



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Chiromo

**Respondent:** Citibank N. A

## RECORD OF A PRELIMINARY HEARING

**Heard at:** East London Hearing Centre

**On:** 24 May 2024

**Before:** Employment Judge C Lewis

### Appearances

For the Claimant: In person

For the Respondent: Mr S Nicholls - Counsel

## JUDGMENT

The claim is struck out.

## REASONS

1. At a preliminary hearing held on 11 March 2024 Employment Judge Moor listed this Public Preliminary Hearing to decide the following issues:
  - a. Whether the deduction of wages claim was brought against the First Respondent within the time limits set out in section 23 of the Employment Rights Act 1996 ('ERA') (within three months of the date payment of wages was due, or if there was a series of deductions the due date for the last of those payments);
  - b. If not, whether it was not reasonably practicable for the claim to be brought within that time. And if not, within what further period was it reasonable to bring the claim.

- c. Whether the claim should be struck out as having no reasonable prospects of success and/or because the claimant has conducted the claim unreasonably.
    - d. Whether a deposit should be ordered as a condition of continuing the claim or any allegation within it.
2. At the preliminary hearing on 11 March 2024 the Claimant withdrew his claims against the Second Respondent and his unfair dismissal claim against the First Respondent. Having heard from the Claimant that he was claiming that he was a worker and not an employee Employment Judge Moor also dismissed the claim for breach of contract due to the Tribunal not having jurisdiction over that claim in those circumstances [see para 6 of Employment Judge Moor's case management summary]. A judgment dismissing those claims on withdrawal was sent to the parties on 12 March 2024.
3. The issues in the remaining claim were identified at paragraph 7 of Employment Judge Moor's case management summary as follows:
  - a. On what date were the wages claimed properly payable (see below for the Parties' cases on dates). If there was a series of deductions, was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
  - b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - c. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
  - d. Was the Claimant a worker of the First Respondent within the meaning of section 230 of the Employment Rights Act 1996? The Tribunal will ask:
    - i. Was there a contract between them.
    - ii. Was that a contract for personal service.
    - iii. Was the First Respondent not a client or customer of the Claimant's business.
  - e. What were the wages due (i.e. properly payable under that contract)?
    - i. The Claimant contends he is due the wages shown as 'pending' on his document at page 23 for work he did for the First Respondent after 14 December 2022 until 4 March 2024.
    - ii. The First Respondent says the contract with a third party through which he did work for it terminated on 14 December 2022 and he did not work thereafter.

- f. Was a deduction made to any wages properly payable, i.e. for work having been done under the contract in respect of which wages were owing?
  - g. If so, was that deduction authorised by the contract?
    - i. The Respondent will say that, even if there was a contract between them, that allowed for 2 weeks' termination of the contract which was given and no further work was done.
  - h. If no, how much was the deduction.
4. The Claimant sought to strike out the Response for not being produced on the prescribed document. Employment Judge Moor rejected this application for the reasons given at the hearing and provided in writing on 16 April 2024 (sent to the parties on 23 April 2024). She refused to make unless orders requested by the Claimant due to those being premature.
5. Employment Judge Moor also made case management orders in preparation for this hearing.
6. Employment Judge Moor set out the Claimant's case on wages as he explained it to her at the hearing on 11 March as follows:
- “The Claimant was clear to me today that he contends he actually worked for the Respondent after 14 December 2022. I had to clarify this as his claim had been he was dismissed on that date. He was clear with me that he was not simply saying that he was owed wages because there had been a portion of his fixed term contract remaining after termination and that was wrong (that had been his breach of contract case), but that he was due wages because he had done the hours of work set out on his page 23 submissions, most often 40 hours. The Claimant said he did ‘high level’ work which he was unwilling initially to discuss because it was confidential (despite the fact that it was a private hearing). I explained to him that he should explain to me because I had asked and it was necessary to his wages claim to know what work he had done. He said he had worked on the Manillar project, doing reviews and proof-reading documents. He had sent this work to his manager Michelle Grimes. There had only been some weeks where he had reduced access to the First Respondent's system. I explained to the Claimant that his witness statement for the next occasion should show examples of work done, including the last work he said he did for which he claims he should have been paid. This will be important for him to establish the proper time limits.”
7. The claim form was presented on 10 November 2023 following a period of early conciliation between the Claimant and Citibank between 26 October 2023 and 30 October 2023, any complaints about deductions that took place before 27 July 2023 are out of time unless it was not reasonably practicable for the Claimant to bring them in time and he brought them within such further period as is reasonable.

**Evidence at the Preliminary Hearing on 24 May 2024**

8. I was provided with a bundle of documents [278 pages] a witness statement from the Claimant [identified as C1] and a witness statement from Ms Slattery for the Respondent [identified as R1]; a 9 page skeleton argument prepared by Mr Nicholls [R2]; a copy of a Judgment of the County Court at Chester dated 9 May 2024 [R3]; a copy of an email dated 22 May 2024 from Global ServiceNow to Chandra Traynor and Katie Slattery [R4]; a copy of an email dated 23 May 2024 from David Speakman to Samuel Nicholls [solicitor and Counsel for the Respondent respectively] forwarding a chain of two emails consisting of an email dated 1 December 2022 from the Claimant's email address to Nick Thom, replying to an email from Nick Thom on 30 November 2022,[R5].
9. At this hearing the Claimant referred to Employment Judge Moor 'making him' withdraw his breach of contract claim, he also referred to the fact that damages for breach of contract are capped at £25,000 in the Employment Tribunal; he also told me that he had been given advice by Howard Jacobs on 10 October 2023 and 28 February 2024. I informed the Claimant that I did not need to hear about his legal advice and warned him that if he chose to tell us about part of his legal advice the Respondent might argue that he had waived his privilege in that advice and should be asked about other aspects of the advice.
10. The Claimant told me there had been a recent decision of the EAT in this case, he told me that the EAT had said he was right and can go ahead with his appeal. I asked him about the EAT decision and referred to correspondence from the EAT on the ET file dated 1 May 2024 which states that Andrew Burns KC had considered his grounds of appeal and was of the view they disclosed no reasonable grounds for bringing the appeals. The Claimant accepted that was what the EAT had said, but told me he understood that Andrew Burns KC's view is just an opinion so he can challenge that and he will have a hearing and he has instructed his solicitor to handle that for him.
11. I explained, as Employment Judge Moor had at the previous hearing, that at today's hearing I would need to hear evidence about the work the Claimant says he has done for the Respondent since December 2022 and when he says the payments for that work fell due; I reminded the Claimant that this is a claim for unlawful deductions from wages. I referred the Claimant to paragraph 14 of Employment Judge Moor's case management orders which reads as follows:

14 A witness statement contains **the facts** the witness can tell the Tribunal **relevant to the issues at the Preliminary Hearing** including:

14.1 What dates the wages were due and owing. The Claimant should bring evidence to show examples of the work he did for the First Respondent after 14 December 2022. He should also include an explanation for why his claim was delayed after 14 December 2022.

And her explanation at the end of paragraph 18;

“I explained to the Claimant that his witness statement for the next occasion should show examples of work done, including the last work he said he did for which he claims he should have been paid. This will be important [sic] for him to establish the proper time limits.”

12. The Claimant's witness statement did not make reference to any of the documents in the bundle nor had he produced any evidence of work done for the First Respondent after 14 December 2022. I explained that as per Employment Judge Moor's orders the Claimant's evidence ought to be set out in his witness statement and the Claimant confirmed that all of the evidence on the relevant points was in his witness statement.
13. I adjourned from 11 a.m. to 11.30 a.m. to read the witness statements and documents referred to in the statements and Counsel's skeleton arguments.
14. Central to the Claimant's claim was the assertion that the Respondent had never terminated his engagement with them and that he was still carrying out work for them. He had not received any payment from the Respondent since December 2022 and he claims that there was a series of unlawful deductions from December 2022 which is ongoing as at today's hearing.
15. The Claimant gave evidence and confirmed the contents of his original witness statement and his amended statement dated 12 May 2024. He was cross-examined by Mr Nicholls. In cross examination he denied that his engagement with the Respondent had been terminated.
16. The content of the email dated 1 December 2022 [R5] was put to the Claimant; he confirmed that the email dated 1 December 2022 has his email address as the sender, he said he could not recall sending that email but accepted it was from his email account. He confirmed that he knew who Nick Thom is, he was the person he dealt with at Morgan McKinley, the recruitment agency. He told me that he did not have any recollection of receiving the email dated 30 November 2022 or of seeing that email, the only emails he remembers are about the placement and about late payment.
17. The Claimant accepted that if he had received the email dated 30 November 2022 it made it clear that his assignment was being terminated on 2 weeks' notice. He told me that he did not think the email looked legitimate to him. He accepted that if it was sent then it was clear that his assignment with Citibank is over. He stated that he did not remember the email and that this was the first that he had seen of that explanation [for terminating the assignment]. He then went on to say against that the email did not look legitimate as it had dashes down the side – referring to the lines indicating the forwarded email. He added that he was aware the assignment was over when he stopped being paid and then random payments were made to him.
18. The Claimant was taken to his ET1 [page 9 in the bundle] which reads:

“... this agreement was broken when they stopped paying me and wrongfully terminated by a recruiter whose role is actually to recruit.”

The Claimant explained that he knew this because he was told by Michelle, his boss. He had a meeting with Michelle in which she told him that he would be receiving an email from Nick informing him that his assignment was being terminated – but he never saw it [the email]. He did not chase Nick for it [the email] he just thought after that conversation that he did not know what it meant. It was put to Mr Chiromo that he was not telling the truth and that his evidence was a fabrication, that he did see the email and clearly referred to it in his ET1.

19. The Claimant was also asked about the paragraph in his ET1 [p9] which states,

“no disciplinary and grievance procedures were followed when my employment was ended and they stopped paying me”

His response was that these were “loose words”, and that this just referred to when they stopped paying [him].

20. The Claimant was asked about the remedy boxes where he had ticked that he was seeking reinstatement [p 10] and his reply was that he “just ticked all the boxes”. The Claimant was taken to question 9.2 where he had written that he was seeking, “reinstatement with Citibank, Giant Professional Limited and Morgan McKinley.” He said he did not know what reinstatement meant, he thought it meant compensation, he repeated that he ticked every box. When it was pointed out that he had not ticked all the boxes, he had not ticked ‘compensation only’, his response was that he did not tick that because he panicked. He was asked what he meant when he had typed “Have my end date updated until April 2024” whether that was a mistake? He said that was mistake and that he had put in for 18 months i.e an extension to the original 12 months. It was pointed out by Counsel that his claim form was dated almost a year after the assignment ended.

21. It was put to Mr Chiromo that he had not done any work for the Respondent since 14 December 2022, his answer was “no comment”; when he was told that no comment was not an answer, he told me he could not provide evidence of any work and that he had only been able to do it on his laptop, he is not allowed to show anyone his work and told me it was not allowed by GDPR. Counsel for the Respondent confirmed that the Respondent has consented to him opening and showing his work on his laptop and I explained that the court process is an exemption to GDPR: the claimant’s response was that he would not be opening his laptop.

22. Mr Chiromo was referred to the content of Employment Judge Moor’s orders which set out that he had to provide evidence of any work done for the Respondent. He was also referred to emails sent by the Respondent’s solicitors reminding him that he needs to provide evidence. He stated that he would not be providing any further evidence. He then went on to say that he has to access his work through a login portal, but he cannot connect to the system because he has been logged out and access has been denied. He said this was because the Respondent was not letting him log in to provide the work. He told me that he could not remember when he had last successfully logged in.

23. The Claimant said he had been paid in March 2024 and that he was able to go into the system in March and access certain things – he had provided some work for the Manillar project, it was high level information. Mr Nicholls put to the Claimant that he had been blocked from the system since an instruction given on 14 December 2022 which had been actioned on 15 December 2022 [R4]. The Claimant disagreed, he said the Respondent was still paying him in March and the Respondent locked him out of the system immediately after the hearing in March. He accepted however that it would not be possible for him to do any work for the Respondent if he did not have access to the Respondent's system and that all work had to be done using the Respondent's IT via a log in. When pressed by Mr Nicholls the Claimant attempted to log in to the Respondent's system on his laptop. He showed me his log in screen with the message, "Access denied".
24. The Claimant pointed to the record of payments made to him by the intermediary company Giant [225] which show payments made to him in 25 August 2023 and 8 March 2024 [227 and 228]; he accepted that the document did not show that the payments had been for work for Citibank; he also accepted that he had other assignments which were paid via Giant but said that the amount matches that shown as pending on the summary of the time sheets next to Michelle Grimes on Horizon[197] and stated that he had never had another contract for 40 hours per week.
25. The Claimant was asked about the content of WhatsApp exchanges between himself and Michelle Grimes [105-106] which he said show he was working with her: he accepted they did not directly mention work but said this was because Citibank did not allow you to discuss work on WhatsApp. It was put to him that the messages were more consistent with him contacting Ms Grimes after not having seen her for a while but the Claimant disputed this.
26. The Claimant was asked about Fieldglass which was the Respondent's system used for contractors and recording time sheets had uploaded. It was put to him by Mr Nicholls that the page he had included in the bundle was just a worker list and did not show that he had done any work for the Respondent. The Claimant confirmed that he had not provided a time sheet or screen shot of hours uploaded, however he said he had uploaded time sheets for each of the entries on p 251. He confirmed that his evidence was that he had been working 40 hours per week each week even though he had not been paid since December 2022. He accepted however that the summary at p251 was based on his original contracted hours and that he did not have evidence of any invoices or timesheets, he volunteered the information that he had been told by the CAB to show evidence of timesheets. He maintained that he had invoiced the Respondent for work each week through the Fieldglass application but it is just showing up as pending. He did not produce copies of any invoices despite having been told that these should be disclosed if they exist.
27. Ms Slattery then gave evidence. She told me that she had seen [R5] yesterday and [R4] had been sent to her by the internal Fieldglass team in response to her request for information. She explained that Fieldglass is a

tool for non-employees to record time entry and that SAPP is the system it runs from. The information stored in SAPP states that the Claimant's contract began on 10 October 2022 and ended on 14 December 2022. In cross examination by the Claimant Ms Slattery told me that her job was to manage non-employees on site and to update Fieldglass system with start and end dates.

28. Ms Slattery's gave evidence that the reason the Claimant has not been paid since December 2022 was because his assignment was terminated on 14 December 2022 with 2 weeks' notice and he has not been paid since then as the Respondent has no evidence of any work being completed. The Claimant was reminded that this was his opportunity to put to Ms Slattery the evidence showing that he had carried out any work since December 2022.
29. Mr Chiromo took Ms Slattery to page 230, headed the 'Worker List'. Ms Slattery told me that this was not a document that she recognised from Fieldglass. She told me that Fieldglass requires uploading of timesheets on a weekly basis. Ms Slattery's evidence was that the Claimant's information was not showing on the Fieldglass system because his end date was shown as terminated on 14 December 2022, so after that date he is not allowed [by the system] to submit or upload timesheets for work. Ms Slattery told me that there is no way Fieldglass would show these payments as outstanding lines.
30. Ms Slattery disputed that the payment records from Giant produced by the Claimant in support of his claim related to Citibank. She explained that the Fieldglass system feeds the backend IT system so it automatically terminates someone's access to the Respondent's computer system and building on their contract termination date.
31. Ms Slattery was asked about work being sent to Michelle Grimes; she accepted she had not spoken to Michelle Grimes, however any work sent would have had to have been sent via the Respondent's IT system and using a Citibank email address; she did not look for any emails from the Claimant's Citibank email address [to show what work he had been doing] as his Citibank email address was disabled on 15 December 2022 in accordance with the instruction given on 14 December.
32. Ms Slattery was also asked about the WhatsApp messages with Michelle Grimes- she did not accept that these indicate that the Claimant was doing any work for Citibank, in her assessment the wording indicated that he was not working: she pointed to the message from the Claimant which reads, "How are you, how are you keeping, just keeping in touch", indicating they have not spoken in a while.

### **Submissions**

33. Mr Nicholls provided a written skeleton argument on behalf of the Respondent in which he set out the relevant legal principles, he made oral submissions in respect of the evidence at the hearing in which he described parts of the Claimant's evidence as astonishing. The Claimant was also



given the opportunity to make submissions and respond to Mr Nicholls' submissions.

### **Relevant law**

#### *Time limits*

34. The applicable time limits are contained in s23 of the Employment Rights Act 1996. In the case of a single deduction, the claim must be presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made (s 23(2)(a)). Where, however, a claim is made in respect of a series of deductions, the time limit is three months beginning with the date of payment of the wages from which the *last* deduction in the series was made (s 23(3)). The time limits are subject to a possible extension if it was not reasonably practicable to present the claim within the relevant period of three months (s 23(4)).

#### *Strike out*

35. I reminded myself that it would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation.

### **Findings**

36. I am satisfied on the balance of probabilities that the email dated 1 December 2022 [R5] was from the Claimant and that he was aware that his contract with the Respondent was being terminated on 14 December 2022. I do find that this email has been fabricated. The Claimant appears to reference the November email from Nick Thom in his claim form in which he states that his contract was "wrongfully terminated by a recruiter". His original claim was for wrongful termination of his contract; the Claimant also told me that he was appealing against the judgment dismissing his breach of contract claim, the basis of which was that his contract was wrongfully terminated. I found his evidence in respect of the claimed lack of knowledge of the email sent to him in November informing him of the termination of his assignment is implausible and inconsistent with the contemporaneous documents, including his reply to that email sent on 1 December 2022.
37. The Claimant's assertion that he has continued to carry out work for the Respondent, working for Michelle Grimes on a 'special project' is implausible and inconsistent with the internal records showing instructions to terminate his access to the Respondent's IT systems on 14 December 2024. It is not supported by the WhatsApp messages which I am satisfied are more consistent with a conversation with someone you haven't seen for some time. There is also a complete lack of any evidence of any work, time recording, time sheets or invoices or other evidence showing claims for payment for work done. When the Claimant reluctantly tried to log in to the Respondent's system during the hearing (at Mr Nicholl's request, in order to

demonstrate how he was able to do work for the Respondent) he was clearly unable to do so and the log in screen simply displayed the message "Access denied". I do not accept the Claimant's evidence that his access was terminated after the preliminary hearing in March and that he had been able to log on before that date. I accept Ms Slattery's evidence that the Claimant's access to the Respondent's system was terminated on 15 December 2022, this is consistent with the email evidence.

38. The Claimant has not shown there are any non-payments/unlawful deductions within 3 months of the date he brought his claim, he has not claimed to have put in any time sheets since October 2022. Despite being given the opportunity to do so, the Claimant has provided no tangible evidence to support his claim that he did any work for the Respondent since 14 December 2022. There is no evidence that he has done work for which any payment was due within the 3 months (extended by the early conciliation period) before he brought his claim. There is no evidence to support any further sums being lawfully due after the last payment date in December 2022
39. The Claimant has not put forward any basis for an extension of time he simply relies on there being an ongoing series of deductions. I am satisfied that he cannot show any payments properly payable within the 3 month time limit, or at any time since December 2022.

## **Conclusions**

### *Time limit*

40. The Claimant has been given the opportunity to produce evidence to show that he had done work for the Respondent since December 2022 but has provided none; he has produced no evidence of any work having been done for the Respondent after December 2022. When asked about this his answers were evasive and implausible. The Claimant has not shown that there have been any sums lawfully due to him since his last payment in December 2022 and therefore has not established the prospect of any unlawful deductions let alone a series of deductions. The claim has been brought out of time and the tribunal does not have jurisdiction to hear it, it therefore falls to be struck out.

### *Strike out for having no reasonable prospects of success*

41. Had I not found that the claim to be out of time I would have considered striking out the claims for having no reasonable prospect of success. I bore in mind that I am not to conduct in effect a mini trial before reaching this view but rather I have to consider the claim at its highest. I am satisfied that the claim being pursued by the Claimant is inconsistent with his pleaded ET1.
42. I am satisfied that taking the Claimant's case at its highest there is no reasonable prospect of the Claimant establishing that his contract was not in fact terminated in December 2022, or that he has done any work for the Respondent since December 2022 and that there have therefore been any

unlawful deductions from wages that were properly due to him. The Claimant's case is implausible and not only inconsistent with his pleaded claim (ET1) but also the contemporaneous documents, including his email sent on 1 December 2022. I am satisfied that the Claimant's case is totally and inexplicably inconsistent with the undisputed contemporaneous documentation and this is one of the rare cases where it would be appropriate to strike out the claim.

43. If I had not found that the claims were out of time, I would have struck out the claim for having no reasonable prospect of success.
44. The hearing listed for **28 August 2024** will not take place.

**Employment Judge C Lewis**  
**Dated: 18 July 2024**