EMPLOYMENT TRIBUNALS

Claimant: Mr H Mainali

Respondent: New Godalming Sushi Ltd

Heard at: Watford Employment Tribunal (in public; in person)

On: **3 April 2023**

Before: Employment Judge Quill (at the hearing centre)
Ms B Robinson; Mr W Dykes (both by video)

Appearances
For the Claimant: In Person
For the respondent: Mr H Dhorajiwala, counsel

JUDGMENT

Judgment and reasons were given orally on 3 April 2023, and judgment was sent. Written reasons have been requested, and these are they.

REASONS

1. This was a hearing which was mainly in person, except that the two non-legal members attended by video. It was a remedy hearing which followed on from panel's previous liability decision.

2. As set out in liability decision, the Claimant was entitled to be given 6 months' notice of dismissal. He was dismissed without being given 6 months' notice.

3. He was told on 22 January 2020 that his contract was terminated with effect from 31 January 2020. What he should have been given was notice to expire 22 July 2020.

4. We said in the liability reasons why the net amount of earnings that the Claimant ought to have been receiving during the notice period was £1500 per month.

5. The Claimant has suggested that there should be an additional £200 per month. He acknowledges that it was not set out on his payslips. He also acknowledges that it was not salary. He says that it was an amount that he was entitled to receive for travel costs.

6. However, we do not allow this, and we continue to treat the net loss as being £1500 per month. There are several reasons for this, any one of which was potentially sufficient on its own.
   a. The document on page 251 of bundle is the partnership deed, which each signed, and is discussed in the liability reasons. It is from April 2019. There are two crossed out parts which are each initialled. The parties do not agree about whether this was done before or after the document was signed. But our decision is that it makes no difference, because it is clear that the parties intended to, and did, enter into this agreement on the basis that those parts were crossed out and did not form part of the agreement. The agreement was that each of the Claimant and Mr Lohani would receive £1500 net salary, and neither would receive a further £200 [for Rent/Travel in the Claimant's case and for Fuel/Travel in Mr Lohani's].
   b. Prior to this document, we do accept that the company (the Respondent) had been contributing towards the rent of a property at which the Claimant was residing for the better performance of his duties. The Respondent was paying that directly to the landlord of the property. There is a dispute about how much was paid (Mr Lohani arguing it was more than the Claimant's suggested £400 per month figure). However, we do not need to resolve what the precise cost to the company, or benefit to the Claimant, was, because the agreement changed. The Claimant ceased living in the accommodation and the Respondent ceased paying for it (and ceased deducting a contribution from the Claimant's wages). The Claimant resumed living at home and therefore had a longer commute, but the Respondent did not agree to pay for the costs of that. The Claimant's aspiration was that the Respondent would agree to pay £200 per month, but, by the end of the negotiaitons, that was not agreed. The old arrangement (for accommodation) was part of what was replaced by the new arrangement in the Deed signed on 26 April 2019.
   c. The Claimant never received the disputed £200 per month.
   d. Furthermore, even if there had been an agreement that the Respondent would pay £200 for travel because of the extra commute, during the notice period, he was not travelling.
   e. Finally, at the preliminary hearing, EJ Reindorf decided that the claim as presented did not include the claim for travel allowance. She heard an application to amend, and refused it. Therefore, arguably, this element of the claim had already been disposed of. However, we rejected it on the merits in any event (on the basis of being part of alleged damages for failure to give notice).

7. The Respondent's bundle, at page 156, shows a calculation that the part of the January 2020 payment attributable to the period after 22 January 2020 was £435.48. We agree with that calculation.

8. The Claimant has not supplied satisfactory documentary evidence about the start date of his Universal Credit. However, he has given evidence oath that the first payment was the £1308.21 that was paid in July 2020. Doing the best we can with the available information, we have treated that as a payment for the 31 days of July and calculated a daily rate. We agree with the

Respondent's calculations, and, within what should have been the notice period, the Claimant received £886.21 as Universal Credit.

9. This was based on the entire household's needs. However, prior to dismissal, the Universal Credit was zero, and so the entire amount should be taken into account when assessing the damages suffered as a result of the breach of contract.

10. So the net earnings during the full notice period would have been £9000.00 (6 x £1500).

11. From that we deduct £435.48 (payment made by the Respondent, attributable to notice period) and £886.21 (payment of Universal Credit, attributable to notice period)

12. The recoupment regulations do not apply.

13. In terms of the Claimant's arguments as per page 153 of bundle (which we took as his evidence in chief) were considered and rejected.
    a. Notice period was 6 months, not 8 months.
    b. We were not satisfied that, for May 2018, there was an agreement that he be paid something greater than that which he actually did receive. This was 11 months before the partnership deed was signed, and it no amount for training was included in that.
    c. The fact that he was not paid in February 2020 is already taken into account in the calculation of damages for failure to give notice.
    d. Any dispute about share ownership, or payments for shares, is a separate matter to that which we were dealing with, and is not a dispute within the Tribunal's jurisdiction. It is not a claim for damages based on his employment contract.
    e. His alleged legal costs are also not a claim for damages based on his employment contract. It is up to him to make a costs application if he decides to do so.
    f. We have not decided that the Claimant failed to act reasonably to attempt to mitigate his losses during the notice period. (The Covid pandemic started not long after the end of his employment with the Respondent). We accept that he did not work during the period up to 22 July 2020, but the fact that he remained unemployed until May 2021 is not relevant.
    g. His claim for loss of reputation – sometimes known as stigma damages – fails on the facts. A claim for a sum of money to reflect the damages caused by breaches of contract which have damaged the Claimant's reputation and made it more difficult to find work (at the same rate of pay) in the future can succeed in appropriate circumstances. However, in this case, we dealt, in the liability reasons, with correspondence and discussions with Kelly Deli and Waitrose security staff. There is no evidence (and it is inherently unlikely) that anything the Respondent (or Mr Lohani) said to Kelly Deli or Waitrose security staff would come to the attention of prospective employers, or have any effect on the Claimant's employability or job search. There is no evidence that he would have obtained a job more quickly, but for comments made about him to Kelly Deli or Waitrose security staff.

14. The damages to which the Claimant is entitled is therefore £7678.31.

15. The payment does not have to be made until we have decided on the costs application.

EMPLOYMENT JUDGE QUILL

Date: 7 July 2023

Sent to the parties on: 11 July 2023

For the Tribunal Office