



EMPLOYMENT TRIBUNALS

Claimant: Mr M Georgiev

Respondent: Milegate Ltd

Heard at: London South (Croydon) (via video hearing – CVP)

On: 19th October 2023

Before: Employment Judge McCann

Representation

Claimant: Did not attend

Respondent: Mr Rosser (Counsel) (in attendance only for part of hearing)

RESERVED JUDGMENT

The Claimant's claim for unauthorised deduction from wages is not well-founded and is dismissed.

POSTPONEMENT REQUEST & NON-ATTENDANCE OF PARTIES Employment Tribunals Rules of Procedure 2013

The request for a postponement, made by the claimant's lay representative, is refused and the final hearing today will proceed in the parties' absence.

REASONS

Background

1. The ET1 was presented by the claimant on 22nd February 2021. The case was listed today for a final hearing (this listing having been confirmed at a preliminary hearing on 9th August 2023, and followed up in the written Record of a Preliminary Hearing and Case Management Summary & Orders document, sent to the parties on 11th August 2023).
2. The hearing today is the fourth occasion on which the tribunal has held a hearing in this case (and the fifth listing of the case). Given the non-attendance of the claimant today, and the request (albeit made only informally this morning by the claimant's lay representative, Ms Ruseva, in a telephone call with a clerk to the tribunal) it is necessary to set out the background chronology in some detail, as follows:

- 2.1. First postponement of final hearing: The case was originally listed for its final hearing on 19th January 2022 – that was postponed on the joint request of the parties as they were seeking to resolve matters without recourse to the tribunal.
- 2.2. Second postponement of final hearing: The case was then re-listed for final hearing on 8th August 2022. On 2nd August 2022, the respondent wrote to the tribunal stating that the parties were still hoping to resolve matters without the need for a hearing and that Ms Ruseva was unavailable for the hearing on 8th August 2022 and asking for a postponement and relisting. The application to postpone, therefore, was made in my view on a joint basis again on that occasion.
- 2.3. The application was not dealt with so the hearing went ahead on 8th August 2022 before EJ Clarke. Neither the claimant nor his lay representative (his daughter-in-law, Ms Ruseva) attended. The hearing was converted into a preliminary hearing for case management and the issues were helpfully clarified and set out in the Record of Hearing and case management summary document sent to the parties on 12th August 2022.
- 2.4. EJ Clarke made clear (at paragraph 2) that there would be no further postponement of the hearing at the request of the parties, save by order of a tribunal judge and the final hearing was re-listed for 14th November 2022.
- 2.5. Third postponement of final hearing: On 14th November 2022, both parties attended. The matter was heard before EJ Harmour. It became apparent to the judge that the claimant understood no, or almost no, English and there was no official interpreter. Since Ms Ruseva was the claimant's daughter-in-law and the claimant was not able to confirm to the tribunal either Ms Ruseva's identity or role nor that she was authorised to translate for him, EJ Harmour converted the final hearing into a hearing for case management; she ordered the case be listed for a further preliminary hearing (for 3 hours) at which a Bulgarian language interpreter had to attend.

I note, from the Record of Hearing and Case Management Orders document (paragraph 6) that Ms Ruseva told the tribunal that she had not received all correspondence from the respondent and she confirmed her email address as: medityyy@hotmail.com. The tribunal clerk today confirmed that the Record of Hearing and Case Management Orders document following the hearing on 14th November 2022 had been sent to the correct email address for Ms Ruseva, as confirmed by her on that occasion. That is also the address which the tribunal has continued to use and I note that, today, Ms Ruseva joined the CVP link which had been sent to that same email address yesterday. I am, therefore, satisfied that tribunal correspondence has been sent to Ms Ruseva, as the claimant's lay representative, and is deemed to have been received by her.

- 2.6. Preliminary hearing: The further preliminary hearing ordered by EJ Harmour took place on 9th August 2023 before EJ Henderson. Neither the claimant nor Ms Ruseva attended; but a tribunal clerk managed to make contact with Ms Ruseva who explained that the claimant was abroad dealing with family matters and she had not had time to notify the tribunal. EJ Henderson expressly noted that this was not acceptable conduct. Whilst acknowledging that the claimant is a litigant in person and Ms Ruseva is a lay representative, the judge observed that it would be normal courtesy to let the tribunal know about any difficulties with attendance. EJ Henderson listed the case for a final hearing on 20th October 2023 for 3 hours (and directed the attendance of a Bulgarian language interpreter). The issues were set out again (as detailed in the Case Management Order of EJ Clarke, dated 8th August 2022). The respondent was ordered to prepare a file of documents and the parties were ordered to exchange their witness statements with each other on or before 6th October 2023.
- 2.7. The claimant was ordered by EJ Henderson to write to the tribunal and respondent by no later than 23rd August 2023 to confirm whether or not he wished to continue with his claim; and the Judge directed that, if the claimant failed to contact the tribunal by that date, the final hearing on today's date would proceed in any event and may be heard in the absence of the claimant.
- 2.8. I note that no correspondence has been received from or on behalf of the claimant, in breach of EJ Henderson's order. I again checked the position this morning and this was confirmed by a clerk to the Tribunal having checked the tribunal file and email inboxes. The clerk was also able to confirm that the correct email address for Ms Ruseva had been used for correspondence from the Tribunal.
- 2.9. At lunchtime yesterday, Mr Rosser (counsel for the respondent) emailed the tribunal noting that the respondent had not received correspondence from the claimant (contrary to the direction of EJ Henderson). Mr Rosser asked if the tribunal could confirm the position and noted that the respondent did not wish to incur further costs in arranging representation for today's hearing.
- 2.10. In the meantime, I note that – at the hearing on 8th August 2022 – EJ Clarke had ordered the Respondent to provide, within its disclosure, the claimant's contract of employment or any other document setting out the terms of his engagement and copies of his payslips from September 2019.
- 2.11. In his email from yesterday lunchtime, Mr Rosser had attached a short bundle of correspondence (10 pages, consisting of emails from the respondent's previous representative – Mr King of Portner Law Limited – to Ms Ruseva in September and October 2022); and a Hearing Bundle consisting of 57 pages (comprised of the ET1, ET3, the Case Management Order of 8th August 2022 and a witness statement in the

name of David Nourani, a director of the respondent company, with an exhibit consisting of payslips from March 2020 to July 2022 and two P60s, for the tax years ending April 2021 and April 2022).

3. I note that, in the correspondence bundle, there is an email from Mr King to Ms Ruseva dated 5th September 2022 by which he provided the payslips from March 2020 and the two P60s; and Mr King confirmed that there was no written employment contract. I note that he asked Ms Ruseva whether there were any queries arising and expressed the hope that the matter “could now be resolved without a hearing”. He followed up with further emails in October 2022, asking Ms Ruseva to confirm what the outstanding issues were, if any, and noting that Witness Statements were due to be exchanged in two weeks and that it was impossible for the respondent to prepare without a full understanding of the outstanding issues. An email of 11th October 2022 refers to a phone conversation between Mr King and Ms Ruseva in which she apparently explained that she would consider the documents disclosed by the end of the week. This indicates that Ms Ruseva had received the documents emailed to her. On 17th October 2022, by email to Ms Ruseva, Mr King served a witness statement on behalf of the respondent. He explained that it was password protected and that the password would be released following receipt of the claimant’s statement. The final email in the correspondence bundle is dated 31st October 2022, from Mr King, noting that the claimant had not served any witness statement and it appeared that he was not actively pursuing his case and noting that a strike out application may be made at the hearing on 14th November 2022. The final hearing on 14th November 2022 was attended by the claimant and Ms Ruseva but, as I have stated above, converted into a preliminary hearing for case management.

Today’s hearing

4. At 10am today, Mr David Nourani (a director of the respondent company) joined the CVP link but indicated, in the chat room function, that his camera and audio was not working. He then left the CVP link and was apparently not able to rejoin (even after his counsel, Mr Rosser, later had tried to assist him to join).
5. Ms Almeida, the Bulgarian language interpreter also joined and her technology was working.
6. Ms Ruseva joined via CVP but her camera/audio was apparently not functioning.
7. The claimant did not attend and nor initially did Mr Rosser (counsel for the respondent), although he did join the link at around 10:35am. His camera and audio was functioning.
8. I asked a clerk to the tribunal to make contact with Ms Ruseva by phone if possible. The clerk established with her that she had not been able to see or

hear on the CVP link; that she was abroad as it was a relative's funeral; that the claimant was in the UK but was not very good with technology; and she indicated that, in those circumstances, she and the claimant would like the hearing to be postponed. She provided no other information or evidence supporting her request, nor had the request for a postponement been made in writing either today or before today and, indeed, it was only made when a tribunal clerk proactively made contact with Ms Ruseva this morning.

9. I also asked the tribunal clerk to make contact with Mr Rosser who attended at 10:35am. The hearing commenced at 10:45am. Mr Rosser apologised for his late attendance; he explained that he was not in funds and that he was attending only as a matter of courtesy to explain the position as the tribunal had asked about his attendance. Mr Rosser also indicated that he would be in a position to make submissions on whether the hearing should go ahead.
10. I asked Mr Rosser to establish with Mr Nourani whether he could rejoin the CVP link. I adjourned to allow that to happen and to ask the tribunal clerk to make contact again with Ms Ruseva to see if she could rejoin the CVP link. The hearing resumed at 11:10am. The clerk had not been able to make contact again with Ms Ruseva as she did not answer her phone. Mr Rosser explained that Mr Nourani had not been able to make the CVP link work.

Decision on postponement of final hearing

11. I decided that, whilst neither the claimant nor Mr Ruseva had formally notified the tribunal of any difficulty with attending today's hearing and neither had formally applied for a postponement, Ms Ruseva had indicated to the tribunal clerk that she wanted the hearing to be postponed. I, therefore, indicated to Mr Rosser that I would treat that as an application to postpone and ascertained that he had instructions to make representations to object to such an application.

Submissions for respondent

12. Mr Rosser, for the respondent, explained that the case was now getting very stale and that the matter had been listed for a final hearing in January 2022, August 2022, November 2022 and again today, as well as being listed for a preliminary hearing in August 2023. The claimant and his representative had only attended the hearing on 14th November 2022 but that hearing was converted into a preliminary hearing for case management due to the claimant's language difficulties. Mr Rosser noted that, on 8th August 2022, EJ Clarke had made clear that no further postponement of the final hearing would be permitted at the request of the parties. He also stated that, on 9th August 2023, EJ Henderson had noted that, if the claimant failed to contact the tribunal by 23rd August 2023, the hearing today would take place and, if necessary, in his absence. Mr Rosser submitted that a further postponement would cause further delay and additional wasted time and costs for the respondent and that this was

to the respondent's substantial prejudice, along with the fact that the passage of time would cause memories to fade further. He stated that the respondent wanted and was entitled to finality.

Submissions for claimant

13. There were no submissions on behalf of the claimant save for what Ms Ruseva had told the tribunal clerk (namely, that the claimant was not good with technology and would not be attending the hearing and that Ms Ruseva was abroad attending to family matters and would also not be attending the hearing and, instead, requested a postponement).
14. I decided to refuse a further postponement for the reasons I gave orally this morning – namely:
 - 14.1. Today's final hearing was the fifth occasion that the matter had been listed for hearing and the fourth time for a final hearing. Significant tribunal time and resource has, therefore, already been allocated to this case.
 - 14.2. This was a straightforward wages claim in respect of a claimed underpayment each month based on information allegedly discovered by the claimant via HMRC which appeared to show (according to the claimant) that his pay – as confirmed by the respondent to HMRC – was higher than the pay which he was actually paid.
 - 14.3. The claimant had not calculated the value of his claim but, from his ET1, it appeared he was claiming in the order of £2690 (box 9.2 of his ET1). It was not, therefore, a claim of high value.
 - 14.4. The claim, therefore, ought to have been capable of determination by using only a few hours of the tribunal's time.
 - 14.5. The claimant had, either jointly or on his own behalf, on at least two previous occasions, asked for a postponement.
 - 14.6. Of the four hearings which had taken place (in August 2022, November 2022, August 2023 and today), the claimant and his representative had only attended once (14th November 2022).
 - 14.7. The tribunal had expended resources for a Bulgarian language interpreter to attend (which she had today).
 - 14.8. Because of the non-attendance of the claimant and Ms Ruseva on the last occasion (at the preliminary hearing for case management on 9th August 2023), a clerk to the tribunal had to contact her and was told that the claimant was abroad dealing with family matters and she had not had time to notify the tribunal. EJ Henderson made clear this was not acceptable conduct and directed Ms Ruseva to email the tribunal to explain the claimant's non-attendance. I have seen no evidence that she complied with this direction (which is included in the Record of Preliminary Hearing, at paragraph (3)). The claimant was also ordered to confirm in writing, by no later than 23rd August 2023, whether he

intended to continue with the claim. No correspondence has been received and so there had been no compliance with that direction either.

14.9. The informal request for a postponement made this morning by Ms Ruseva is very late and there is no evidence to support the request. As the request has been made on the day of the final hearing and, therefore, less than 7 days before the date of the hearing, by Rule 30A(2) of the Employment Tribunals Rules of Procedure 2013, this tribunal may only order the postponement with the consent of all parties (and the respondent does not consent) or it is in accordance with the overriding objective to grant a postponement.

14.10. I do not consider that a postponement furthers the overriding objective or is otherwise in the interests of justice:

i. The respondent is entitled to certainty and finality in litigation; and this claim was presented to the tribunal on 22 February 2021, more than 2½ years ago.

ii. Whilst some of the delay is due to both sides requesting postponements (of the hearings in January 2022 and August 2022), since August 2022, the respondent has pursued its defence of the claim and has complied with orders for disclosure and witness statements. The claimant has not and nor has he or his lay representative complied with the instruction to explain (via email) the reasons for their non-attendance on 9th August 2023; nor have they provided any proper explanation for their absence today or provided any evidence to support their reasons for not attending on either occasion. The claimant has also failed to comply with the direction to write in to the tribunal to confirm whether he wished to continue with his claim.

iii. The claimant was warned in clear terms that, if he failed to contact the tribunal by 23rd August 2023, the final hearing today “shall” proceed in any event and “may” be heard in his absence.

iv. The resources of the tribunal are finite and the tribunal must balance the claimant’s right to a fair hearing within a reasonable time under Article 6 of the European Convention on Human Rights with that of the respondent and, indeed, other tribunal users whose cases may be delayed if further tribunal time is taken up with this case.

v. The overriding objective includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay and saving expense. I assume that the complaint of unpaid wages is of some importance to the claimant but he has not actively pursued his claim, which is apparent from his failure to comply with the tribunal process in the ways set out above. I also have regard to the fact that this claim is straightforward and of relatively low value and importance compared to other cases in the tribunal. Postponing the final

hearing, yet again, will undermine the overriding objective, including by increasing the costs and delay for the respondent.

14.11 In all the circumstances, a postponement is not in the interests of justice which, in fact, demand that this case be concluded.

Decision on proceeding in absence of parties

15. Having decided not to postpone the hearing, Mr Rosser, for the respondent, made clear that he had no instructions to represent the respondent any further. Mr Rosser also explained that, for reasons he did not fully understand, Mr Nourani was not able to join the link. I asked whether, in those circumstances, the respondent was seeking a postponement but Mr Rosser was very clear that the respondent's position was that the claim should be dismissed in the absence of the claimant or that the hearing should go ahead in the absence of the parties, with a decision taken on the papers.

16. Given that I had the claim form and response as well as payslips from 31 March 2020 onwards and a witness statement from Mr Nourani, I decided that, rather than dismiss the claim outright under rule 47 of the Employment Tribunals Rules of Procedure 2013, I should proceed with the hearing in the absence of the parties and their representatives and determine the claim by considering the information available to me.

The claim

17. The claimant says in his claim form that he started working for the respondent, he believed on a self-employed basis, in September 2019 and has been paid £400 per week net. He says that he never received a written contract of employment or Written Particulars of Employment. In Mr Nourani's witness statement (at paragraph 3), he confirms that no written contract or statement of employment particulars was ever provided.

18. I record that the respondent's admitted failure to provide a Written Statement of Particulars is a breach of s1 of the Employment Rights Act 1996 and, if the claimant were to succeed on his unauthorised deductions claim, this would – in and of itself – give rise to an award of two weeks or four weeks pay by virtue of s 38 of the Employment Act 2002.

19. The claimant says in his claim form that he believes that the respondent may have been claiming furlough pay in respect of him but that he had continued to work full-time throughout the pandemic and so was not actually furloughed. The claimant says that he noticed on his personal tax account on HMRC that he was treated as an employee from May 2020 onwards and that the respondent had informed HMRC that his gross pay was £2500 per month or £2004.20 net (which is £462.27 per week net). He was, however, paid £400 (net) per week.

20. The claimant, therefore, claims – for a ten month period – the difference between his actual net pay of £400 per week and the £462.27 per week which

he says was the amount declared by the respondent to HMRC. He says this amounts to £2690. He also claims for “couple of pay deductions from my £400 per week” (box 9.2 of his claim form) but has not explained when these deductions were allegedly made nor in what amount.

21. I note that £400 per week net equates to £20,800 per annum or £1733.33 per month. I also note from the payslips in the respondent’s bundle that:

- (1) The claimant’s salary for March 2020 is stated to be £1733.33 gross (and £1611.53 net)
- (2) There is no payslip for April 2020.
- (3) The claimant’s salary for each of May, June and July 2020 is stated to be £2500 gross (and £2211.80 net for May but £2003.40 net for June and July 2020)
- (4) The claimant’s net salary for each month from August 2020 onwards is stated to be £1733.33 (with the gross salary typically recorded as £2102.53 per month, albeit with some months showing a slightly lower or slightly higher gross monthly salary – such as, for example, £2119.29 for May 2022)
- (5) Mr Nourani’s witness statement says that deductions were made on a couple of occasions for parking tickets but these were repaid to the claimant. I have seen no evidence of any deductions for parking tickets nor repayments nor what months these might refer to. I have no information from the claimant to shed any light on this.

22. Without the benefit of oral evidence from either the claimant or the respondent, I find that, whatever the respondent may have declared to HMRC for March, May, June and July 2020, and whatever the position may have been in respect of furlough or claims made by the respondent (if any) under the Government’s Coronavirus Job Retention Scheme, the claimant was routinely and normally paid £1733.33 per month net which equates to £400 per week. I further find that £400 per week is what the claimant normally expected to be paid and that it is, accordingly, more likely than not that the verbal agreement between the parties was for the claimant to be paid (net) £400 per week. That is consistent with the narrative, such as it is, contained in the claim form.

23. Apart from March 2020, when the claimant was paid less than £400 per week net (he was paid £1611.53 for that month), the claimant has been paid at least £400 per week net according to the payslips.

24. I have no evidence before me to suggest that these payslips are not an accurate statement of what the claimant was actually paid.

25. I, therefore, find that the claimant had a contractual entitlement to £400 per week (net) and that he was paid at least £400 per net from May 2020 onwards.

26. I do note that the claimant's payslip for March 2020 shows a net payment for that month of only £1611.53, which would equate to £371.89 per week which might suggest an underpayment. However, on the information before me, it is not apparent that there was any *unlawful* deduction made on 31 March 2020 which was not then repaid to the claimant, given Mr Nourani's witness statement, which I have referred to above.
27. Furthermore, if the claimant was underpaid for March 2020, his claim was only presented on 22 February 2021 which is significantly beyond the statutory prescribed time limit of three months (plus any extension for Acas early conciliation) contained in s23 of the Employment Rights Act 1996. The claimant has not explained why it was not reasonably practicable to present his claim in time nor within any further reasonable period. There is no other information to suggest that it was not reasonably practicable for the claimant to present his claim in time, particularly given that the contents of his claim form make clear that he became aware of the declared payments in late June or July 2020. Whilst I acknowledge that, according to the claim form, the claimant was trying to obtain copies of his employment contract and payslips from the respondent, this fact would not render it 'not reasonably practicable' for the claimant to present a claim form within the three month prescribed time limit or a further reasonable period.
28. Having regard to the information before me, without oral evidence from either party, I cannot find that the wages paid to the claimant are less than the wages he should have been paid of £400 net per week.
29. The claim for unauthorised deductions from wages is not well-founded and is dismissed.
30. Because the claimant has not succeeded on his claim, the question of an award of two weeks or four weeks' pay under s 38 of the Employment Act 2002 does not arise in respect of the respondent's failure to provide a Statement of Particulars of Employment, in apparent breach of s1 of the Employment Rights Act 1996.

Employment Judge McCann
Date: 27 October 2023