



EMPLOYMENT TRIBUNALS

Claimant: Mr T Rajaravi

Respondent: KZ Catering Ltd

Heard at: London South Employment Tribunal (by CVP video conference)

On: 1 November 2023

Before: Employment Judge Musgrave-Cohen (sitting alone)

Representation:

Claimant: In person (accompanied by his son)

Respondent: Mr D James (Solicitor)

JUDGMENT

1. The claim for unfair dismissal is dismissed on withdrawal.
2. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.
3. The complaint of breach of contract is not within the jurisdiction of the Tribunal and no determination is made.

REASONS

Introduction

1. Mr Rajaravi started employment with the Respondent on 11 October 2001 working as a Cook at the Croydon branch of KFC. He remains employed by them. He complains about an imposed change of working hours and consequent loss of income. ACAS was notified under the early conciliation procedure on 13 April 2023 and the certificate was issued on 17 April 2023. The ET1 was presented on 18 April 2023. The Respondent failed to present an ET3.

Procedural matters

Correct Respondent

2. Mr Rajaravi bought a claim against KFC-SBR Group on 18 April 2023 complaining of unfair dismissal and a complaint that the Respondent had cut off his work hours and caused him loss of income. Mr Rajaravi had previously made a complaint about the same employment and had sent that claim to the same Respondent on 8 February 2023 (case number 2300620/2023). That case was heard on 2 October 2023 and dismissed.
3. Today Mr Rajaravi acknowledged that the present claim should properly be bought against KZ Catering Ltd and the Respondent's name was amended accordingly. The same process of changing the Respondent's name to KZ Catering Ltd had taken place in case number 2300620/2023.

Parties engagement with the claim and hearing

4. On 7 June 2023, the Respondent's representatives wrote to the Tribunal to explain that they had only recently become aware of the claim and so were

out of time to file their response which had been due on 26 May 2023. They applied for an extension of time to present a response and attached a holding response form. The Respondent requested that they be sent all communication from the Tribunal relating to the case. This did not happen. The notice of hearing had already been sent to the Respondent at their business address in Church Street in Croydon.

5. This was the work place of the Claimant and that it would have been occupied each day by employees of the Respondent such that the claim and the notice of hearing was properly sent to the Respondent.
6. Today Mr James said that he had not received notice of the hearing and had only attended today as he had received the CVP joining details. He said he was not prepared for the hearing. I accept that the Respondent had not brought today's hearing to the attention of Mr James who is their representative. I am grateful to Mr James for joining the hearing today having been provided with the CVP joining details last night and for the pragmatic and helpful way in which he conducted proceedings at such short notice.
7. I am also grateful to Mr Rajaravi for his patience as I considered each of the procedural points relevant to today's proceedings and for the clear way in which he explained his position. I also express my thanks to his son who assisted him today.

The issues

8. Before determining how I should proceed, I converted the first part of today's hearing to a case management hearing with both parties participating to seek to establish what the issues in the case were.
9. After lengthy discussion, the issues in the case were agreed to be:
 - a. Unfair dismissal – Mr Rajaravi accepted that the case of unfair dismissal could not proceed as he remained in employment. He also

explained that he had previously bought a claim of unfair dismissal which had been dismissed due to his ongoing employment. He withdrew the claim and I dismissed it. I do not need to say anything further about it.

- b. Unlawful deduction from wages – Mr Rajaravi was unwell in the first few months of 2023. He was ready to return to work on 17 April. His claim was issued on 18 April. The claim before me is limited to unlawful deduction from wages relating to payment Mr Rajaravi said he was due on 17 and 18 April.
- c. Breach of contract – Mr Rajaravi says that the Respondent breached his contract of employment by reducing his hours from 30 hours to 6 or 7 hours per week after his return from ill health in April 2023. I explained to Mr Rajaravi that I did not have jurisdiction to consider a complaint of breach of contract given he remained in employment. Mr Rajaravi requested that I adjudicate on it.

Respondent's application for extension of time to present a response

10. The Respondent has not presented a response to the claim.

11. I considered rules 18 and 20 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 (ET Regulations). I did not grant an extension of time for the Respondent to present a response. The application was not accompanied by a draft of the response which the Respondent wished to present.

12. It is unclear to me precisely how the claim came to the Respondent's attention. Mr Rajaravi did not send it to them and the Tribunal only had the address of the KFC premises on Church Street so could only have sent it there. At some point it seems likely that the Respondent found the claim and sent it to their legal team. The legal team then telephoned the Tribunal to make further enquiries as to what was expected of them.

13. The Respondent says it was through no fault of their own that they did not receive the claim form. Even if that is right, and I make no finding about that,

then that still does not explain why they have not prepared a response by now as an application under rule 20 requires. The holding response of 7 June 2023 did not explain the reasons why the Respondent defended the claim.

14. I note that a hearing in the similar matter already referred to took place on 2 October 2023 and the Respondent could have used that opportunity to find out what had happened to the present case and what was required of them. Their holding response acknowledged that the claim appeared to be connected to and arising out of the same facts as the matter going to hearing on 2 October 2023 but they did not request that it be joined nor did they bring the second claim to the Judge's attention on 2 October 2023. The Respondent could have made further enquiries of the Tribunal when they failed to answer their email of 7 June 2023 and they could have asked the Claimant about his understanding of the claim.

15. Tribunal orders were made for the parties to exchange documents and prepare for this trial in the usual way. I understand that on 5 June the Claimant had sent information to Mr James for today's hearing. One email was labelled with the case number for the present hearing. Mr James had therefore misunderstood the purpose of those materials and thought they were to be part of the documentation for the other claim already mentioned so he had incorporated them into that other bundle of documents. I did not have a bundle for today's hearing but Mr James told me that the previous bundle would contain the relevant documents.

16. With the Claimant's agreement, I was provided with a copy of the bundle for case number 2300620/2023 and took the documents I was referred to in that bundle into consideration.

17. I then considered whether I could proceed today. The Claimant wanted me to do so. Having taken time to consider the matter and take instructions, Mr James agreed that it would be appropriate to press on today rather than to request a postponement to allow the Respondent to fully prepare.

18. Having regard to rule 21 ET Regulations, I considered that I could properly determine the matters before me and issue a judgment. The documents I need to refer to are within the bundle provided relating to the other case and both the Claimant and Mr James were able to address me on the legal issues and uncontroversial facts.
19. I granted permission for Mr James to participate in the hearing to the extent that he could cross examine the Claimant and could make submissions on the documents. I did not give him permission to adduce any fresh evidence.
20. I heard evidence from Mr Rajaravi. He had not produced a witness statement. He was sworn in and confirmed under oath the details he had already given me and explained a bit more about his understanding of his contract and how he was paid for his work done. He was asked one key point of clarification by Mr James.

Findings of fact

21. Mr Rajaravi has worked for the Respondent as a Cook since 11 October 2001. He works at the KFC in Croydon. His original contract of employment states that his rate of pay is £4.50 per hour. This sum has now increased to £10.47 per hour. His hours of work are described as being a basic working week of 30 hours spread over 2 shifts per week.
22. Within the contract of employment, the Respondent reserves the right to determine which particular shifts Mr Rajaravi would work and to notify him of the same once per week. Mr Rajaravi confirmed this is what happened in practice. The Respondent further reserves the right to vary Mr Rajaravi's normal hours if necessary to meet the Company's business needs.
23. Mr Rajaravi agreed in his evidence that his pay would vary depending on the hours worked. The company would calculate the exact hours he had worked and pay him every 2 weeks.

24. In or around the start of 2022, Mr Rajaravi's hours of work were reduced from 30 hours per week to between 17-19 hours per week. He did not receive a new contract. He continued to work for the Respondent on the reduced hours basis.

25. Mr Rajaravi did not have set days of work. He normally worked Monday, Thursday and Sunday. But it could change from week to week and he would never refuse the work.

26. In January 2023, Mr Rajaravi suffered a period of ill health. He was fit and ready to return to work from 17 April 2023. That week, his rota showed that he would be required to work as follows:

Monday 17 April – no shifts

Tuesday 18 April – no shifts

Wednesday 19 April – 11am-5pm

There were no other shifts allocated to Mr Rajaravi that week.

27. Mr Rajaravi agreed that he was always paid for the hours that he worked.

28. Mr Rajaravi agreed that his real complaint is that the Respondent stopped offering the hours of work that they used to offer and that he says he is contractually entitled to.

29. Mr Rajaravi bought his claim on 18 April 2023 and has continued to work for the Respondent. He continues to be dissatisfied that his hours of work have been reduced.

The Law

Unlawful deduction from wages under section 13 Employment Rights Act

30. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless

the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

31. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Breach of contract

32. The Tribunal do not have jurisdiction to hear a complaint of breach of contract by an employee who remains in employment with the Respondent (Article 4(c) The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994).

Conclusions

Unlawful deduction from wages

33. I find that Mr Rajaravi has been paid for the work that he has done according to his contract of employment. His contract states that he is to be paid an hourly rate for work done and he acknowledges that is what has happened.

34. I therefore find that his claim of unauthorised deduction from wages for the period from 17-18 April 2023 fails.

Breach of contract

35. Mr Rajaravi's real complaint is that he says the Respondent breached his contract of employment by reducing his hours from 30 hours to 6 or 7 hours.
36. I explained to Mr Rajaravi that I can not deal with a breach of contract claim because he is still employed by the Respondent.
37. It is not for me to make findings as to whether or not Mr Rajaravi has a contractual entitlement to be given a certain number of hours per week nor if the Respondent has breached that entitlement. I do not make any findings about this.
38. Mr Rajaravi asked me if he could bring the complaint again but I explained that the restriction is not limited to me. The Tribunal as a whole do not have jurisdiction to hear a complaint of breach of contract from someone who remains employed.
39. There has been significant confusion between the parties as to precisely what Mr Rajaravi complains about and he has issued a number of claims about similar matters.
40. His complaint now appears to be clear. He is unhappy that his hours of work have been cut as the cut of hours means a loss of pay which causes him understandable financial difficulty. I encouraged Mr Rajaravi to seek legal advice before committing to any further action in respect of either a breach of contract claim or an ongoing unlawful deduction from wages claim. I have not made findings as to the merit of any such action.
41. I note that Mr Rajaravi is an employee with over 20 years' service and I encouraged the parties to discuss his complaints between them and try to seek a resolution for how to move forwards.

Employment Judge Musgrave-Cohen

Dated: 16 November 2023