



EMPLOYMENT TRIBUNALS

Claimant: B VADERA

Respondent: UNITED BISCUITS (UK) LTD T/A PLADIS

Heard at: Watford Employment Tribunal (video)

On: 29 March 2023

Before: Employment Judge Din (sitting alone)

Representation

Claimant: Representing himself

Respondent: David McCrum, David McCrum Ltd

JUDGMENT having been sent to the parties on 15 April 2023 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 Claimant is Bharat Vadera (**Claimant**). The Claimant represented himself at the hearing.
2. The Respondent is United Biscuits (UK) Ltd, T/A Pladis (**Respondent**). The Respondent is a food manufacturing company. The Respondent was represented by David McCrum of David McCrum Ltd.

Issues

3. The issues to be determined by the Tribunal were:
 - a. Whether there was a breach of the Claimant's contract;
 - b. What damages should follow if there was a breach of contract; and
 - c. Whether any other costs should be payable to the Claimant in light of the Respondent's conduct.

Procedure, documents and evidence heard

4. By a claim form presented on 10 July 2022 the Claimant claimed for compensation for financial loss due to changes in National Insurance caused by late settlement by the Respondent company. The Tribunal is asked to award the following.
 - a. Compensation of “at least” £1,380.72. This is stated to be the amount that, according to the Claimant, the Respondent attempted to deprive the Claimant of.
 - b. Compensation for time spent on the matter of £1,001.
 - c. A costs order or a “preparation time” order.
5. In addition, the Claimant requested that the Tribunal:
 - a. Require the Respondent to explain why it took them four attempts at correcting their National Insurance calculation.
 - b. Fine the Respondent for its wrongdoing and report them to the relevant authorities.
6. The Respondent’s response form and attached defence to claim is dated 19 August 2022. In essence, the Respondent resisted the claim because the Respondent considered that the appropriate sums had been paid to the Claimant.
7. There was an agreed bundle of 191 pages. This was supplemented by the Claimant on the day of the hearing with further correspondence regarding the bundle between the Claimant and Mr McCrum consisting of:
 - a. Emails between 19 January and 9 February 2023; and
 - b. Emails between 2 March and 9 March 2023.
8. On 15 March 2023, the Claimant sent the Tribunal (copied to the Respondent) a witness statement of the Claimant.
9. Also on 15 March 2023, the Respondent sent the Tribunal (copied to the Claimant) two witness statements on behalf of the Respondent. These consisted of:
 - a. A witness statement of Ben Platton, an Employee Relations Manager at the Respondent;
 - b. A further witness statement of Ben Platton, relating to remedy and costs.

Facts

10. The Claimant started working for a predecessor of the Respondent on 30 August 2011. He worked as an Advanced Team member at the Respondent’s site in Harlesden.
11. On 26 January 2022, the Claimant’s employment with the Respondent ended. On 7 February 2022, the Claimant received a leaving letter from the

Respondent setting out, among other things, how much holiday pay the Claimant was entitled to.

12. There then followed a dispute as to how much was payable to the Claimant. In summary, the following occurred. I have not set out every interaction between the Claimant and the Respondent in relation to this matter but only the key ones.
- a. The 7 February 2022 letter stated that the Claimant had accrued 19 days untaken leave in the holiday year 1 April 2021 to 31 March 2022, plus two days carried over from the holiday year 1 April 2020 to 31 March 2021. These last two days were at the Respondent's discretion due to the Claimant's long term absence from 1 March 2021 to 6 August 2021 and his inability to take six days in the 1 April 2020 to 31 March 2021 holiday year.
 - b. In light of the above, on 18 February 2022, the Claimant was paid the gross sum of £4,832.52 for 21 days' accrued untaken holiday.
 - c. The Respondent failed to include two days additional holiday due to the Claimant as a result of the Claimant's length of service. The Claimant initially contacted the Respondent about this on 17 February 2022 and following further engagement, the Claimant was paid the gross sum of £460.24 for those additional two days on 18 March 2022.
 - d. Also on 17 February 2022, the Claimant stated that he was entitled to a further four days' holiday carried over from the holiday year 1 April 2020 to 31 March 2021. After considerable backwards and forwards, and delays on the part of the Respondent, the Respondent agreed to pay the Claimant for those four days and on 13 May 2022, the Respondent was paid the gross sum of £920.48.
 - e. On 25 April 2022, the Claimant wrote to Fraser Jones, Manufacturing Manager, complaining about the way his claim for holiday pay had been dealt with. In a letter sent on 24 May 2022, Mr Jones apologised for the problems that had arisen and accepted that the Respondent had made errors.
 - f. The Claimant then wrote to Katy Finlayson, the factory General Manager, (dated 10 June 2022, stated by the Respondent to have been received on 24 June 2022). The Claimant referred to the errors and delays in the payment of his holiday pay, and alleged that he Respondent had deliberately misled him and had attempted to deprive him of his holiday entitlement.
 - g. The Claimant also stated that, because the payment of £920.48 had been made in the 2022 to 2023 tax year, the Claimant suffered a disadvantage due to changes in the tax and National Insurance regimes over the relevant period. This followed considerable correspondence between the Claimant and the Respondent, and enquiries made by the Claimant.
 - h. Ms Finlayson replied to the Claimant on 12 July 2022 stating that there was no deliberate attempt to mislead him or to deprive him of his holiday entitlement. She agreed to reimburse him in respect of the tax and National Insurance in the sum of £11.51. It later transpired, following the Claimant's claim, that this was incorrect, and that there should have been an additional £16.20 paid. This was paid by the Respondent on 15 September 2022, again following a great deal of correspondence.

- i. The Claimant is now claiming that a further £2.78 is due to him.

Conclusions

Time limits

13. The Respondent has argued that under Article 7(a) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, a breach of contract claim must be brought within three months of the employee's employment termination date. The Claimant's employment terminated on 26 January 2022 but he did not start the ACAS early conciliation process 6 July 2022. According to the Respondent, this means that the claim is out of time.
14. A breach of contract claim can be brought in the circumstances set out in Article 7(c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Given the ongoing correspondence with the Respondent, something that did not end until the final payment was made on 15 September 2022, I find that it was not reasonably practicable for the Claimant to bring his claim until he did and that the claim was presented within such further period as the Tribunal considers reasonable.

Breach of contract

15. The Respondent has admitted that it was in breach of contract.
16. In terms of damages, the purpose of damages for breach of contract is to put the Claimant in the position they would have been in, had both parties performed their obligations according to the contract.
17. I find that the appropriate sums have been paid to the Claimant with respect to holiday pay, and the any disadvantage that the Claimant suffered as a result of tax and National Insurance changes over the relevant period. There is a remaining dispute with respect to £2.78. I find in favour of the Respondent in this regard.
18. The Claimant has set out in detail how he has expended considerable time and energy in dealing with the matters that gave rise to the dispute, often as a result of errors and delays on the part of the Respondent. The Claimant has not had to give up any paid work as a result of the dispute.
19. I agree that the Claimant has expended considerable time and effort in attempting to right the situation. There has been delay and error on the part of the Respondent – something that the Respondent has admitted to. Damages awarded for a wrong can potentially take account of expenses that the Claimant has incurred in attempting to mitigate his loss. In light of this, I awarded the Claimant a further £300, taking into account the amounts that the Claimant has claimed in this regard by way of time spent on this matter.
20. In terms of the other remedies that have been sought by the Claimant:
 - a. As the Respondent has paid everything that the Claimant is owed, no further damages are awarded.

- b. With respect to any stress that the Claimant may have suffered, I have not seen cogent evidence of this, even if damages for injury to feelings or psychiatric injury caused could have been awarded (which the cannot in the current case).
- c. In relation to requiring the Respondent to explain why it took them four attempts at correcting their National Insurance calculation, the Respondent has provided a detailed explanation as to what happened and has acknowledged its errors in this regard. Even if I could make a further order here, I impose no further requirements on the Respondent in this respect.
- d. The Claimant asks that I fine the Respondent for its wrongdoing and report them to the relevant authorities. The Tribunal does not have the power to fine in these circumstances. Further, the matter has been heard in public and the judgment and these reasons will be published. No further action is therefore required.

Costs

21. Finally, I find that no costs should be payable by the Claimant to the Respondent or the Respondent to the Claimant in accordance with Rule 74 to 84 of the Employment Tribunals Rules of Procedure 2013. This is because the relevant grounds for considering costs (as set out in the Rules) have not been made out and I do not consider it appropriate for the Tribunal to exercise its discretion to make an award of costs in this matter.

Employment Judge Din
12 June 2023

REASONS SENT TO THE PARTIES ON

18 June 2023

GDJ
FOR THE TRIBUNAL OFFICE