



EMPLOYMENT TRIBUNALS

BETWEEN

MR IDRIS ILYAS

Claimant

AND

IF TRADE CO LIMITED (IN ADMINISTRATION)

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD at Southampton via VHS

ON

1 September 2023

EMPLOYMENT JUDGE H Lumby

Representation

For the Claimant: Did not attend

For the Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that

- (a) the claimant succeeds in his claim against the respondent for unlawful deduction from wages in respect of unpaid entitlement to a signing on bonus and the respondent is ordered to pay the claimant the gross sum of £1,500; and
- (b) the claimant's claim for unlawful deduction from wages in respect of sick pay is dismissed

REASONS

1. In this case the claimant Mr Ilyas brought monetary claims for breach of contract, unfair dismissal and unlawful deduction from wages against the respondent as his employer. The respondent denies the claims.
2. By a judgment made on 19 October 2022, the claims for breach of contract and unfair dismissal were struck out. The remaining claims are for a contractual "signing on" bonus of £3000 and sick pay for 12 weeks from 28 November 2021, amounting to £1,156.
3. Amended grounds of resistance were served by the respondent following the 19 October 2022 judgment.
4. A hearing was set for 12 and 13 June 2023 but cancelled as a result of the respondent entering administration.
5. On 22 May 2023 the administrators of the respondent confirmed that they did not have any objections to the matter proceeding in their absence, that they did not intend to be present at any hearing or to be represented in the proceedings.
6. A new hearing date was set for 1 September 2023. Various directions were issued on 21 June 2023 including the provision of evidence of the claim by the claimant by 5 July 2023, the provision of a bundle by the claimant by 2 August 2023 and its provision to the tribunal by 25 August 2023 and the provision of witness statements from the parties by 16 August 2023. None of these directions have been complied with, save for an email dated 22 June 2022 from the claimant stating "The remedy I'm seeking is the £3000 signing up bonus promised to me when I started work for PMP Recruitment". PMP Recruitment is the previous name of the respondent.
7. By email timed at 01.25 on 1 September 2023, the claimant informed the tribunal that he could not make the hearing and asked if it was possible to reschedule. Considerable time has already been spent by the tribunal on this claim. Given the late timing of the request and the failure to comply with the directions issued on 21 June 2023, the tribunal did not agree to a rescheduling of the hearing and proceeded in any event in the absence of the parties, in accordance with Rule 47 of the tribunal's Rules.
8. This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was Video Hearing System. The documents that I have considered are the Form ET1 submitted by the claimant, the ET3 and the amended grounds of resistance submitted by the respondent, the judgment issued on 19 October 2022 and the claimant's email of 22 June 2022.
9. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the documentation available to me.

Facts

10. The respondent is an employment agency that sources staff for its clients. The claimant entered into a contract of employment with respondent on 17 November 2021 (the Contract). The relevant clauses provide as follows:

- a. Clause 3.2: the respondent agreed to offer the claimant opportunities to work for its clients, each opportunity being defined as an “assignment”.
 - b. Clause 5.1: the claimant remained an employee of the respondent whilst on assignment. Further, whilst on assignment it was the respondent who would remunerate the claimant (at a rate that was not below the national minimum wage). The Contract provided for payment of remuneration to be weekly, in arrears.
 - c. Clause 7.1: there was no entitlement to contractual sick pay, but eligibility for statutory sick pay.
11. On 17 November 2021, the respondent arranged for the claimant to be placed on assignment with the on-line retailer Amazon at one of its sorting centres.
 12. The terms of the assignment were set out in a letter dated 17 November 2021 (the Assignment Terms). The claimant’s duties were to involve sorting and loading parcels for which he was to be paid, by the respondent, £10 per hour (which increased slightly for night work). The assignment was anticipated to last 39 weeks.
 13. At this time, Amazon appears to have had a great need for staff and so offered, to at least some of its workers, a signing on bonus of £3,000.
 14. There is no express contractual entitlement in the claimant’s contract to be paid the signing on bonus.
 15. By an email dated 22 November 2021 the respondent confirmed to the claimant:

“Regarding the bonus you will receive half of this bonus 45 days after your first shift and the other half another 45 days later, so across 12 weeks, ensuring (sic) that you turn up to each one of your shifts and there are no lates etc”.
 16. The tribunal finds that this is evidence that the bonus was payable, subject to completion of sufficient days’ work. The terms and conditions relating to the payment of the bonus have not been provided. However, the tribunal finds on the balance of probabilities that it would have structured to prevent people working for short periods and claiming an entitlement to the £3,000. Following the payment structure, this is likely to have been 45 days’ employment to earn the first £1,500 and a further 45 days employment for the balance.
 17. The bonus if due has not been paid.
 18. The claimant commenced work at Amazon on 22 November 2021. The site where he worked was one where employees were eligible for a signing on bonus.
 19. On 23 November 2021, the claimant says that he suffered a back injury whilst lifting heavy boxes. On medical advice, the claimant did not return

- to work and was signed off work by his GP until 17 December 2021. This is evidenced by a medical certificate that is dated 3 December 2021.
20. The claimant says that he remained incapacitated by reason of his injury for a period of 12 weeks and until about 16 February 2022. It is accepted that, following his injury, the claimant never returned to work for Amazon and has carried out no further assignments for the respondent.
 21. By email dated 7 December 2021, the respondent terminated the ongoing assignment with Amazon and notified the claimant. The effect of terminating the assignment did not mean that the claimant's employment with the respondent was at an end. The tribunal has determined that this employment has not been terminated.
 22. No statutory sick pay has been paid to the claimant. His contract does not provide for the payment of contractual sick pay, only statutory sick pay.
 23. The tribunal has found that any non-payment of the bonus or statutory sick pay, if due, can only be claimed as an unlawful deduction of wages. There is no evidence that the claimant has applied to HMRC for a determination in relation to statutory sick pay.

Law

24. Having established the above facts, I now apply the law.
25. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
26. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.
27. In the case of Taylor Gordon & Co Ltd (t/a Plan Personnel) v Timmons [2004] IRLR 180, it was held that the employment tribunal has no jurisdiction to determine the entitlement of employees to statutory sick pay, this is the sole jurisdiction of HMRC.

Bonus

28. The tribunal has found that there was an entitlement to the signing on bonus, contingent on completion of sufficient days' work. The claimant only did two days' work, and the assignment was ended on 7 December 2021, after only 15 days from the first shift, well short of the 45 days to qualify for the first tranche. However, he was incapacitated as a result of the injury until 16 February 2022, 86 days from the first shift. As this was a workplace injury, the tribunal does not consider that the claimant should be penalised as a result of the earlier termination of the assignment. The incapacity flowed from the employment and so this period should be taken into account.

29. 86 days is in excess of the 45 days threshold to qualify for the first tranche of £1,500 but short of the 90 days threshold for the second tranche. The tribunal therefore finds that a signing on bonus of £1,500 is payable. As this has not been paid, it has been unlawfully deducted from the claimant's wages. The tribunal therefore determines that £1,500 (before deduction of tax) is due from the respondent to the claimant.

Sick pay

30. The tribunal finds that the claimant has no entitlement to contractual sick pay. The tribunal cannot consider the entitlement to statutory sick pay without a determination from HMRC. As none has been provided, it can make no further determination in relation to this. Accordingly, the claimant's claim for sick pay is dismissed.

31. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 2; the findings of fact made in relation to those issues are at paragraphs 10 to 23; a concise identification of the relevant law is at paragraphs 24 to 27; how that law has been applied to those findings in order to decide the issues is at paragraphs 28 to 30; and how the amount of the financial award has been calculated is at paragraph 29.

Employment Judge H Lumby
Date: 1 September 2023

Amended Judgment sent to Parties:
8 November 2023

For the Tribunal Office