



EMPLOYMENT TRIBUNALS

Claimant: Mr I Kamara

Respondent: Immortals Solutions Limited

Heard at: Bury St Edmunds via CVP

On: 25/1/23

Before: Employment Judge Beck

Representation

Claimant: In Person

Respondent: Mr Pineiro (Managing Director)

JUDGMENT having been sent to the parties on 27/2/23, after oral judgment on the 25/1/23, and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 on the 28/2/23, the following reasons are provided:

REASONS

1. Both parties accept that the claimant was employed by the respondent as a fire marshal, at a rate of £9.50 per hour. The claimant signed a contract of employment and non-disclosure agreement on the 14/6/21.
2. I have considered a 71-page bundle, an undated witness statement from the claimant, and a witness statement from the respondents managing director, Mr Pineiro dated 24/1/23. The claimant brings a claim for non-payment of wages.
3. The parties both appeared in these proceedings in person, gave evidence on oath to the tribunal and were cross examined by each other.
4. It is accepted the claimant was paid on the 19th of every month and received the pay due to him from the respondent on the 19th June and 19th July 2021.
5. It is agreed by the parties that on the 5/7/21, the claimant started work at another location, the Hampstead Square site, at the request of his employer the respondent. The respondent sent the claimant and others to work there under the terms of a service agreement it had with another company, Insight Risk Management.

6. The claimant's position is that he worked for the period 5/7/21 - 8/8/21, at the Hampstead Square site for the respondent. He claims he was not paid by the respondent for working the period 19/7/21 - 8/8/21.

7. The claimant's position is his last day of work for the respondent was the 8/8/21. Both parties agree the respondent did not offer the claimant any work after the 8/8/21. The respondent's position is the 31/8/21 was the end of the claimant's contract.

8. Both parties accept, if the claimant's complaint is successful, it would be for 16 days worked between the 20/7/21 and 8/8/21, based on an 11-hour working day at £9.50 per hour. (11 hours x £9.50 = £104.50 gross day rate. £104.50 x 16 days = £1,672.00 gross)

9. The issues for me to determine were whether the claimant worked the 16 days claimed, and whether he was entitled to his salary for the period from the respondent. The respondent alleged the claimant was in breach of his contract, failing to attend work for the respondent / stating he was unavailable for work with the respondent / was working for Insight Risk Management instead. If any of the respondent's allegations were correct, did this entitle the respondent to treat the claimant as having committed gross misconduct / be in breach of contract by not attending therefore entitle the respondent to treat the contract as terminated with no liability for wages for the period referred to?

10. The claimant has presented photos of 3 timesheets for weeks ending 25/7/21, 1/8/21, and 8/8/21. The claimant confirmed in evidence that he had gone back to the Hampstead Square site, and sought permission from Insight Risk Management to take photos of the documents.

11. The three-time sheets show the claimant's name recorded every week, with a PIN number of 00517, showing a record of 16 days being worked over the 3 weeks, of predominantly 12-hour shifts, with an hour being taken for a break. The same PIN number is recorded against the claimant's name in all 3-time sheets.

12. Both parties accepted in evidence that PIN numbers beginning with '00' were identified as employees working for the respondent. Other staff on site working for different companies were identified on the timesheets by differently formulated numbers.

13. I find that the 3 weekly timesheets, which are contemporaneous documents at the time of the dates said to have been worked, confirmed the claimant's evidence that other employees of the respondent were transferring / or beginning to work for Insight Risk Management as their new employer. The respondent accepted in his evidence this was the reality of what was happening.

14. On the timesheet week ending 25/7/21, only 2 out of the 18 staff listed had PIN numbers which did not start in '00'. In respect of the timesheet ending 1/8/21, 3 out of 13 staff had PIN numbers not starting in '00', but a further 2 staff were in the process of transferring / working for Insight Risk Management. The timesheet for week ending 8/8/21, showed 6 out of the 8 listed staff had either PIN numbers which did not start in '00', or were in the process of becoming employees of Insight Risk Management.

15. I accept the timesheet records in their entirety as evidence the claimant worked for 16 days, but note particularly week ending 8/8/21, I find that the claimant was only one of two employees who still had a PIN number starting in '00'.

16. The claimant has produced an e mail from the respondent dated 4/8/21, which sets out his shifts for the period 2/8/21 - 8/8/21. I find this provides evidence the claimant was still employed by the respondent, and being treated as an employee. The shifts set out in the respondents e mail also accord with the shifts set out in the third timesheet, which shows the claimant worked shifts of 7.00am until 7.00pm for the period Tuesday 3/8/21 to Sunday 8/8/21.

17. The respondent in his evidence has referred to reports from Insight Risk Management that the claimant was not present on site, but is unable to substantiate which days and dates this relates to. The respondent states he is unable to produce WhatsApp messages which would verify this, due to his phone being stolen during a knifepoint robbery in January 2023.

18. The respondent also referred to the claimant not switching his GPS tracking system on, on his phone, to enable him to be tracked, the claimant says this was switched on and he could be tracked at any time. No evidence has been produced from the internal work system know an 'Parim', to show that the claimant was absent from work on any of the 16 days claimed.

19. I accept the claimant gave candid evidence he was asked to transfer / work for Insight Risk Management, and refused to do so, despite being put under pressure by Insight to do so. The respondent in his evidence referred to a letter he said he had from Insight, which stated the claimant was an employee of theirs, but this letter has not been produced.

20. The respondent accepted in cross examination that the letter he adduced in evidence from Astle Paterson Solicitors dated 23/12/21, whilst stating the claimant had worked for them on occasion, did not confirm the claimant worked for them during the July / August 2021 period.

21. I accept the claimants account that he worked for Insight Risk Management in September 2021 for 3 days. He looked for work towards the end of August 2021, after not being offered work by the respondent since the 8/8/21. It is consistent with the claimant's evidence of only doing a few extra days in September 2021, because he was due to return to college around this time. The respondent's evidence that the claimant's contract was terminated on the 31/8/21 supports the claimant's version, and the days were undertaken in September. I do not find that the claimant worked for Insight Risk Management in July / August 2021, I find he was still employed by the respondent at this time.

22. Overall I do not find that the claimant was in breach of his contract. I do not find he failed to attend work / or said he was unavailable for work at this time. I do not find he was working as an employee of Insight Risk Management at this time. I find that the claimant had worked the 16 days for the respondent that he claimed, taking into account the contemporaneous time sheets produced, and e mail from the respondent dated 4/8/21. The respondent was liable as his employer to pay him for the 16 days worked. Therefore, the claim is well founded and I order the respondent to pay the claimant £1,672.00 gross in unpaid wages,

I confirm this judgment has been electronically signed

Employment Judge Beck

Date: 21/3/23

REASONS SENT TO THE PARTIES ON

31 March 2023

FOR THE TRIBUNAL OFFICE