



EMPLOYMENT TRIBUNALS

Claimant: Mr Benjamin James Mathiou

Respondent: Featherstone Rovers Rugby League Football Club Ltd

Heard at: Leeds (By CVP Link)
Before: Employment Judge R S Drake
Representation:

On: 28 July 2023

Claimant: In Person
Respondent: No Response filed.

JUDGMENT

1. I refused the Respondent's application for leave to file and serve a Response out of time for the reasons expressed below.
2. The Claimant has established that he suffered an unlawful withholding of 2 month's pay contrary to Section 13 of the Employment Rights Act 1996 ("ERA") for the period 1 October 2022 to 30 November 2022 amounting to the sum of £1,849.66 gross (netted down to £1,558.33 after deduction of tax, NI and pension contributions – "statutory deductions") totalling £3,699.32 gross the net equivalent being £3,116.66. Thus he is entitled to Judgment after statutory deductions for the total sum of £3,116.66 which the Respondents shall pay to him. His claim in this respect succeeds.
3. Further, and on the same grounds and for the same reasons, because the Respondents withheld contractual bonus payments for 5 matches (played and won for them or their lendees) in the sum of £200 per match and thus the total sum of £1,000 gross (the net equivalent after statutory deductions being £800) the Claimant is entitled to Judgment for £800 which sum which shall be paid by the Respondents. His claim also in this respect succeeds.

REASONS

Introduction

4. The Claimant attended this hearing in person and represented himself. I heard evidence and argument given by him personally. The Respondent, via its CEO Mr M Vickers sought leave to file an ET3 Response to the claims out of time but did not satisfactorily adduce in advance a readable form of ET3 or Grounds of Resistance, asserting that he had tried to do so the day before the hearing, but unsuccessfully.
5. I concluded that the Respondents had not complied with Rule 20 of the Rules of Procedure which expressly requires that an application for leave be accompanied by a draft Response, and I was not satisfied with the sparse explanation given for not responding to the claims before the due date of 20 April 2023. Despite this, I record my recognition of and respect for Mr Vickers' candour and co-operation throughout this hearing.
6. I noted in particular that the Respondents accept the ET1 Cites their correctly recorded Registered Office address and that all the evidence available to the Tribunal today points to the probability that they were served with the claim, but insufficiently explicably and regrettably, had not reacted sufficiently swiftly thereto.
7. Therefore, I permitted Mr Vickers to remain at the hearing so as to answer enquiries I raised of him in the interests of justice as distinct from arguing any form of response to the claims. He clarified certain matters for me insofar as I asked him to do so by way of assisting the Tribunal generally. I record my gratitude to him as set out above.

Findings of Fact

8. I was able to accept the Claimant's unchallenged evidence as it was persuasive and cogent. He produced his fixed term contract of employment dated 17 January 2022 which disclosed his entitlement to an annual salary of £18,000 payable in equal monthly instalments of £1,849.66 gross from the date employment commenced until it ended by effluxion of time on 30 November 2022.
9. However, the contract clearly stipulates that employment could only commence on attainment of an Irish passport (he is a professional Rugby League player of Australian and Irish joint nationality), which though the Claimant was originally confident would enable him to start work legally from the date of the contract, could only be attained on 31 March 2022 after he visited the Irish Embassy to clarify his application.

10. To have worked (played for the Respondent's teams) before that date would have been unlawful. Therefore I found that he had only lawfully worked from 1 April 2022 to 30 November 2022 and that he was entitled to be paid 8 months pay, not the 10 months commencing with the date of the contract. He accepted he had been paid for 6 months but not for February and March nor for October and November.
11. I found that he was entitled to be paid a gross sum of £200 for every match played in which his team won. I noted that the Respondents had sought to argue that this did not mean he could include matches in which he was loaned to another Club.
12. However, I noted also that this was an argument that could not run by the Respondents without leave to permit them to plead so which I had declined to grant.
13. Furthermore, I noted that this argument was incompatible and inconsistent with provisions of the contract which did not expressly provide for a qualification of the right to win bonus if wins were achieved with teams to which he was seconded or lent out, a practice not uncommon in team sports. There is no clear statement to this effect in the contract.
14. The Claimant accepted that he had been paid one (1) win bonus but satisfied me he had played in five (5) further won games, albeit when lent to another team, but that his contract did not preclude the entitlement to claim bonus from the Respondents whatever terms they may have had with Clubs to whom he was lent.
15. I found that the Claimant was thus entitled to six (6) win bonuses (calculated on the gross sum of £200 and the net sum after statutory deductions of £160) but had received only one (1).
16. There is nothing in the contract expressly permitting deduction from pay other than in respect of statutory deductions. I find that the Claimant had neither expressly nor impliedly agreed to permit deductions from his pay other than in respect of statutory deductions from which he could not demur.

The Law and its Application

17. The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 as amended ("ERA") which provides as follows: -

"(1) An employer shall not make a deduction from wages of a "worker" employed by him unless –

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or –
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction ...”
18. The Claimant had done nothing to agree to anything other than statutory deduction – paragraph 16 above refers.
19. I award the Claimant Judgment for unpaid wages for the period of 01 October 2022 to 30 November 2022 and bonus for 5 games won but not paid – both are calculated on the basis of the net entitlement and the Respondents shall account for any statutory deductions made from the gross sums referred to above.

Employment Judge R S Drake

Signed 28 July 2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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