



EMPLOYMENT TRIBUNALS

Claimant: Mr Simon Hedley

Respondents: Birds (Derby) Limited

Record of a Hearing by CVP at the Employment Tribunal

Heard at: Nottingham

Heard on: 5 May 2023

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: No appearance

Respondent: Nickie Elenor, Solicitor

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The claim for unlawful deduction of wages fails and is dismissed.
2. The claim of breach of contract fails and is dismissed.

REASONS

The Claim

1. The Claimant presented his claim to the Tribunal on 17 January 2023. He had been employed by the Respondent as Area Manager from 31 October 2022 and until his dismissal on 22 November 2022.
2. In his claim form he did not tick the box for notice pay but said that he was making a claim of “breach of contract claim in terms of incorrectly ending my employment and failure to provide any support during a bereavement”.
3. His claim had been accepted and served on the Respondent and the matter listed for a hearing today. A notice of hearing was sent to the Claimant on 1 February 2023 and Case Management Orders were set out in the letter which included that the Claimant should provide a document setting out how much he was claiming and a written statement setting out the facts relevant to his case.
4. The Respondents filed a response to this claim on 17 February 2023. They denied that the Claimant had been dismissed wrongfully or otherwise and said that they had not made any unlawful deductions from his pay.
5. On 6 March 2023 the Claimant provided some further details. He said that he was not claiming unfair dismissal, but he was claiming breach of contract.
6. He acknowledged that he had not signed his contract of employment.
7. He said that he had been treated unfairly by being dismissed and claimed that he should be reimbursed for expenses he had incurred whilst he had been employed.
8. He also alleged that he had not received any payslip and said he should be paid compensation for the way he was treated.
9. The case remained listed for hearing today.
10. On 11 April 2023 the matter was considered by my colleague Employment Judge Adkinson. The parties were written to on 25 April 2023 when he reminded the Claimant that he should comply with the Orders made and said that the matter would be referred to another Judge if he did not comply.
11. On 3 May 2023 the Claimant wrote to the Tribunal to say that he had no witness statement to provide and had no documentation to rely on.

The Hearing Today

12. The Respondent wrote to the Tribunal on 3 May 2023. They complained that the Claimant had failed to submit a witness statement or supply documents that he intended to rely on at the forthcoming hearing. They requested a postponement of the hearing to review the Claimant’s conduct.

13. The Claimant said that he did not object to the postponement of the hearing.
14. The matter was referred to me and having reviewed the correspondence between the parties and the Tribunal I declined to adjourn the hearing. I said that it would proceed.
15. In response the Claimant (in an email dated 4 May 2023) said that he would not be attending the hearing. He said that he was unable to attend a Tribunal after agreeing to postpone it. He said that he had informed his current employer that he would be at work and that he was not prepared to harm the relationship with his current employer by “messaging them around”.
16. He went on to say, “please feel free to make a decision in my absence, which by the tone of email has already been made”. He asked me to take certain matters into account but did not produce any evidence in support of any of the matters that he raised. He had still not provided any statement in support of his case as per the orders of the tribunal.
17. At the hearing today the Claimant did not attend. I decided not to contact the Claimant as he had made it clear that he would not attend. Ms Elenor, Solicitor together with her witness, Mr Frost, Head of HR attended the hearing.
18. I had before me a witness statement from Mr Kevin Frost dated 4 May 2023 who was employed by the Respondent as Head of HR. The statement had been served upon the Claimant. I also had a bundle of documents that had been prepared by Ms Elenor. I heard sworn evidence from Mr Frost and was satisfied with the evidence that he gave me. I had read the Claimant’s ET1 and his further details that he had provided later and took those into account.

My Findings of Fact

19. The Respondent had placed a vacancy for the role of Sales Area Manager with the Agency 2fawcett in September 2022. The Respondents were sent a CV for Mr Hedley which is at pages 31-33.
20. Mr Frost told the agency that they wanted to interview Mr Hedley on 14 September 2022. The interview would be conducted by Jason Samuel, Operations Director and Mel Hughes, Shop Operations Manager. Someone from the agency called Mel and told her that Mr Hedley’s mother had passed away and he was therefore unable to attend the interview.
21. The interview was then re-arranged for 20 September 2022. Jason and Mel told Mr Frost that the interview had gone well and they wanted to offer him the role. At their request Mr Frost prepared an offer letter and contract of employment which was sent to him (pages 27-30). He was asked sign and return the contract to the Respondents but failed to do so.
22. Mr Hedley’s employment commenced on 31 October 2022. He attended the Company’s Head Office and undertook a day of induction.

23. On 1 November 2022 Mr Frost noticed that the reference that they had received from Mr Hedley's former employer, Travelex dated 27 October 2022 (page 34) contained different dates of employment to those provided by the Claimant on his CV.
24. On 2 November 2022 the Claimant did not attend work. He sent a text to say that he would not be in work today because his mother had been rushed into hospital (page 35). This appeared to contradict the information concerning his mother having passed away prior to the previous interview.
25. The Claimant was then absent from work and never returned. Over the next two weeks the Respondent received several contradictory texts (pages 35-36).
26. He should have returned to work on 17 November 2022 but did not do so. He did not contact the Company and Mr Frost wrote to him inviting him to attend a meeting on 22 November 2022 (page 39).
27. Mr Hedley did not contact Mr Frost or anyone else at the Respondent Company after 14 November 2022 and he did not attend the meeting or ask to rearrange or hold the meeting remotely.
28. On 22 November 2022 Mr Frost decided that Mr Hedley did not wish to continue his employment and wrote to him to confirm that his employment had ended on 22 November 2022 (page 40).
29. On 24 November 2022 Mr Hedley finally contacted Mr Frost. He sent an email (page 41). He said that it was unfair to assume that he had resigned but accepted that his employment had ended by providing information regarding the return of Company property. He said that he would be contacting ACAS about several issues, in particular the lack of consideration for his welfare.
30. The Claimant was sent a payslip on 30 November 2022 (page 48) and a P45 (page 46-47) and he was paid for the 2 days' work comprising the first 2 days of his employment amounting to £246.15.
31. He had a Company car during this period but did not return it until 3 December 2022.
32. I have seen the Company's Compassionate Leave Policy (page 43). The policy provides for a discretionary payment for compassionate leave. It is entirely a matter for the Company as to whether they pay the Claimant for compassionate leave.

My Conclusions

33. I am satisfied that the Claimant only worked on 1 day for the Respondent, that is the first day of his employment. He has been paid for 2 days. The rest of the time he was absent without leave. During this period, he failed to keep in touch with his employer and was not entitled to receive any pay and he has therefore not suffered any unlawful deduction of his wages. As he only attended work on the first day of his employment, he could not have incurred any expenses in connection with his employment. Certainly, he has not provided me with any evidence of any expenses

that he might have been entitled to.

34. The Respondents have not breached the Claimant's contract in any way. He did not sign his contract of employment and he is only entitled to statutory notice pay. As he was in employment for less than one month he is not entitled to any notice.
35. The Respondents have not breached any of their other procedures. The Claimant was not entitled to any payment under the Company's Bereavement Policy Scheme and there are no other entitlements due to him under the terms of his contract.
36. In all the circumstances of the case all his claims fail and are dismissed.

Employment Judge Hutchinson

Date: 24 May 2023

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