



EMPLOYMENT TRIBUNALS

Claimant: Mr Q F Ahlin

Respondent: Nanny Care Services Limited

Heard at: Reading

On: 26 February 2024

Before: Employment Judge Anstis (sitting alone)

Representation

Claimant: In person

Respondent: Mr J Trambo (counsel)

RESERVED JUDGMENT

1. The respondent must pay to the claimant £3,290.45 (net) as compensation for breach of contract.
2. The claimant's other claims are dismissed.

REASONS

INTRODUCTION

1. The claimant brings claims of unpaid wages and/or breach of contract in respect of three different payments he says are due to him from the respondent:
 - a. A "commissioning bonus" of £8,000,
 - b. Underpayment of basic salary, and
 - c. £7,000, being payment of 30% of the business's profit.
2. The claimant is an experienced care manager. The respondent is a business run by Ms Zhara Abdullahi. While formerly a care worker, Ms Abdullahi had no experience herself of managing a care business.

3. The claimant responded to an advert on Indeed for a care manager. This advert was placed by Berks Care, a business that Ms Abdullahi intended to establish with a business partner. This business did not proceed, but Ms Abdullahi decided to proceed without her business partner and established a new business: the respondent. She contacted the claimant and he joined her new business as an employee with a view to setting up and registering the business with the CQC.
4. Although the claimant has sometimes referred to this as being a partnership it is not in dispute that he was an employee of the respondent. It is also not in dispute that he was vastly more experienced than Ms Abdullahi was and that she needed the claimant or someone else with his skills in order to set up the business.
5. An aspect of this that was agreed on by the parties is that all the necessary paperwork to establish the business and register it with the CQC was prepared by the claimant, usually on the basis of materials he had acquired while at other care organisations.
6. A core dispute between the parties was what the terms of the claimant's contract of employment were. There were two rival documents. There was a longer contract with the parties' names on it, which was unsigned, and a much shorter "statement of main terms of employment" that were apparently signed by both parties (although Ms Abdullahi denied ever having signed this document). Both were dated 1 September 2020 (which is agreed to be the claimant's start date). Both parties said that the contract they relied on had been produced by the claimant.
7. The business was successfully registered with the CQC and acquired contracts. However, the claimant's employment ended in acrimony with accusations and counter-accusations between the parties as to their behaviour and the behaviour of various relatives. The claimant resigned, and matters came to a head in a meeting at the respondent's office which resulted in the police being called. Both parties devoted most of their witness evidence to the question of what happened in the lead up to and immediately after the claimant's resignation, but at the start of the hearing both parties agreed that nothing in the claimant's claim depended on the circumstances in which his employment ended or what followed that.
8. This focus on the behaviour of each side led to large gaps in evidence about what really mattered in this case: the question of what the terms of the claimant's contract were and what he had or had not been paid. Despite the stark fact that both sides relied on completely different written contracts those contracts and the circumstances in which they arose were barely mentioned in anyone's witness statement. The respondent called their accountant as a witness, which might have been helpful in assessing what the claimant had or had not been paid, but in fact the entirety of the accountant's witness

statement was devoted to describing what he saw as the claimant's poor behaviour which, as the parties accepted, was not relevant to the question of what payments he may have been owed.

9. To some extent those deficiencies in evidence could be made good by questions during oral evidence, but by the end of the hearing it remained the case that there were substantial gaps in both parties' evidence.
10. The parties agree that the claimant's employment started on 1 September 2020 and ended on ended on 8 December 2021. The parties agree that his basic salary was £40,000. Almost everything else in relation to any payments due to him is in dispute.

DISCUSSION AND CONCLUSIONS

Profit-related pay

11. It was the claimant's case that he was due profit-related pay in accordance with the written statement of main terms of employment that he considered to be his employment contract: "*in addition to your salary, you are entitled to receive 30% of all profits generated by the company*". The contract relied upon by the respondent had nothing to this effect, but has a bonus clause of up to £7,000 that is not at all dependent on profits.
12. The claimant's witness statement contained scant detail on what this actually meant or how the clause had arisen. There was a section at the end with a table where he had contained an element of £7,000 for "*estimated of 30% of all profit*".
13. On giving his evidence he was questioned as to how he had come to that figure. He explained that he had worked it out from the invoices, and it seemed at first that he had calculated this simply as 30% of invoiced value, which can have hardly anything to do with "profit". It then seemed to be his case that he had calculated 30% of the gross margin on the invoice (that is, the difference between the hourly rate paid by a client and the costs of providing a carer for that hour) and later that he had in fact included overheads. It remained unclear as to how the claimant had calculated anything to do with "profit".
14. Mr Tramboo relied on statutory accounts showing that rather than making any profit the respondent had made a substantial loss. The claimant really had no answer to that, and I can determine this question without resolving the question of which of the rival contracts of employment the claimant was employed under. Even if he was entitled to 30% of the profit, there never was any profit and so he cannot have any entitled to payment of a percentage of that non-existent profit.

Annual salary

15. I can address this element of the claim without deciding between the rival contracts, since both parties agree that it was agreed that the claimant would be paid £40,000 a year by way of salary.
16. I was concerned at the start of the hearing that there was no clear explanation by the respondent of what it was that the claimant had actually been paid while employed. The claimant had set out a table of what he said was due and what he had been paid. While the bundle also contained a schedule of bank transfers from the respondent to the claimant, and extracts from his bank statements, it did not seem as though the respondent's representatives had ever made any attempt to reconcile these against the claimant's figures to see if there was anything due, or where the areas of dispute were. Attempts to clarify this at the start of the hearing got no further. At this point the respondent suggested that their accountant could answer the question of the payments in his evidence although, as I have referred to above, there was nothing in the accountant's witness statement about payments at all.
17. Mr Tramboo attempted to get an explanation of some kind from the accountant by way of supplemental questions, but this became a somewhat confusing exercise. It seemed that the accountant had been expected by the respondent to criticise the claimant's figures on the basis that they were gross, rather than net, but it quickly became clear that the claimant's statement of how much he should have been paid was based entirely on net pay and in doing so he had taken his figures from payslips provided by the respondent, or at least his figures for what should have been paid matched almost entirely the respondent's figures on what should have been paid.
18. The accountant then suggested that the claimant's figures were wrong because they were based on net pay rather than a separate figure of take home pay that would account for pension deductions and was approximately £50 a month less than the net figure. The claimant said he knew nothing of any pension that had been set up for him and, while Mr Tramboo reminded me that auto-enrolment was now a statutory requirement, it was somewhat awkward for the respondent that pension deductions were provided for in the contract the claimant contended for but not in the contract they contended for. A further complication which the accountant was not able to resolve was that the claimant had never actually been paid either the net or take home pay by the respondent. Both were figures either side of £2,500 and for much of his employment the transfers from the respondent were simply £2,500. It is not at all easy to map the payments made by the respondent onto the payslip amounts, since payment appears to have been made sporadically without much reference to what the payslips said. There is no point at which a payment can be clearly identified as being the amount due to the claimant according to his payslip.
19. Setting aside the question of the commissioning bonus and profit share, the parties agree that the claimant's correct net pay for the time he was in

employment was £3,028.37 for each of October and November 2020, £2,904.77 for December 2020 and then £2,570.17 for January 2021, £2,570.37 for February 2021, £2,570.17 for March 2021 and £2,571.97 a month for the remainder of 2021. This amounts to £39,819.95. This is based on the “payroll data” at p101 of the bundle and the table in the claimant’s witness statement (which I note differs by 20p for February 2021 – I have taken the respondent’s figure for that).

20. There is little difference between the net pay figure and the “take home pay” figure. The difference is said to be accounted for by pension contributions deducted for the claimant. I have seen nothing to suggest that these were ever paid into a pension scheme for the claimant, and so will proceed by reference to net pay rather than take home pay.
21. This does not match with the “wages reconciliation” prepared by the respondent at p100 (which comes to £38,469.47). The respondent did not explain this difference so I have worked on the basis of the “payroll data” which matches with the claimant’s account of events.
22. So £39,819.95 should have been paid, but what was paid?
23. After an adjournment prior to closing submissions, Mr Tramboo said that the statement of payments at p102 prepared by the respondent matched the bank statements the claimant had produced. The totals from p102 were £36,529.50, which is also the figure in the wages reconciliation statement at p100. I have added up the figures in the claimant’s bank statement and agree this is what it shows has been paid. The claimant’s table says £32,400 has been paid.
24. The claimant has produced bank statements showing he has received £36,529.50 from the respondent. There has been no explanation from him of what this is if it is not basic salary. I accept the respondent’s position that £36,529.50 has been paid to the claimant by way of direct bank transfer for basic salary.
25. Mr Tramboo surprised me in closing submissions by saying that an additional £2,825.10 of basic salary had been paid to the claimant in cash.
26. Neither Ms Abdullahi nor the respondent’s accountant’s witness statements said anything about cash payments of salary having been paid to the claimant. There had been a suggestion that substantial cash loans had been made to the claimant. That was denied by the claimant, but no-one had said that they were salary or any substitute for salary.
27. On reviewing matters with Mr Tramboo, he said that he had asked Ms Abdullahi in supplemental questions whether she had made cash payments of salary and she said she had (although no more detail had been given). Similarly he had cross-examined the claimant about this and he had denied

receiving cash payments. Ms Abdullahi's witness statement contains a passing reference to the spreadsheet at p101 that records £2,825.10 being paid in cash.

28. The respondent's complete failure to give any explanation of what these cash payments were and how they came to be made seems to reflect its surprising lack of focus on anything to do with what the claimant was paid, which was always going to be a core issue in the case.
29. This seems to me to call out for an explanation that was never given. Why were most payments made by bank transfer, but some made in cash? The claimant says that he did not receive any cash payments and there was nothing of any detail to dispute that. The respondent's passing reference to a spreadsheet (which seems itself to have been constructed for the purposes of the litigation) showing cash payments does not demonstrate to me that cash payments have been made. I find that the claimant should have been paid £39,819.95 in basic salary and was only paid £36,529.50. That leaves £3,290.45 to be paid, and I make an award for that amount. For the avoidance of doubt, that is a net figure, and I am awarding it as compensation for breach of contract.

The commissioning bonus

30. The "commissioning bonus", said by the claimant to be a one off payment with a gross amount of £8,000, is something of a mystery.
31. The "remuneration" section of the contract of employment contended for by the claimant says "*additionally, you will be compensated with a sum of £8,000 for consultation and commissioning fees*". That is the only evidence that £8,000 may be due.
32. In arguing against this, Mr Tramboo said that (i) even if the contract contended for by the claimant was the correct one, there was nothing to say what was required to trigger the £8,000 payment or when or how it was payable, (ii) the contract contended for by the respondent was the correct one and contained no such provision, and (iii) the claimant had never mentioned anything about a £8,000 bonus until his claim – in particular there was no mention of it in either his grievance or resignation letters where he had complained of non-payment of basic salary and the profit share.
33. The key question, of course, is whether the claimant has demonstrated on the balance of probabilities that the respondent owes him £8,000.
34. I find that he has not. As Mr Tramboo points out, even in the contract contended for by the claimant there is no mention of what, if anything, gives rise to this payment or when it is due. The claimant's failure to mention this substantial sum of money when mentioning non-payment of basic salary and profit share is striking. I find that the claimant has not demonstrated on the

balance of probabilities that this amount is due to him, and his claim for this amount is refused.

Employment Judge Anstis
Date: 27 February 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
12 March 2024

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