



EMPLOYMENT TRIBUNALS

Claimant

Mr Vasilica Mihailescu

Respondent

v Care Signature Christian Homecare
Services Limited

Heard at: Bury St Edmunds

On: 18 & 19 April 2023

Before: Employment Judge Bloom

Appearances

For the Claimants: In person

For the Respondent: Mr Paul Clarke, Employment Consultant

Interpreter: Ms Maria Safronov, Romanian speaking

JUDGMENT

1. The Claimant was an employee working for the Respondent pursuant to a contract of service as defined by s.230 Employment Rights Act 1996.
2. The Claimant's claim of unlawful deduction of wages succeeds. The Respondent is Ordered to pay to the Claimant the total sum of: **£607.75** for wages owed.
3. The Claimant's claim for outstanding holiday pay succeeds and the Respondent is Ordered to pay to the Claimant the sum of: **£306.00**.
4. The Claimant's claim brought pursuant to an alleged breach of Regulation 12 Working Time Regulations 1998 fails and is dismissed.
5. The Claimant's claim for breach of contract / wrongful dismissal fails and is dismissed.

REASONS

1. The Claimant appeared in person before me. The Claimant's first language is Romanian. As a consequence the Tribunal was assisted by Ms Maria Safronov, an Interpreter. I am grateful to her for her assistance throughout the case. The Respondent was represented by an Employment Consultant Mr Paul Clarke. They called one witness, a

Director of the company Ms R Gadi. I heard evidence on oath from the Claimant and from Ms Gadi. I also considered the content of a joint Bundle of documents consisting of 559 pages.

2. The first issue to be determined by me was the Claimant's employment status. The Claimant contended that he was an employee of the Respondent and not a worker as they were suggesting. After some discussion and prior to hearing any evidence, the Respondent conceded that the Claimant was an employee of theirs, working under a contract of service. He was employed between 22 November 2018 and the date of his dismissal, 3 March 2020. He was employed as a Support Worker offering help to the Respondent's clients who are elderly persons, or persons in need of specific medical care. Many of their clients are severely ill and some of them require care as "end of life" treatment. For obvious reasons it is not possible to determine how much care each client will require.
3. It is clear from the evidence, even without the concession made by the Respondent, that the Claimant was an employee pursuant to the provisions of s.230 Employment Rights Act 1996. He worked under the control and instruction of the Respondent throughout. He worked hours that were determined by rosters prepared fortnightly in advance and submitted to the Claimant via an App. Those hours were subsequently recorded on time sheets. From the time sheets the Claimant was paid an hourly rate of £8.50 per hour.
4. Tax and National Insurance contributions were deducted from payments made to the Claimant. He was provided with payslips. His employment was subject to the terms of a company Handbook. He was provided with a document entitled "Terms of Engagement for Homecare Workers" (pages 52 – 61 of the Bundle). I am satisfied that (page 61) the document was signed by the Claimant and dated 23 November 2018. The Claimant did suggest during the course of giving evidence that his signature had been forged, but there was no evidence to support that allegation. It was an allegation, in my judgement, completely without foundation. The section of that document entitled "The Agreement" (page 54) is of particular importance. It states –

"By signing this contract you confirm that you are understanding that the business makes no promise of a minimum amount of work nor working hours and you will work on a flexible basis as and when required."
5. In essence this means that the Claimant was paid for each and every hour worked, but the number of hours each week or each month were never guaranteed. The Claimant contended throughout the Hearing that he was salaried and worked a minimum of 48 hours per week. It was clear that he was confusing that position with a Working Time Regulation "opt-out agreement" signed by him which effectively stated he consented to working more than 48 hours per week if required. Despite the fact I gave a detailed explanation to the Claimant as to the impact of that statement, he

refused to accept that it was anything other than a guarantee of a minimum 48 hours of work per week. He clearly misunderstood the position. The Claimant was an hourly paid employee effectively working pursuant to the terms of a zero hours contract. The Claimant also submitted before me that under the terms of the Employment Rights Act 1996, a zero hours contract was “illegal”. Again, I explained to him that this was not the case. Despite the assistance of the Interpreter, the Claimant appeared not to understand that position, or he refused to accept the position as clearly stated to him.

6. The claim for unlawful deduction of wages was never clarified by the Claimant throughout the Hearing. I explained to him on more than one occasion that the burden of proof was on him to show, on the balance of probabilities, that he worked hours for the Respondent for which he was not paid. He was unable to expand on that point. He was unable to show me any documentation that supported that contention. In contrast to the Claimant’s position, the Respondent helpfully provided me with a Schedule. They had spent some time after the first day of the Hearing working through the Claimant’s time sheets and comparing them with his various payslips. To the Respondent’s credit, at the commencement of the second day of the Hearing they accepted he had not been paid for 71.5 hours of work. At the rate of £8.50 per hour, that amounts to an underpayment of £606.75 gross. The payment is subject to deductions for Tax and National Insurance contributions.
7. In a similar way, the Respondent also undertook additional enquiries in relation to the Claimant’s entitlement to holiday pay. He was entitled to 28 days holiday per annum including bank holidays. Having examined holiday pay already paid to the Claimant, the Respondent accepted that he was owed 36 hours of holiday pay, which again at the rate of £8.50 per hour results in an underpayment of £306.00. That sum is again subject to deductions for Tax and National Insurance contributions.
8. The Claimant also brought a claim pursuant to the provisions of Regulation 12, Working Time Regulations 1998. Those Regulations entitle a worker to have a 20 minute break after six hours of consecutive work per working day. The Claimant alleged he had not been given such breaks. I invited him to produce documentation supporting that allegation. He was unable to produce anything other than to continually repeat orally the claim. I explained to him that the burden of proof was on him to show to me that on the balance of probabilities that he had not been given such breaks. He was unable to do so. As a consequence that claim has to fail and is therefore dismissed.
9. The Claimant was summarily dismissed by the Respondent on 3 March 2020. That decision was taken by Ms Gadi who is a Director of the Respondent. I heard evidence on oath from her. Although the Claimant attempted to give evidence on the same point, his evidence consisted of a general ramble regarding his employment status and other non-related

matters. I have no hesitation in accepting the evidence of Ms Gadi who struck me as an honest and reliable witness.

10. The facts relating to Ms Gadi's decision to summarily terminate the Claimant's employment are relatively straight forward. On 21 February 2020 she received a Report from the Claimant's Line Manager. The Line Manager complained that the Claimant's attitude towards her was *"aggressive, argumentative and rude"*. She was finding it increasingly difficult to deal with the Claimant. She could no longer effectively manage him. There were a number of specific allegations. The Line Manager had asked the Claimant to come in to the offices to discuss work rosters but he refused. The Line Manager gave out employment contracts to all employees, but the Claimant tore his up in her presence stating it was *"illegal"*. The Claimant had been caught smoking at a client's house. Smoking is strictly prohibited at a client's property. Some clients had complained about the Claimant's attitude towards them and had asked the Respondent not to assign him work at their houses in the future. The Line Manager felt that the Claimant's attitude towards his work left vulnerable clients at the risk of being neglected and abused. The Claimant was often late for shifts. The Claimant refused to take part in a training programme. The Claimant continued to demand a higher rate of pay without merit. The Claimant refused to attend Team Meetings. He requested meetings should take place privately with himself. He argued over almost every single instruction given to him. He was rude to work colleagues. He used inappropriate language both verbally and in communications, e.g. WhatsApp messages.
11. On 25 February 2020, the Line Manager made a further report to Ms Gadi relating to the Claimant. The Claimant had not attended work that day. He had received instructions on the roster to attend two clients that morning. The rosters were conveyed to employees via the Respondent's App. If the App did not work, the employee could visit the local office to collect the roster in person. Despite being told to do this, the Claimant refused. He was insisting the rosters be sent by email. It is not possible to send rosters via email. The rosters disclosed confidential information relating to the clients and the submission of these sheets via email would place the Respondent in breach of their data protection obligations.
12. Having received these complaints Ms Gadi attempted to telephone the Claimant on 3 March 2020. She wanted to invite him to a meeting to discuss these concerns. An outline of the allegations was made to the Claimant during the course of that conversation. He was told he could be represented at the meeting if he wished to do so. The Claimant's reaction was to shout down the telephone. He was verbally aggressive and rude to Ms Gadi. Ms Gadi attempted to explain to him that she was a Director of the Respondent and was entitled to instruct him to attend that meeting. The Claimant responded by saying,

"I will not speak to you because you are nothing to me and you have nothing to do with me."

13. He went on to state that he had apparently engaged in some other litigation against a previous employer and had been successful and that he would do the same thing against the Respondent. He continued shouting at Ms Gadi. Before Ms Gadi could say anything further the Claimant ended the call.
14. Ms Gadi gave due consideration to not only the matters reported to her by the Claimant's Line Manager, but also in relation to the conduct of the Claimant during that call. She decided that the Claimant's behaviour was intolerable and resulted in a fundamental breach of the implied terms of his contract of employment. Such was the seriousness of the Claimant's conduct, it constituted gross misconduct. In my judgement the Claimant's conduct did constitute gross misconduct. He refused unreasonably to comply with any instruction given to him by the Respondent. He was rude, abusive and aggressive to a Director of the company. Those matters constitute, in my judgement, offences of gross misconduct. His dismissal without notice was, in all the circumstances, fully justified. As a consequence the Claimant's claim of breach of contract / wrongful dismissal fails and is dismissed.

Employment Judge M Bloom

Date: 26 June 2023

Sent to the parties on: 27 July 2023

For the Tribunal Office.