



EMPLOYMENT TRIBUNALS

Claimant: Mr R Amey

Respondent: Rowland Door Services Limited

Heard: Midlands West (by Cloud Video Platform)

On: 16 April 2024

Before: Employment Judge Power (sitting alone)

Representation

Claimant: in person

Respondent: Mr Barnes, Solicitor

JUDGMENT having been sent to the parties on 22 April 2024 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

Background

1. The Claimant's claim form was presented on 3 December 2023, following a period of early conciliation from 25 September 2023 to 6 November 2023. The claimant's claim is for breach of contract, in respect of a failure to pay expenses and commission payments which the Claimant says was outstanding on termination of his employment.
2. The Respondent entered a defence on 28 December 2023 and counter-claimed for the cost of an iPhone which the Respondent says was issued to the claimant and, although returned by the Claimant upon termination of employment, the Respondent says cannot be used without the Claimant's Apple ID which has not been provided. The Claimant wrote to the Tribunal on 11 March 2024, refuting the counterclaim. The Claimant's response to the counterclaim was accepted on 3 April 2024. Employment Judge Edmonds directed on 8 March 2024 that the original claim and employer's contract claim should be heard together today.

Issues

3. The issues to be determined were as follows:
 - a. Whether the terms of the Claimant's contract of employment provided for the Respondent to pay expenses to the Claimant.
 - b. Whether the terms of the Claimant's contract of employment provided for the Respondent to pay commission to the Claimant.
 - c. Whether in breach of contract the Respondent failed to make payment for outstanding expenses incurred but unpaid on termination of employment.
 - d. Whether in breach of contract the Respondent failed to make outstanding commission payments to the Claimant on termination of employment.
 - e. The appropriate level of damages in the event of a breach by the Respondent.
 - f. Whether the Claimant returned company property to the Respondent, namely an iPhone, on termination of employment. Whether the Claimant was required to provide an Apple ID at the same time and if not, whether this was a breach of contract by the Claimant.
 - g. The appropriate level of damages in the event of a breach by the Claimant.

Evidence

4. Following Case Management Orders made on 7 December 2023, the parties had produced an agreed 70-page bundle. This contained several pages of correspondence to and from ACAS, which I informed the parties I would disregard. The Claimant had produced a Schedule of Loss.
5. The Claimant and Mr Rowland, Managing Director of the Respondent, had produced witness statements. Both witnesses gave evidence on affirmation. The Respondent's representative asked questions of the Claimant. The Claimant asked questions of Mr Rowland. I asked some questions of each witness for the purposes of clarification. After hearing closing submissions, I adjourned to make my decision.

Findings of fact

6. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings of fact are limited to those that are relevant to the issues listed above, and necessary to explain the decision reached.
7. The Respondent is a medium-sized company with approximately 62 employees. The Claimant was employed as a Sales Manager for the Respondent. The Claimant commenced work for the Respondent on 11 April 2023. The Claimant was issued with an iPhone 14 at the start of his employment, together with other work equipment.

8. The Claimant was issued with a contract of employment, a copy of which appears in the bundle at pages 31-39.
9. The section of the contract of employment in relation to company equipment states:

“Company Equipment

To perform your role/duties to the very best of your abilities we will issue you with various pieces of equipment to fulfil these duties/tasks.

Each piece of equipment issued will require a signature of acceptance at all times.

We will keep a log of company issued equipment and the company reserves the right to conduct random audit/health check of any issued equipment.

All equipment issued should be looked after as if it was your own and that any issues/damages to said equipment is to be immediately to your line manager for the relevant action/reissue (sic)...

Should any equipment be returned in an unsatisfactory condition the company reserves the right to deduct the costs of any final monies owing to you, or you will otherwise reimburse the company...

You agree that on termination of your employment should you not return the equipment or should the equipment be returned in an unsatisfactory condition the cost of replacement or a proportionate amount of this, as decided by the Company, will be deducted from any final monies owing to you, or you will otherwise reimburse the Company.

Further information on the use of mobile phones and computers is contained in the Employee Handbook.”

10. The section of the contract of employment in relation to fuel expenses states:

“Fuel – mileage reporting and reimbursement

Fuel for the vehicle is covered by the custodian of the vehicle and all mileage and fuel use is to be recorded on the dedicated RDS mileage sheet.

The RDS mileage sheet with all business related miles is to be completed weekly and submitted for processing to RDS accounts ...

The company will endeavour to reimburse the custodian of the vehicle

within the same day or submittance of the mileage sheet, this may not always be possible due to any unforeseen issues that may arise i.e. sickness, bank holidays and IT matters.”

11. The section of the contract of employment in relation to the commission scheme contains a table which illustrates that for sales up to £225,000 0% commission is due. For sales for between £250,000 and £500,000, 1% commission is due. The contract states:

*“ - Remuneration workings on a banding basis per annum running from April 23 to June 24
- First £250,000 for sales achieves 0% commission.
- Sales between £250,000 to £500,000 will have 1% commission...”*

12. The Claimant does not recall being given or shown how or where to access an employee handbook, which is referenced within the contract of employment. Mr Rowland says that employees are shown where to access an employee handbook on induction when equipment is issued to them. There was however no copy of an employee handbook in the bundle before me today. There was no evidence that the Claimant had signed to accept his company equipment nor of a log of equipment issued to the Claimant. I am not satisfied that the Claimant was ever given or shown where or how to access an employee handbook.

13. The employment ended on 14 August 2023 by reason of his dismissal. The Claimant was paid in lieu of one week's notice.

iPhone

14. A letter to the Respondent from EE, dated 22 November 2023, appears in the bundle at page 42. The letter confirms the make, number and model of an iPhone purchased for £1,368 by the Respondent on 29 March 2023. It is accepted by the Claimant and the Respondent that the iPhone referred to in that letter is that issued to the Claimant when he commenced work for the Respondent. The Respondent asserts that the value of the iPhone at termination of employment is £1,368. This valuation is disputed by the Claimant. I do not find that the iPhone was worth the purchase price of £1,368 by the time the Claimant's employment was terminated.

15. The Claimant gave clear evidence about his use of the iPhone during his employment. He explained that he had had to use his own Apple ID to access the iPhone on a particular business trip. Although it was submitted on behalf of the Respondent that the Claimant was told he could not use the iPhone for personal use, there was no evidence of that before me today. Indeed, Mr Rowland accepted in oral evidence that he would have to review the Respondent's stance on personal use and logging of personal information on work issued mobile phones. It is apparent that the Respondent does not have a clear policy. I find that the Respondent's requirement that the Claimant provide his Apple ID to the Respondent, which was stated in the correspondence with the Claimant subsequent to

the termination of his employment, was not stated to the Claimant at any time during or on termination of his employment. I find that the Claimant was not provided with any information – beyond what was in the contract of employment – about the use of the iPhone.

16. The contract states that “*should any equipment be returned in any unsatisfactory condition the company reserves the right to deduct the costs of any final monies owing to you, or you will otherwise reimburse the company ...*”
17. On the Claimant’s dismissal, he was asked to return all company property. He attended a meeting at the company on 14 August 2023 at which he handed back his company property, including the iPhone. The Claimant unlocked the iPhone at that meeting. The Respondent accepted the iPhone back. No indication was given to the Claimant that the iPhone was not returned in a satisfactory condition at that time.
18. It was not until 18 August 2023 that the Claimant was contacted by the Respondent and asked to provide his Apple ID. Several communications then followed between the Claimant and the Respondent in relation to access to the iPhone, which were in the bundle before me. I find that the Claimant made significant efforts to provide assistance to the Respondent subsequent to the termination of his employment. The Respondent maintained that it required the Claimant’s Apple ID in order to access the iPhone. The Claimant explained to the Respondent why he did not consider it appropriate to provide his Apple ID to the Respondent, including that he was concerned that the Respondent would then have access to confidential information belonging to the Claimant and others. I find that the Claimant did his best to assist the Respondent, including by contacting the manufacturer of the iPhone, Apple, and relaying to the Respondent the information Apple provided about how the iPhone could be accessed. I do not find that the Claimant deliberately withheld information from the Respondent, as was submitted on behalf of the Respondent.

Fuel expenses

19. The Claimant made a claim for fuel expenses at termination of employment on a spreadsheet which appears at page 54 of the bundle. The amount claimed by the Claimant is £1,354.05. The Claimant says that he did not make a claim earlier in his employment as he did not have access to the relevant spreadsheet. It was accepted by Mr Rowland in oral evidence today that this is a valid claim for expenses in accordance with the contract and that the Respondent would have paid these expenses to the Claimant but for the issue with the iPhone.
20. I find that the sum of £1,354.05 was owed by the Respondent to the Claimant at the termination of his employment in respect of fuel expenses.

Commission Payments

21. The Claimant asserts that he should have been paid 1% commission in relation to the sales he brought in for the Respondent during his

employment. He says that this would be a reasonable amount based on the sales that he made. There is however no contractual provision to that effect. There was no evidence that the Claimant had achieved sales of over £250,000 such as to engage the commission payment scheme. I find that the Claimant is not owed any sums in respect of commission payments by the Respondent.

Relevant law

Breach of contract

22. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, Article 3, provides as follows:

“3. Proceedings may be brought before an employment tribunal in respect of a claim of an employee 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; and*
- (c) the claim arises or is outstanding on the termination of the employee’s employment.”*

23. Article 4 provides as follows:

“4. 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 claimant 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.”*

Application of law to facts

Breach of contract

24. The Claimant was required by his contract of employment to return the iPhone to the Respondent on termination of his employment on 14 August 2023, which he did. There was no express or implied requirement for the Claimant to release his Apple ID to the Respondent on termination of his employment. The Claimant was not in breach of contract by failing to provide his Apple ID to the Respondent.

25. The Respondent owed the Claimant the sum of £1,354.05 in respect of fuel expenses upon the termination of his employment. The Respondent did not owe the Claimant anything for commission payments.
26. In light of my findings above, the Respondent had no contractual entitlement to withhold the purported value of the iPhone from the payment due to the Claimant in respect of fuel expenses.
27. Although it was submitted on behalf of the Respondent that the Claimant had been vexatious in his dealing with this claim, there is no evidence of that before me today. I have found that the Claimant, although he had been dismissed by the Respondent, made attempts to assist the Respondent to resolve the issue with the iPhone. The Respondent breached the Claimant's contract by refusing to pay the Claimant in respect of his expenses outstanding on termination of employment and the Claimant properly sought redress through his claim to the Tribunal.
28. The Claimant's claim for breach of contract in respect of fuel expenses payments outstanding at the termination of employment is well-founded.
29. The Respondent is ordered to pay the Claimant damages for breach of contract in the sum of **£1,354.05**.
30. The Claimant's claim for breach of contract in respect of commission payments is not well-founded and is dismissed.
31. The employer's contract claim brought by the Respondent is not well-founded and is dismissed.

Signed electronically by me
Employment Judge Power
Date: 2 May 2024