



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Tawfiq

Invent Enterprises Limited

Heard at: Reading (by CVP)

On: 7 June 2023

Before: Employment Judge Manley

For the Claimant: In person

For the Respondent: Mr M Hashim, director

JUDGMENT

JUDGMENT having been sent to the parties on 24 June 2023 and reasons having been requested outside the time limit in Rule 62(3) of the Rules of Procedure 2013, but the employment judge having decided that it is in the interests of justice, the following reasons are provided:

REASONS

Introduction and Issues

1. The claimant brought claims of unlawful deduction of wages and/or breach of contract in a claim form presented on 2 November 2022. The claim related to his employment with the respondent between 1 May and 30 September 2022 where he had been engaged as a general manager for a new restaurant which was not yet open. In summary the claimant said he had received half pay for four months and had not received the last month's pay. He assessed his loss at £13,750 in the claim form. He also claims for untaken holidays.
2. Other potential claims were mentioned by the claimant before this hearing but he accepted they were either not in the claim form or the tribunal had no jurisdiction.
3. The respondent defended the claim, stating that the claimant had agreed to accept half pay, that he had not worked his notice and making other allegations which do not need repetition here.

4. On this basis, the issue for me was to decide whether the claimant was entitled to any further sums than those he had already received. In short, the disagreement was primarily about whether there was an agreement to receive half pay temporarily or whether that agreement was made on an open-ended basis.

The hearing and the request for reason

5. The hearing was by CVP with the claimant attending in person and the respondent represented by Mr Hashim who is a director. I had a bundle of documents and was sent other documents during the course of the hearing.
6. Mr Hashim had produced a witness statement. The claimant had sent an email on 12 March 2023 with further details of his claim and attaching a number of documents including his contract of employment, voice and video recordings, invoices and screen shots. His loss was now assessed at over £19,000, primarily because interest was added. At the beginning of the hearing, we discussed some matters raised by the claimant in that email such as unfair dismissal and defamation but the claimant readily accepted those were not matters which could proceed.
7. The claimant gave oral evidence as did Mr Hashim and I asked questions of both of them. I gave oral judgment which was confirmed in a short judgment signed by me later that day.
8. The respondent asked for written reasons by email of 9 August 2023. He acknowledged that the request was out of time, stating that he had taken notes of my oral judgment believing that would be sufficient. He indicates an intention to appeal and realises that he would need written reasons for that. Given that the respondent is not legally represented and the delay is relatively short, being about a month out of time, I decided it was in the interests of justice to provide the written reasons.

Facts

9. The relevant facts can be shortly stated. It is agreed that the claimant was employed from 1 May 2022 in the post of general manager in a new venture to build and/or refurbish a new restaurant in Alperton. The employment contract, which the claimant said he insisted upon, states the salary to be £55,000 per annum. It is unnecessary to set out any other provisions, save that holidays were said to be 28 days per annum. The directors who discussed the majority of matters with the claimant were brothers Sayeed Gulzada and Sheer Gulzada.

10. The claimant's case is that he was told that it was anticipated that the restaurant would be open within three months and he agreed to accept half pay for that period. His evidence, which I accept, was Mr Sayeed Gulzada told him he would be receive the balance once the restaurant opened. His case was that he only accepted a delay in payment of half his salary not that he would never receive it. When the claimant asked to be paid in full in August, he was given notice of termination on 2 September 2022, stating that his services were not required after 2 October 2022. The letter which confirmed termination indicated that the respondent was happy with his performance. The claimant's evidence is that he worked that month and was not paid and I accept that is correct. He took no holidays.
11. The respondent's case is that the claimant agreed to be paid at half salary until the restaurant opened which did not happen (and had still not happened by the date of this hearing). Mr Hashim asked me to look at a WhatsApp message from the claimant to Sayeed Gulzada which reads "*Also its not half salary as discussed. The first 3 months we agreed to be paid half has passed and August where my contract resume to full pay as per our agreement*". There is no copy of any answer and I did not hear from Sayeed Gulzada.
12. Mr Hashim told me that he was told about the agreement for the claimant to receive half pay was made by Sayeed Gulzada and that he had no other involvement in it. Mr Hashim believed the claimant did not do any work during his notice period but he did speak to him about work matters in September. He agreed that the claimant didn't take any holidays.

The law and submissions

13. The claim is one for unlawful deduction of wages under Part 11 Employment Rights Act 1996 or, alternatively, that there has been a breach of contract by the respondent when it failed to pay the whole salary and the claimant did not take holidays in line with the contractual provision for 28 days per year.
14. There is little dispute between the parties, which is relevant to this matter, except for two main issues. That is whether the claimant's agreement to accept half pay was open ended and whether he worked during his notice period. I must look at the written information which may assist, the contract and the WhatsApp message and I heard oral evidence to determine what the contractual agreement was.

Conclusions

15. My role is to decide what the agreement between the parties was. First, I have a written document that states the salary was £55,000 per year. Secondly, having heard sworn evidence from the

claimant, I have found that the agreement was that half pay would be paid for three months only and the amount outstanding would then be reimbursed. The claimant brought that agreement to an end, and it would have ended anyway, by informing Sayeed Gulzada that he should be paid in full from August. I did not hear from Sayeed Gulzada and have accepted the claimant's evidence.

16. The complaints of unpaid wages and holiday pay succeed. No tax or national insurance has been deducted and I must only award the sums the claimant is entitled to after those deductions. The suggested net figure for monthly pay for a salary of £55,000 is £3412, although that may not be correct in individual circumstances. I gave some calculations to the parties after I had given oral judgment on the basis of the claimant having received £2291.66 per month. Mr Hashim pointed out, and I treated it as a reconsideration, that the claimant received £2292 per month and I agreed to calculate the sums due on that basis.
17. The respondent is ordered to immediately pay the following sums to the claimant. They are calculated on the basis of the estimated net sums due to the claimant (less tax and national insurance which should be or should have been paid) based on gross monthly pay of £4583.33 (£55,000 per annum) and net £3412.

(1)	Unpaid wages May to August 2022 £3412 less £2292 paid = £1120 x 4	£4480
(2)	Unpaid wages September 2022	£3412
(3)	Holiday pay 11.66 days x £157.47	£1836.10
Total		£9728.10

Employment Judge Manley

Dated 14 August 2023

Sent to the parties on: 17 August 2023

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For the Secretary to the Tribunals