



EMPLOYMENT TRIBUNALS

Claimant: Mr S Payne

Respondent: JL Drinks Limited

HELD by CVP at Leeds ET

ON: 2 November 2023

BEFORE: Employment Judge Miller

REPRESENTATION:

Claimant: In person

Respondent: Mr M Uppal - director

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was employed by the respondent as a business development manager from 10 May 2023. There were disputes about the nature of the claimant's role but none of those disputes are directly material to the decision I have to make today.
2. The claimant was appointed on a salary of £25,000 per annum plus 10% commission on any sales he made.
3. It was not disputed that the claimant was not paid at all during his employment and at some point the claimant's employment ended. The date of the end of his employment is one of the main matters of dispute today.
4. The claimant made a claim to the Employment Tribunal for unauthorised deductions from wages on 14 August 2023 following a period of early conciliation from 12 July 2023 to 7 August 2023.

5. Neither of the parties had produced a file of documents or any witness statements for use at the hearing. There was correspondence on the file which included a copy of the claimant's contract, some screen shots of messages and various other documents. The claimant attended and represented himself. Mr Uppal represented the respondent and was accompanied by Ms K Harris who described her job as "Accounts". By agreement I took oral evidence from the claimant, Mr Uppal and Ms Harris and each witness was asked questions by the other side with some assistance from me.
6. I make the following findings of fact. Where facts are disputed I have made my decision on the balance of probabilities.
7. The claimant's employment started on 10 May 2023. The claimant says he was employed as a business development manager. There was a meeting on 10 June 2023 with the claimant, Mr Uppal and the respondent's other director, referred to only as Baz. This meeting was about the claimant's role and how he was performing. The claimant believed his job to be developmental whereas the respondent wanted him to make more actual sales of their product. He had not made any sales.
8. I prefer the claimant's evidence that at the meeting on 10 June 2023 there were discussions about the claimant's role changing. I accept that the director referred to as Baz said that the contract would change but I find that it was not communicated to the claimant at that meant that his employment was terminated. The claimant left the meeting believing that he remained employed but that the nature of his role would change.
9. Baz then decided to dismiss the claimant at some time after that meeting. Arrangements were made to send the claimant a P45 and terminate the contract at some point after that date, most likely 13 June 2023 although that is not at all clear.
10. Ms Harris made arrangements for the respondent's external accountants to issue the claimant's P45. The claimant did not receive a copy of his 45 at that point.
11. On balance, I think that the respondent probably did believe that the claimant was dismissed at that point when Ms Harris was asked to send the claimant his P45. However, this was never clearly communicated to the claimant – either then or at any other point.
12. Subsequently the claimant then resigned by email on 29 June 2023 and the respondent, in the person of Ms Harris, accepted that resignation and then sent the claimant his P45. This suggests that the claimant still believed that he was still employed by 29 June 2023 and he was not contradicted by the respondent when he tendered his resignation.
13. I prefer the claimant's evidence that he then did continue to work his notice until 5 July 2023. It might be that the claimant was not doing a great deal of work in that period but he still believed that he remained employed and he acted as if he was. There was a dispute as to what actual work the claimant was doing, but I prefer the claimant's evidence that he continued to do work for the respondent during his notice period. In any event there had been no effective communication to the claimant that his employment had ended before the end of the notice the claimant had given on 5 July 2023.

14. I therefore find that the claimant was employed from 10 May 2023 to 5 July 2023 on a salary of £25,000 per year and the claimant was not paid any of that salary, or any wages at all.

Law and conclusions

15. Section 13 of the Employment Rights Act 1996 provides that an employer may not make deductions from an employee's wages unless that is authorised. There is no suggestion that any deduction was authorised in this case – it was not.

16. A deduction is made in any circumstance where less is paid on any occasion than is properly payable.

17. The amount properly payable in this case was a salary of £25,000. It is not disputed that any additional commission was due. It was not, because the claimant had not successfully made any sales.

18. The claimant was employed for the period from 10 May to 5 July 2023. Where a contract of employment is terminated by notice, that is effective when the notice is received, or has had a reasonable opportunity to come to the attention of the intended recipient. Notice was never received by the claimant because the respondent had never sent a notice terminating the claimant's employment and nor had they communicated it in any other way. It is far from obvious that receipt of a P45 could amount to effective notice in any event, but in my judgment the fact that Ms Harris sent the claimant his P45 when the claimant tendered his resignation on 29 June 2023 is evidence that it had not been previously sent to the claimant.

19. I note Mr Uppal's inventive submissions about the meaning of the conversation that occurred at the meeting on 10 June 2023. He said that because the claimant was told that his contract would change when his role changed, that meant that his current contract had obviously ended so that the claimant would not be employed until a new contract was issued. Aside from the fact that I have found that the alleged termination of the claimant's contract was not communicated to him at that meeting and that, in fact, the decision to dismiss the claimant was not made until after that meeting, this is clearly wrong anyway. In order to end a contract of employment, the employer must inform the employee that the contract is being ended clearly and unambiguously.

20. In my judgment, Mr Uppal was simply making up his argument as he went along and responding to whatever I or the claimant said in the course of the hearing.

21. This means that the claimant was employed for eight weeks. Calculating the annual salary of £25,000 as a weekly rate gives £480.77 and so eight weeks of that is £3,846.16 gross. None of that was paid so this is the amount that is awarded.

22. I did explore briefly with the claimant any additional compensation for the financial losses that he has incurred but I am unable to award of those because there was no direct evidence and the claimant wasn't able to be precise as to what the extent of those losses were.

10 November 2023

Date

REASONS SENT TO THE PARTIES ON

14 November 2023

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