



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr S Glover

Alsager Town Council

**HELD AT** Birmingham

**ON**

28 February 2024

**EMPLOYMENT JUDGE** Choudry

**Representation:**

**For the claimant:** Mr S Harding (Counsel)

**For the respondent:** Ms E Greening (Counsel)

## JUDGMENT

The claimant's claims for unauthorised deduction from wages and breach of contract fail and are dismissed.

## REASONS

### ***Background***

1. Following a period of Early Conciliation commencing on 17 October 2022 and ending on 8 November 2022, the Claimant issued a claim for unlawful deduction from wages and breach of contract which was received by the Employment Tribunal on 30 January 2023.

2. The respondent is a Town Council.

### ***Adjustments for the Claimant***

3. The Claimant has anxiety, dyslexia and ADHD. At a preliminary hearing held on 19 September 2023 before Employment Judge Edmonds the Claimant requested some adjustments. Mr Harding confirmed that the adjustments recorded by Employment Judge Edmonds in the case management order were still the ones that were required by the Claimant and no other adjustments were needed.
4. The Claimant was reminded to ask for a break whenever required. The Claimant was accompanied by his mother, Mrs Rita Glover, and I confirmed that Mrs Glover could assist the Claimant with locating documents but she could not answer on his behalf during his evidence.

### ***Evidence and documents***

5. At the start of the hearing Mr Harding indicated that the Claimant wished to call Alexander Daniel Haddon as a witness. Neither the Tribunal nor Ms Greening had a copy of the witness statement for Mr Haddon. Mr Harding explained that he had sent it through to the Tribunal at 10.11am today together with an amended statement for the Claimant. Ms Greening did not object to the Claimant submitting an amended statement.
6. Ms Greening objected to the calling of a further witness at such late stage when she had no advance notice that the Claimant intended to call a witness. Ms Greening referred to the Claimant's repeated non-compliance with the case management orders and the fact that the Respondent had indicated that it would not object to a postponement. Ms Greening indicated that she was not objecting on the basis of prejudice to the Respondent. After hearing representations from Mr Harding I determined that it would be in line with the overriding objective for permission to be given to the Claimant to adduce evidence from Mr Haddon subject to Ms Greening being given some time to take instructions on his evidence.
7. In the event I only heard evidence from the Claimant and from Nicola Clarke, clerk to the Respondent. I did not hear evidence from Mr Haddon as he was not able to attend the hearing in the afternoon due to a doctor's appointment which he had not informed Mr Harding of. I did, however, read Mr Haddon's statement and attached such weight to it as was appropriate bearing in mind that Ms Greening did not have the opportunity to test Mr Haddon's evidence through cross examination.
8. I was also presented with a bundle of some 138 pages. At the commencement of the hearing I sought confirmation from the parties as to whether the bundle was agreed. This was confirmed to me.

## **Issues**

9. I set out below the list of issues which the Tribunal needed to consider and which were agreed with the parties at the preliminary hearing (case management) with EJ Edmonds on 19 September 2023. Mr Harding confirmed that the issues were agreed and that the Claimant accepted he had received payments from the Respondent in respect of all but one of the wage slips in the bundle which he would need to give credit for.
10. The issues are:

### **Unlawful deduction of wages**

- 10.1 were the wages paid to the Claimant from 6 October 2021 to the date of his P45 (around July 2023) less than the wages he should have been paid. The Claimant says that he was offered, and accepted, a role which was advertised at £18,426-£18,795. The Claimant says he accepted the role to start week commencing 6 October 2021 and he should have received his full wage from this date.
- 10.2 In addition, did the respondent fail to pay the Claimant sums due in respect of using his own equipment to carry out his work. The Claimant says it was agreed that he would be paid for this and claims the sum of £4,315.00 broken down as follows:
- 10.2.1 cleaning the interior and exterior windows – 12 occasions at £240 = £2,880.00
  - 10.2.2 traditional interior clean = £35.00
  - 10.2.3 cleaning full gutter blockage, flood clean up = £390.00
  - 10.2.4 full gutter clean = £240.00
  - 10.2.5 jet wash Civic Centre = £360.00
  - 10.2.6 use of Claimant's vehicle to collect and drop off a full kitchen = £150.00
  - 10.2.7 replacement printer for a printer borrowed and never returned = £260.00
- 10.3 Was any deduction required or authorised by statute?
- 10.4 Was any deduction required or authorised by a written term of the contract?
- 10.5 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 10.6 Did the Claimant agree in writing to the deduction before it was made?
- 10.7 How much is the Claimant owed?

### **Breach of contract**

- 10.8 Was the Claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?
- 10.9 Did this claim arise or was it outstanding when the Claimant's employment ended?
- 10.10 Did the Respondent do the following:
  - 10.10.1 offer the Claimant a role which he accepted, which was advertised at £18,426-£18,795 per annum, but fail to pay him that rate?
  - 10.10.2 Agree to pay the Claimant for using his own equipment to carry out his work, but fail to pay the Claimant for that?
- 10.11 Was that a breach of contract and, if so, between what dates?
- 10.12 How much should the Claimant be awarded as damages?

### **Facts**

11. I make the following findings of fact :

- 11.1 The Respondent is a Town Council.
- 11.2 In or around September 2021 the Respondent advertised for an Events Caretaker and General Assistant for Alsager Civic Hall. The advert stated that Alsager Civil Hall was looking for 3 part time individuals to form part of its team of dedicated Event Caretakers. The roles involved setting up for event hire at the civic hall, including full room layouts of chairs, tables and equipment, cleaning duties and customer service.
- 11.3 The role was advertised on Indeed with a full time equivalent salary of between £18,426 and £18,795. The Claimant made an application for this role.
- 11.4 On 4 October 2021 the Claimant had a meeting with Nolana Fielding, the Respondent's Civic Operations and Marketing Officer. The Respondent's position is that the Claimant was not being interviewed for the role of Events Caretaker/General Assistant but that the Respondent invited a number of those people who had expressed an interest in working for them to meetings to discuss work that it did have available which, at the time, was General Assistant roles on a casual worker agreement basis. This is disputed by the Claimant who says he was being interviewed for the Events Caretaker and General Assistant role.
- 11.5 Following the meeting on 4 October 2021, Ms Fielding emailed the Claimant to say:

*"Hi Scott,*

*Lovely to meet you, I think you could be value addition to our team. I have attached the other part of the paperwork for you.*

*Are you able to let me know your availability over the next few weeks and I will add a couple of shadow shifts with our current caretaker and email them across”.*

11.6 Attached to this email was a casual workers agreement. This agreement made it clear that the agreement was not an employment contract and did not confer any employment rights. Further, the contract did not create any obligation on the Respondent to provide work for the Claimant, that the Respondent made no promise or guarantee of a minimum level of work and that the Claimant would work on a flexible “as required” basis.

11.7 The Claimant responded to Ms Field to indicate that the job he had applied for and was interested in was that of the Events Caretaker and General Assistant role. In his email to Ms Field the Claimant indicated that he wanted “*before being offered any job role*” to tell Ms Field, in private a little bit about himself.

11.8 It is clear from the Claimant’s email that he did not think he had been already been offered (or indeed accepted) the Events Caretaker and General Assistant role at this point. Notwithstanding this, during his evidence the Claimant asserted that the casual workers agreement had been issued to him in error and that he had, in fact, been offered a permanent contract. Despite this assertion the Claimant accepted in cross examination that he was never sent the terms and conditions of the permanent role.

11.9 Ms Fielding responded to the Claimant’s email the following day. In her email she said:

*“..I am keen to offer you the job of event caretaker, the casual agreement I sent to you is purely to get started ASAP. If the role is then suitable for yourself after a few weeks we would be more than happy to look at a permanent contract”.*

She labelled the arrangement as a “...sort of ‘try before you buy’ option” and indicated that she was keen for the Claimant to ensure the role was what he expected before he was expected to commit to full time. Ms Field offered to send the Claimant some available shifts for the coming weeks.

11.10 In the event the Claimant did not undertake any work for the Respondent until 6 November 2021 as he had been looking after his poorly child. He also turned down a shift for 5 November 2021 as he was spending bonfire night with his children. In an email dated 3 November 2021 the Claimant expressed confusion regarding the offer of “*one-off tasks*” as he had thought that he was applying for the role of Events Caretaker and General Assistant.

11.11 On 18 November 2021 Ms Field sent the Claimant and other casual general assistants a rota for the week commencing 29 November 2021.

- 11.12 Not long after the Claimant started undertaking work for the Respondent Ms Field left the Respondent's employment and Nicole Clarke took over. In her evidence Mrs Clarke accepted that Ms Fielding had indicated to the Claimant that the casual contract might lead to a permanent contract but she insisted that this had never materialised.
- 11.13 The Claimant, in his evidence, indicated that he had a number of conversations with the Civic Centre manager Tom Wolstencroft whom the Claimant described as dismissive and who made excuses to him about the permanent contract, indicating that he needed to seek approval from senior staff members before he could discuss the Claimant's contract with him. The Tribunal did not hear evidence from Mr Wolstencroft as he is no longer employed by the Respondent. However, it is clear from the Claimant's own evidence that Mr Wolstencroft did not offer (either verbally or in writing) the Claimant a contract for the role of Events Caretaker and General Assistant as he told the Claimant that he needed to seek approval from senior members of staff before he could discuss the contracts of the Claimant and his colleagues. Indeed, the Claimant indicated in his evidence that he repeatedly requested a meeting to be called to allow him and other members of staff to ascertain the Respondent's stance regarding their contracts.
- 11.14 A meeting finally took place on 3 May 2022 which was led by Mrs Clarke during which the Claimant was informed that no offer of a permanent contract of employment would be made.
- 11.15 The Claimant provided in the bundle a series of text messages between him and Mr Wolstencroft during May, June and July 2022. In these exchanges the Claimant repeatedly sought clarity as to why he had not been issued with a contract for the role that he had applied for. However, there is no offer of a contract from Mr Wolstencroft nor was there any indication of an agreement that the Claimant would be paid for using his own equipment.
- 11.16 From July 2022 the Claimant did not undertake any work for the Respondent.
- 11.17 On 10 October 2022 the Claimant sent an email to his MP, Fiona Bruce to which he attached a letter which he has sent to Mrs Clarke. The Claimant indicated that the letter set out his experience of a "false" offer of a position at the Respondent.
- 11.18 In his letter to Mrs Clarke the Claimant indicated that he had been misled. He had applied for a permanent position but then had been told that Mr Wolstencroft did not have authority to offer the Claimant a permanent contract which had to be approved leading the Claimant to have a false sense of job security. The Claimant referred to a meeting in which it was alleged that the issue would be resolved and a contract would start in December 2021. The Claimant indicated that he had been dedicated to his job and had used his personal equipment causing unnecessary wear and tear which he expected compensation for.

- 11.19 Mrs Clarke responded to the Claimant the following day in which she expressed her regret that the Claimant felt the situation was not resolved. Mrs Clarke re-iterated that Mr Wolstencroft was not in a position to offer the Claimant a role that was outside of the approved staff structure and nor should he have advertised the role as a permanent role. the Claimant was advised that there were no current vacancies at the Respondent but the Claimant had the option to remain as a casual member of staff if he wished to do so but there would be no guarantee of hours of work each week. The Claimant was asked to bring in his uniform and fob if he was not prepared to stay on as a casual member of staff.
- 11.20 On 23 February 2023 Mrs Clarke sent an email to the Claimant to indicate that the Claimant was still on the Respondent's records as a casual member of staff. The Claimant was asked to confirm if he wished to remain as a casual member of staff so that the Respondent could offer him some shifts. The Claimant was asked to let the Respondent know as soon as possible as the Claimant still had the Respondent's keys and uniform which would need to be returned. The Respondent would then issue the Claimant's P45.
- 11.21 In her evidence Mrs Clarke alleged that there was no agreement that the Respondent would pay the Claimant for the use of his equipment. Mrs Clarke asserted that the Claimant was not obliged to do so nor did the Claimant ever invoice the Respondent for the use of his equipment. It was accepted that the Claimant did submit a quote for window cleaning work but this went to outside contractors as they were more competitive than the Claimant.

***Applicable law***

12. Section 13 of the Employment Rights Act 1996 (ERA) provides:

*“(1)An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a)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*

*(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2)In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—*

*(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

*(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

*(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*

*(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."*

13. Section 27(2)(b) of the ERA specifically excludes:

*"any payment in respect of expenses incurred by a worker in carrying out his employment".*

14. A contract is only formed when 5 key elements coincide: offer; acceptance, consideration, intention to create legal relations and certainty of terms. As indicated in **James Russell Gray -v- Douglas Simpson Smith, Blackmoor Investment Partners Limited [2022] EWHC 1153 (Ch)** :



*“The basic requirements of a contract are that: (i) the parties have reached an agreement, which (ii) is intended to be legally binding, (iii) is supported by consideration, and (iv) is sufficiently certain and complete to be enforceable : ....”*

15. The Tribunal’s jurisdiction to hear claims for breach of contract is set out in The Employment Tribunal’s Extension of Jurisdiction (England and Wales) Order 1994. Section 4 provides:

*“Proceedings may be brought before an employment tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

*(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

*(b) the claim is not one to which article 5 applies;*

*(c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and*

*(d) proceedings in respect of a claim of that employee have been brought before an employment tribunal by virtue of this Order.”*

### **Submissions**

16. In her submissions Miss Greening submitted that the Respondent accepted that the advert it placed was erroneous and the role the Claimant had applied for was not in the Respondent’s structure. As such, the advertisement was simply an invitation to treat and no offer or acceptance took place. She pointed to the fact that there has been no written acceptance by the Claimant of the role Events Caretaker and General Assistant. Indeed, the only offer that was made to the Claimant was that of a casual worker which the Claimant accepted by undertaking work on a casual basis. Miss Greening acknowledged that conversations had taken place about the possibility of a permanent contract but this was only a possibility and no formal offer was made to the Claimant. The Claimant only worked under the casual contract for which accepted payment – no other contract was sent to the Claimant. The Claimant undertook casual work until June 2022 even though he was under no obligation to do so. The Claimant did not undertake any work after June 2022 and because he was a casual worker he faced no disciplinary action for failing to attend work.

17. Miss Greening further submitted that no wages were outstanding to the Claimant and any alleged outstanding expenses were not included within the definition of wages under ERA.
18. In terms of the Claimant's claim for breach of contract, the Tribunal only has jurisdiction to hear claims of breach of contract made by employees. The Claimant was not an employee but a casual worker who received no salary but was paid for the ad hoc hours that he did. She submitted that there was no evidence of any agreement that the Claimant would be paid for using his own tools and asserted that if the Claimant had used his own tools it was because he was more comfortable doing so.
19. In his submissions, Mr Harding accepted that the evidence was unclear on both sides but he asserted that the Respondent's evidence should have been better. Mr Harding accepted that the job advert placed by the Respondent was an invitation to treat and not an offer in itself. However, he took the view that a bargain had been reached between the parties as the Claimant had undertaken work for the Respondent. This, Mr Harding submitted, created legal relations and consideration was provided because the Claimant was paid. He accepted that the terms of the contract were uncertain but argued that the Claimant should benefit from the contra proferentem principle and any ambiguities should be construed against the Respondent. Further, it was submitted that it was possible that Mrs Clarke misunderstood the agreement reached with the Claimant. It was clear that the Claimant had been interviewed and it was submitted that he was offered a part time 16 hour contract as opposed to a casual contract. Mr Harding invited the Tribunal to accept that the Claimant had been offered an employment contract in October 2021.
20. Mr Harding further pointed out that it matter not that Mr Wolstencroft did not have actual authority to offer the Claimant a role. There was no positive evidence whether he had offered the Claimant role but if the Tribunal was satisfied that an offer was made to the Claimant of a permanent contract then a legally binding contract was engaged through implied agency.

### **Conclusions**

21. In reaching my conclusions I have considered all the evidence I have heard. I have also considered the bundle in its entirety as well as the oral submissions made by the parties' representatives.
22. I accept the submission made by Mr Harding that if an offer of employment was made to the Claimant by Mr Wolstencroft then the Respondent would be bound by this under the agency principle. However, I am satisfied on the evidence before me that no offer of a permanent contract was made to the Claimant. It is clear that a job advert was placed by the Respondent for a permanent part time Events Caretaker/General Assistant. The Claimant applied for this role and was

invited for an interview. However, the only contract that the Claimant was offered and worked under was that of a casual worker, such offer being made by Ms Field on 4 October 2021. Understandably, the Claimant was aggrieved that he was not offered a job undertaking the role that had been advertised and for which he had applied and he continued make enquiries in this regard. However, I see no evidence of any formal offer being made to the Claimant of a permanent contract, nor of the essential requirements required to create a contract. There was no offer, no acceptance, no intention to create legal relations, no consideration and no certainty of terms. It is clear from the evidence that even the Claimant did not consider he had been offered a permanent contract on 4 October 2021 as he emailed Ms Field after he was offered the casual contract to say, he wanted "*before being offered any job role*" to tell Ms Field, in private a little bit about himself. In the circumstances, I am satisfied that the Claimant was only offered and accepted a casual contract and that there has been no unlawful deduction from his wages.

23. As the Claimant was not an employee the Tribunal does not have jurisdiction to hear the Claimant's claim for breach of contract. However, even if the Tribunal did have jurisdiction, the Claimant's claim would have failed as he has not produced any evidence to demonstrate that an agreement was made with the Respondent that he would be paid for the use of his own equipment.
24. As such, the Claimant's claims for unlawful deduction from wages and breach of contract fail and are dismissed.

Employment Judge **Choudry**  
13 May 2024