



THE EMPLOYMENT TRIBUNALS

Claimant Mr J Rankin

Respondent Giant Professional Limited

Heard at Newcastle upon Tyne Hearing Centre (via CVP video link)

On 7 July 2023

Before Employment Judge SE Langridge

Representation:

Claimant In person

Respondent Mr J Lewis-Bale, counsel

JUDGMENT

- (1) The respondent did not make an unlawful deduction from wages by not paying him wages for the assignment undertaken between 10 October 2022 and 18 November 2022.
- (2) The claimant's claim is dismissed.

SUMMARY REASONS

1. This claim arose from an assignment on which the claimant was engaged in the period between 10 October 2022 and 18 November 2022. His services were provided through the respondent, his employer, to an end user through a series of contracts between the respondent, its client Oscar Associates, and the latter's customer (WWT).
2. In the normal course of events the claimant would have expected to be paid by the respondent for the hours worked while engaged in work on the customer's behalf. Payment would be made at the basic rate based on the National Minimum Wage (NMW), with the option of a discretionary bonus payment depending on payment by the client to the respondent and the profitability of the assignment.
3. It was a term of the claimant's contract that he submit time sheets to the respondent, its client and the end customer in a timely manner, weekly at least. These time sheets were the only record of work done and due to the fact that the engagement largely involved remote working, it was essential that the end user see and approve these time sheets promptly. Unfortunately the claimant did not fulfil his contractual duty to submit time sheets promptly, only after the customer gave two week's notice to terminate the assignment. By the time he attempted to submit the time sheets, two days before the termination date, he found that he was locked out of the customer's system. That impasse has never been resolved, despite efforts by both the claimant and the respondent to obtain information from the customer. The client (Oscar Associates) is caught in the middle, being unable to pay the respondent's invoices for the work done by the claimant, because they in turn have not received authorisation from WWT.
4. The data log information provided by the claimant on receipt from WWT does not provide evidence of the work done, the hours or dates worked. The time sheets he submitted successfully to the respondent and the client likewise do not establish a right to be paid wages for the period in question, as this right starts with the end user's confirmation that the work was done and this is absent.
5. This is not a question of what is fair or morally right, but the claim is governed by specific statutory provisions. Section 13 Employment Rights Act 1996 protects workers against unlawful deductions from wages being made by employers. Section 13(3) defines deductions as being the difference between the amount of wages paid to a worker (here, nil) and the amount of wages "properly payable" on that occasion. The crux of the question for the Tribunal has therefore been what wages were properly payable, and this in turn is a contractual question.
6. Under the claimant's contract, he would have been entitled to a basic wage (plus any applicable holiday pay) based on the NMW for the six weeks when he was assigned to work for WWT. Any additional wages may or may not have resulted, depending on the profitability of the contract for the respondent. However, the right to be paid depended on the claimant fulfilling his duty under clause 3.6 of his terms and conditions of employment, which required him to submit to the client (Oscar Associates) time sheets verified and signed by the customer (WWT) within 5 business days. This was the only way that any of the parties could verify the

amount of work done, and without that evidence there is no basis on which to say that wages were properly payable to the claimant for this assignment. There was therefore no unlawful deduction on this occasion.

SE Langridge
Employment Judge Langridge

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 7 July 2023**

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