



EMPLOYMENT TRIBUNALS

Claimant: Mr Khan

Respondents: (1) GP Hamptons Limited (in voluntary liquidation)
(2) Secretary of State for Business and Trade

Heard at: Bristol (by CVP)

On: 10 May 2024

Before: Employment Judge Murdoch

Representation

Claimant: In person

First Respondent: Mr Cuillinane, insolvency manager on behalf of liquidators

Second Respondent: Did not attend

JUDGMENT

1. Under section 183 Employment Rights Act 1996, it is determined that the claimant is not entitled to a redundancy payment from the first or second respondent.
2. The complaint of breach of contract in relation to unpaid notice against the first respondent is well-founded. The first respondent is ordered to pay the claimant the sum of £577 (one week's gross pay) as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will be taxed upon it as Post Employment Notice Pay.
3. The complaint of unauthorised deduction from pay contrary to Part II Employment Rights Act 1996 in respect of unspecified dates against both the first and second respondent is not well-founded and is dismissed.
4. The complaint of unauthorised deductions in respect of holiday pay against both the first and second respondent is not well-founded and is dismissed.
5. The first respondent is therefore ordered to pay the claimant the total sum of £577.

REASONS

Introduction

1. GP Hamptons Limited entered into Creditors' Voluntary Liquidation on 11 May 2023. Simon Lowes and Stephen Powell of Begbies Traynor (Central) LLP were duly appointed as Joint Liquidators as at the same date. As this is a Creditors' *Voluntary* Liquidation, there were no restrictions on proceedings.
2. The claimant was employed as a store supervisor. His last day of employment was 12 March 2023.
3. The date on the claimant's ET1 was 25 May 2023.

The hearing

4. The claimant was representing himself. Mr Cuillinane attended as the insolvency manager, who was attending on behalf of Simon Lowes and Stephen Powell. The second respondent had already stated in its grounds of resistance that it was not attending.
5. The parties had not provided any witness statements, nor a bundle of evidence. They did not have questions for each other. I put both parties under oath and asked them some questions.
6. There were significant technical problems during the hearing, including blank screens and the second respondent's representative being unable to rejoin the hearing having lost connection. After half an hour of technical problems and no solutions being offered, I decided to end the VHS hearing and convert to CVP. The CCD/Judicial Case Manager system was also experiencing outage problems at the time. The technical problems meant I was unable to start the substantive hearing until past 11:00am (one hour late), in a hearing with a two-hour allocation. Even when I managed to commence the hearing, the line was poor. I decided that the connection was good enough (just) to proceed, bearing in mind the overriding objective to deal with cases efficiently and proportionately.

Issues for the Tribunal to decide

7. The unfair dismissal claim was struck out on 31 October 2023 on the grounds that there was not two years of service.
8. The claimant confirmed that he had four remaining claims: redundancy pay, notice pay, unpaid wages and holiday pay.

Findings of fact

Length of service

9. The claimant stated that his employment should be counted as five years and four months of continuous employment as he started working for the

respondent in October 2017 and finished in March 2023. He admitted though – in writing and in oral evidence – that there was a gap in employment from April 2020 to November 2021. He was furloughed between April 2020 and June 2021, and then had a five-month gap in employment, until the respondent employed him again in November 2021. He argues that this does not break his employment.

10. I find that there is, in fact, a break in service here. The end date of employment is 12 March 2023, and the claimant did not start his second round of employment with the respondent until November 2021. That period is approximately 17 months of continuous service, which obviously falls short of the two years, or 24 months, of service. This was evidenced during the course of the hearing via the first respondent showing me two P45s: the first had an end date in June 2021 and the second had an end date in March 2023. Furthermore, the unfair dismissal claim had already been dismissed for lack of two years of service.

Redundancy pay

11. The claimant needs at least two year's continuous service to be able to claim statutory redundancy pay.
12. He does not have two year's continuous service and is therefore not entitled to statutory redundancy pay from the first respondent.
13. In relation to the second respondent, I was shown during the course of the hearing the claimant's application for payment from the Insolvency Service. It stated that the claimant was not entitled to redundancy pay as he had not been continuously employed for two years. The claimant is therefore not entitled to statutory redundancy pay from the second respondent either.

Notice pay

What was the claimant's notice period?

14. The second representative's representative sent me the claimant's contract of employment during the proceedings. It stated that if the amount of service was up to two years, a notice period of one week would be given. Given the claimant started working for the respondent in November 2021 and finished working for them in March 2023, I find that the notice period is one week.

Was the claimant paid for that notice period?

15. I find that the claimant was not paid for that notice period, as he set out in his unchallenged ET1 and oral evidence under oath.

Calculation

16. I calculate that the first respondent owes the claimant £577 gross pay. I made this calculation by taking his gross annual salary of £30,000 (which I accepted by way of his oral submission under oath, as there was no documentation provided) and then dividing that figure by 52 weeks.

Has the claimant applied to the Secretary of State for this payment?

17. Section 182 of the ERA 1996 states that the claimant can make an application to the Secretary of State for this notice pay, and the Secretary of State can pay the employee out of the National Insurance Fund. Section 166 ERA 1996 also permits employees to apply to the Secretary of State for notice pay. The first and second respondent contend that the claimant has not made this application to the Secretary of State, and did not submit the 'correct R2P form'. The claimant was not sure whether he had applied and was unable to provide any evidence of his application. I find that he has not made an application to the Secretary of State for notice pay.

18. I have simultaneously issued a case management order in this case, which states as follows:

"The following directions are given in respect of the claimant's complaint of breach of contract in relation to unpaid notice against the second respondent:

- a. The claimant's complaint of breach of contract in relation to unpaid notice against the second respondent is stayed for six months pending the claimant's application to the second respondent for notice pay under section 166 or 182 of the Employment Rights Act 1996.
- b. If the claimant has not made the application within six months (by 5 December 2024) and informed the tribunal accordingly, or applied to the tribunal for an extension of time, the complaint of breach of contract in relation to unpaid notice against the second respondent will be dismissed without further order on the grounds that it is not being actively pursued."

Unpaid wages

Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

19. I asked the claimant numerous questions to try and understand the factual matrix of his unpaid wages claim. He said in oral evidence that he was owed five week's wages, three weeks from sometime in January 2023 and two weeks from sometime in February 2023. He was unable to be more specific and was unable to provide any evidence.

20. The first respondent's representative stated that unpaid wages had now been paid in the gross amount of £880 and net amount of £557. The claimant accepted that he had received £557 from the insolvency services. The first respondent's representative stated that the dates for these unpaid wages were 27 February 2023 through to 12 March 2023. These dates do not correspond with the claimant's suggested dates.

21. I find that the claimant has not made out to the requisite burden of proof that any unauthorised deductions have been made from the claimant's pay, that would entitle him to more than what he has already been rewarded.

22. The complaint of unauthorised deduction from pay contrary to Part II Employment Rights Act 1996 in respect of unspecified dates is not well-founded and is dismissed.

Holiday pay

What was the claimant's leave year?

23. The employment contract stated that the holiday year was from 1 January to 31 December. It stated that the holiday entitlement must be taken during this period and that payment will not be made for any unused holiday and that these cannot be taken over into the next holiday period. The contract stipulated that the full amount of holiday entitlement was 28 days per year pro-rata per completed month's employment. If annual leave is 28 days including bank holidays, that equates to 2.33 days a month.

How much of the leave year had passed when employment ended?

24. As the leave year started on 01/01/2023 and the employment ended on 12/03/2023, two completed months of the leave year had passed when the claimant's employment ended.

How much leave had accrued for the year by that date?

25. I find that five days of leave had accrued from 01/01/2023 to 12/03/2023. I calculated this figure by multiplying two completed months of the leave year that had passed when the claimant's employment ended by 2.33 (which is the claimant's monthly annual leave allowance).

How much paid leave had the claimant taken in the year?

26. The claimant said he took ten days holiday from 01/01/2023 to 12/03/2023 but that it was unpaid. The second respondent stated that he understood that ten days of holiday had been taken during this period but had been paid. No further evidence was provided by either party.

Were any days carried over from previous holiday years?

27. The contract states that the worker is only entitled to pay in lieu of holiday accrued but not taken in final year.

How many days remain unpaid?

28. The claimant had accrued five days of leave from 01/01/2023 to 12/03/2023 and taken 10 days leave. I find that the claimant has not made out to the requisite burden of proof that this holiday was unpaid. No payslips or other evidence was produced. The complaint of unauthorised deductions in respect of holiday pay is not well-founded and is dismissed.

Conclusion

29. The first respondent is therefore ordered to pay the claimant the total sum of £577.

Employment Judge Murdoch

Date 5 June 2024

JUDGMENT SENT TO THE PARTIES ON
24 June 2024 By Mr J McCormick

FOR THE TRIBUNAL OFFICE