportion, up to 25%?

4. Wrongful dismissal / Notice pay

- a. What was the Claimant's notice period?
- b. Was the Claimant paid for that notice period?
- c. If not, was the Claimant guilty of gross misconduct? Did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

5. Unfair dismissal

- a. Was the Claimant dismissed?
- b. If the Claimant was dismissed, what was the reason or principal reason for dismissal?
- c. Was it a potentially fair reason?
- d. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?
- e. Was the reason or principal reason for dismissal that the Claimant asserted a statutory right?
- f. What was that right?
- g. Does it fall to be within s.104(4)ERA?
- h. Was the right infringed?
- i. Was the claim to that right made in good faith?

6. Remedy for unfair dismissal

- a. Does the Claimant wish to be reinstated to their previous employment?
- b. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- c. If there is a compensatory award, how much should it be? The Tribunal will decide:
- d. What financial losses has the dismissal caused the Claimant?

- e. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- f. If not, for what period of loss should the Claimant be compensated?
- g. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- h. If so, should the Claimant's compensation be reduced? By how much?
- i. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- j. Did the Respondent or the Claimant unreasonably fail to comply with it?
- k. If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
- l. If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
- m. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- n. Does the statutory cap of fifty-two weeks' pay or £86,444 apply?
- o. What basic award is payable to the Claimant, if any?
- p. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

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