



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Khazravan

**Respondent:** Canny Clever IT Service Centres Limited

**On:** 17 July 2024

**At:** Newcastle Employment Tribunal (remotely by CVP)

**Before:** Employment Judge Sweeney

## Appearances

**For the Claimant, In person**

**For the Respondent, No attendance or representation**

**JUDGMENT** having been given on **17 July 2024** and written reasons for the Judgment having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

## WRITTEN REASONS

### Background

1. The Claimant, Mr Khazravan, presented an ET1 on **29 April 2024**, in which he claimed for unpaid wages and notice pay. He maintained that the Respondent failed to pay him his wages for February and March 2024 and that he was dismissed in breach of contract, having been entitled to one week's notice. In its response of **14 June 2024**, the Respondent denied the claims, maintaining that the Claimant had been dismissed because he had been working in direct competition with it, in breach of a non-complete clause contained in its standard contract.
2. Upon serving the ET1 on the Respondent on **17 May 2024**, the case was listed for a final hearing on **17 July 2024**. Standard directions were issued which required the Claimant to state how much he was claiming and to send supporting documents and evidence to the Respondent within four weeks of the letter (therefore, by **14 June 2024**) and for the Respondent to send to the Claimant copies of its supporting documents and evidence within six weeks (therefore, by **28 June 2024**).

3. Neither party complied with those directions by the stated dates. On **10 July 2024**, the Claimant sent his supporting documents and witness statement to the tribunal but did not copy in the Respondent. On **12 July 2024**, the Tribunal forwarded these to the Respondent and reminded the Claimant that it was his responsibility to copy correspondence to the Respondent. The Claimant sent the documents to the Respondent that same day. Almost immediately upon receipt of the Claimant's documents, Ken Mosley, on behalf of the Respondent, emailed the Tribunal (also failing to copy in the Claimant) saying that '*ideally we would like the proceedings adjourned for a few weeks so that we can look at these [assertions/allegations] and obtain witnesses to refute the claims. We already have a defence prepared in respond to the previously advised issue around pay but he has not raised issues around his working from home etc..*'
4. This was referred to Judge Loy who refused the application to postpone the final hearing and who explained that all issues to be determined on **17 July 2024** were those that were set out in the Claim Form and that any wider issues could be considered at the start of the hearing. The Respondent was also reminded of its responsibility to copy the Claimant into correspondence. The upshot was that the Respondent was told that the hearing was going ahead.
5. On the day of the hearing, no-one from the Respondent logged on to the remote hearing. The clerk managed to contact Mr Mosley. He said that he did not realise he had to attend the hearing because he had 'put his defence in', that he could not attend because he was going back to the hospital. He did not say why nor did he further contact the tribunal seeking a postponement.
6. The hearing proceeded in the Respondent's absence. The Respondent had two months' advance notice of the hearing date. The application of **12 July 2024** to postpone the hearing made no reference to any hospital visit and no such visit was communicated to the Tribunal until after the start of the hearing. The claims were straightforward 'money' claims and the Respondent had ample time to prepare its own case. The Respondent never complied with the direction to send its supporting documents and evidence to the Claimant by **28 June 2024** or at all.

### Findings of fact

7. The Claimant was employed by the Respondent from **22 August 2023** until **06 March 2024** as a Mobile Device Technician. He agreed a six month probationary period.
8. He was paid hourly at the rate of £20 an hour. The agreement to pay him at this rate was arrived at verbally with Mr Mosley. He worked on average 24 hours a week over six days and was paid monthly at the end of each month.
9. On **06 March 2024**, the Claimant was dismissed without notice. In its Response, the reason for dismissal was stated to be that he had been in breach of a non-compete clause in his

contract of employment. The Respondent believed the Claimant to be working in direct competition with it whilst purporting to work as an employee exclusively for the Respondent. The Respondent says that the Claimant had been directing work away from it and the loss it suffered “*outweighed the amount owed to Mr Khazravan*” (see section 6.1 ET3). I take from this that Mr Mosley, a director of the respondent, accepts that money by way of wages for work done was indeed owed to the Claimant.

10. Although the Response refers to a ‘standard contract’, the Claimant says that he never signed any written contract. Indeed, he says he was never given one to sign even though he had asked Mr Mosley for one. The only document he signed was a ‘new employee’ form. I accept his evidence and find that he never signed a contract of employment and did not agree to any ‘non-compete clause’.
11. The only document he was given to sign was a ‘new employee form’, a copy of which was provided to the tribunal by the Claimant. He signed this document on **04 October 2023**. It contains only personal information such as a PAYE reference and bank details for payment. Nothing is said about terms and conditions.
12. I accepted the Claimant’s evidence as truthful, that Mr Mosley was aware that the Claimant was also undertaking other work from home, repairing devices, as he told Mr Mosley this.
13. The Claimant worked on 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> March 2024. On Monday 4<sup>th</sup> March, he was told he did not need to come in the following day, Tuesday 5<sup>th</sup> March but no reason was given. He was ready and willing to work on that day. When he arrived at work on 6<sup>th</sup> March 2024 he was told by Mosley that his employment was terminated with immediate effect and he was given a letter to that effect.
14. There was no express agreement between the Claimant and the Respondent as to notice. In the circumstances, I find that the minimum notice period of 1 week to be a reasonable period of notice. Therefore, the Claimant was entitled to one week’s notice (subject to him not being in repudiatory breach of contract). As he worked on average 24 hours a week at the rate of £20, a week’s net pay equated to approximately **£413**. The Claimant did not find alternative employment in the week following dismissal. He had to borrow money from his parents and subsequently a bank.

**What was the Claimant due to be paid in February and March 2024 respectively?**

15. Leaving aside any dispute regarding the Claimant allegedly operating in competition with the Respondent, the Claimant worked and was paid for the work he did in August through to January. He also worked in February and March 2024. His gross pay for the months of February and March 2024 was:
  - 15.1. £1,440 for the month of February
  - 15.2. £700 for the month of March

- 16.** These amounts were reflected in the Respondent's pay statements included as part of the Claimant's evidence. He obtained these statements from his 'HMRC app', which allows him to track his payslips and income. They show that those amounts were payable on **29 February 2024** and **31 March 2024** respectively as the Claimant maintained. The amounts were calculated by the Respondent. Therefore, the Respondent had calculated that, as at **31 March 2024**, a total of **£2,140** gross wages was owed to the Respondent.
- 17.** He was not in fact paid for the work he had done in February or in March. Nor was he paid anything in lieu of notice. The Claimant emailed Mr Mosely asking for payment but to no avail.

## **Relevant law**

### **Unlawful deductions**

- 18.** Section 13 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*

*(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.*

- 19.** The statutory provision ensures that earnings are not arbitrarily or unilaterally reduced or withheld by employers. All sums which are "properly payable" (i.e sums to which there is a legal entitlement – normally under the contract of employment) on each payday are

protected. A failure to pay those wages that are properly payable will, absent statutory or contractual authority or written consent, amount to an unauthorised deduction. Any sum that has been unlawfully deducted is recoverable by statute.

### **Notice**

- 20.** An employee is entitled to be given notice of termination of employment. If no notice period is expressly agreed, he is entitled to reasonable notice. The law imports a period of minimum notice into contracts of employment. For an employee who has been continuously employed for one month or more but less than two years, the entitlement is to not less than one week's notice (section 86(1)(a) ERA).
- 21.** Failure to give and/or pay notice is a breach of contract unless the employer can show that it was entitled to terminate the contract without notice by reason of the employee's repudiatory conduct. An employer must prove by evidence that an employee was in fundamental or repudiatory breach, thereby effectively disentitling the employee from any notice or payment in respect of that notice.

### **Discussion and Conclusion**

#### **Unlawful deduction of wages**

- 22.** The ET3 accepts that money was owed to the Claimant. Referring back to my findings of fact and the pay statements prepared by the Respondent, I conclude that an amount of £1,440 was properly payable to the Claimant on **29 February 2024** and that an amount of £700 was properly payable to him on **31 March 2024**, those being the respective pay dates.
- 23.** I then had to consider whether there was any statutory or contractual provision authorising a failure to pay the Claimant for the work done in February and March 2024. There was no statutory authority and no evidence of any contractual authority, whether written, oral, express or implied. I had found that there was no written contract in place between the parties. There was merely a simple oral contract that the Claimant would be paid a certain rate for the hours worked.
- 24.** I then had to consider whether the Claimant had previously signified in writing an agreement or consent to the deduction. He clearly had not.
- 25.** Therefore, none of the circumstances that permit an employer to make a deduction from wages so as not to fall foul of section 13 ERA existed.
- 26.** The Respondent had not brought an Employer's Contract Claim against the Claimant. There is no right to set off on a statutory claim of unlawful deduction of wages. The ERA does not allow an employer to set off claims for damages against a worker in respect of wages otherwise due: **Asif v Key People Ltd** EAT/0264/07. Therefore, even if the Respondent had a strong argument that it had suffered loss as a result of the Claimant's activity elsewhere, this would not assist it in resisting the claim for arrears of wages, as this is a statutory claim.

**27.** This leads to the conclusion that the Respondent has unlawfully deducted the gross sum of **£2,140**. The complaint under section 23 ERA is well-founded and succeeds.

### **Notice**

**28.** The Claimant's minimum notice entitlement was one week and I found that to be a reasonable period of notice in the circumstances, given the duration of the employment and there being no evidence of any customary longer period of notice.

**29.** It is not in dispute that the Claimant was dismissed with no notice. If he is to be deprived of that right to notice, it is for the Respondent to establish by evidence that the Claimant was in repudiatory breach of his contract of employment. Under the Extension of Jurisdiction Order 1994, there is no restriction to the grounds of defence available to an employer to a breach of contract claim. Accordingly, an employer is able to rely upon set-off as a defence to such a claim. In any wrongful dismissal claim, therefore, an employer may resist the claim for damages by showing that the employee was in repudiatory breach and may also, in any event, seek to set off monies owed to it against its debt to the employee. In order to resist payment of the Claimant's contract claim by relying on the doctrine of set off, the Respondent was not required to bring an Employer's Contract Claim. However, evidence is required for all of this.

**30.** Not only did the Respondent fail to attend the hearing and present any evidence, it failed to send any documentary evidence or witness statements to the Tribunal at all. Therefore, there was nothing to support the contention that the Claimant was in repudiatory breach. The Respondent has also failed to establish by any evidence that the Claimant acted in breach of contract so as to cause it financial loss and that such loss should be set-off against any debt owed to the Claimant for breaching his contract of employment by wrongfully dismissing him.

**31.** This leads me inexorably to the conclusion that the claim for breach of contract (wrongful dismissal) is well-founded and succeeds.

## **REMEDY**

### **The unlawful deductions claim**

**32.** In respect of the claim of unlawful deduction of wages, I order that the amount of **£2,140** be paid to the Claimant. I declined to award any further compensation under section 24(2) ERA in respect of the Claimant having to borrow money from his parents or the bank or any other associated losses. The Claimant was ordered to set out how much he was claiming and how he calculated and he has failed to do so. I do not consider it appropriate or just to award compensation in those circumstances as I cannot be satisfied what, if any financial loss has been sustained which is attributable to the non-payment of wages.

### **The wrongful dismissal/notice pay claim**

**33.** The Claimant's average gross weekly pay was £480. I have estimated his weekly net pay to be **£413**. There being no issues raised regarding failure to mitigate loss, I award that amount in damages for breach of contract/wrongful dismissal.

Employment Judge Sweeney

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Date: 16 August 2024