



EMPLOYMENT TRIBUNALS

Claimant: G Oluokun

Respondent: Matthew Watts Associates Ltd

Heard at: London Central (by video) **On:** 14 April 2024

Before: Employment Judge E Burns (sitting alone)

Appearances

For the Claimant: Represented himself

For the Respondent: Yousaf Mahmood, Solicitor

JUDGMENT

All of the Claimant's claims fail and are dismissed.

REASONS

THE CLAIM AND THE ISSUES

1. The Claimant commenced employment with the Respondent as a Multi Skilled Technician on 22 June 2022. He was dismissed for gross misconduct without notice or a payment in lieu of notice on 3 February 2023.
2. The Claimant presented a claim to the tribunal containing various legal complaints on 14 May 2023, following a period of early conciliation from 5 April to 14 April 2023. Prior to this hearing, a number of those complaints had either been withdrawn or struck out. At the time of the hearing, the Claimant had a live appeal to the employment appeal tribunal in connection with the complaints that had been struck out. The parties and I agreed that was not a reason not to proceed with the hearing.
3. The remaining complaints were for notice pay and unpaid wages relating to deductions, sick pay, overtime and holiday pay. The list of issues agreed with the parties in advance is attached as an appendix.

THE HEARING

4. The hearing was a video hearing. From a technical perspective, there were a few minor connection difficulties from time to time. I monitored these carefully and paused the proceedings when required.
5. The Claimant gave evidence. He also provided a written witness statement from Abidoye Amao, who accompanied him to the appeal hearing against his dismissal held by the Respondent on 16 April 2023. The witness was unable to attend the tribunal hearing, but I read the witness statement and took it into account when reaching my decision.
6. For the Respondent I heard evidence from:
 - Ms Sue Watts, Director with responsibility for HR
 - Mr Charles Mayhew, Senior Facilities Manager and the Claimant's line manager
7. I ensured that each of the witnesses had access to the relevant written materials which were unmarked. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.
8. There was an agreed trial bundle of 285 pages. The document that the Claimant relies on as his contract of employment was not included in the bundle. This was added to the bundle at pages 286 – 288. I read the evidence in the bundle to which I was referred. I also asked the parties to comment on some additional documents in the bundle which I had read.
9. I apologise to the parties for the length of time it has taken to send them this reserved judgment.

FINDINGS OF FACT

10. In this section I record my findings of fact. The parties will note that not all the matters that they told me about are recorded in these findings of fact. That is because I have limited them to points that are relevant to the legal issues.
11. Having considered all the evidence, the test I have applied is to make all findings of fact on the balance of probabilities.

Background

12. The Respondent provides Facilities Management services to various clients. The Claimant commenced employment with it as a Multi Skilled Technician on 20 June 2022. He was assigned to work at various buildings and required to report to Mr Mayhew.

Contract of Employment

13. Before me there was a dispute of fact between the parties regarding the contract of employment which the Claimant was issued.
14. The Claimant told me he was only ever issued with a contract in the form of an offer letter dated 16 June 2022, which he signed and returned to the Respondent on 19 June 2022. He says he was never issued with any other contract and accused the Respondent of falsifying some of the documents in the bundle.
15. The Respondent told me that the Claimant was first issued with the offer letter, but then subsequently issued with a more comprehensive contract which superseded it. It denied falsifying any documentation.
16. There was a copy of an email in the bundle which was said to be from Ms Watts to the Claimant. The email was undated. It shows attached to it a comprehensive contract (dated 23 June 2024) and other employment related documents described as a new starter pack.
17. Although the Claimant said in his evidence that he did not receive the email or the comprehensive contract attached to it, the bundle contained a screen shot of his signature on the last page of a document that looked exactly like the signature page of the comprehensive contract. The signature was dated 25 June 2024. There was also an email in the bundle from the Claimant to Ms Watts dated 26 June 2020 saying he was attaching the signed scanned /scan documents of the employment contract.
18. Based on this evidence, I find that the Respondent sent the Claimant an initial offer letter on 16 June 2022 but this was then followed by the comprehensive contract which was sent by email on or around 23 June 2022. The Claimant signed the contract on 25 June 2022 and emailed a screen shot of the signature page to the Respondent the following day, 26 June 2022.
19. I therefore find that the contract which was in place was the comprehensive contract rather than the offer letter.

Pay and Bonus

20. The Claimant's starting salary was £35,000 per annum. The Claimant says that because he was assigned to work at seven buildings rather than the Respondent's standard number of five, Mr Mayhew promised to pay him a bonus of £2,000. The Respondent disputes that the Claimant was promised a bonus.
21. The Claimant's salary was increased by £2,500 to £37,500 from 1st August 2022. My finding is that the Claimant misunderstood what Mr Mayhew told him. Rather than promise him a bonus, I find Mr Mayhew told the Claimant he would get a pay increase and this is what happened. The Claimant's payslips from August 2022 onwards show that his gross salary was increased from that month.

22. Pay slips covering the entire period of his employment were included in the bundle.

Deductions

23. One of the Claimant's deductions claims was based on the fact that the amounts deducted from his wages were different each month and he often earned a different net amount.
24. The Claimant's pay slips do show different total deductions. They also show slightly different gross payments because in some pay slips overtime and call out payments are shown as having been paid.

Overtime

25. The overtime clause in the Claimant's contract of employment said:

"You are required to work 40 hours each week exclusive of breaks. Your normal working days are Monday to Friday and your normal hours of work are 08:00-17:00 inclusive of an unpaid rest break of 60 minutes.

Subject to compliance with all and any relevant working time laws, you shall be required to work overtime in addition to your normal hours of work if instructed to do so by your manager on reasonable notice. We do not guarantee that overtime will be available to you.

You will only be paid for overtime which has been approved in advance by your manager. For each approved full fifteen minutes you work in overtime, you will be paid your basic pay or you may agree with your manager to receive paid time off in lieu for each full half-hour your work in overtime, to be taken at a time convenient to us."

26. Although not mentioned in his contract of employment, the Respondent told me that the Claimant was also required to do emergency call outs. He was paid £10 a day if he was on call out duty. If he was actually called out to do work, he received a fixed rate of £25 per hour and a minimum call out rate of four hours. The documentation provided by the Respondent supported their assertion that this was the system in place for the Claimant and for others doing the same roles as the Claimant. I was therefore satisfied that this was how it operated in practice.
27. The Claimant claimed he was owed overtime as a result of call outs on Saturday 25 July 2022 when he worked 8 hours, Saturday 13 August 2022 when he worked 4 hours, and Saturday 24 September when he worked 8 hours. He was not sure of the exact dates.
28. Email evidence provided by the Respondent showed that the Claimant was on call on Saturday 25 June 2022 and not 25 July 2022. The Respondent's records also show that he was paid four hours at the fixed rate of £25 for the call out that occurred that day and that this was paid in his June pay. I find that the Claimant

has got the date of 25 June 2022 muddle with 25 July 2022. He was paid in full for overtime on the relevant date.

29. The Claimant was on call out duty on 13 August 2024, but was not required to attend to deal with any call outs that day as evidenced by the timesheet he submitted on 15 August 2022 that did not included any call out hours. The Claimant was paid the call out duty rate of £10 for that day as shown on his payslip for August, but nothing extra. I find the clamant was paid correctly for 13 August 2022.
30. The Respondent had no record of the Claimant working overtime on 24 September 2022. The Claimant was on call out duty in the weeks commencing 12 and 19 September 2022. Although there was no official call out made, the Claimant claimed an additional 8 hours pay for working 4 extra hours on 16 September 2022. The Respondent paid him for the four hours in his October. I find that the Claimant has got the date of 16 September 2022 muddle with 24 September 2022. He was paid in full for overtime on the relevant date.
31. The Claimant claimed he worked nearly 250 additional hours in July/August/September/October/November and December 2022 on emergency lighting. He valued this as worth £9,275. The Claimant provided no evidence to support this claim. The additional hours were not shown on the timesheets he submitted. He said that the only record of the extra hours was via the tracker system which the Respondent used, which had not been able to be obtained for the hearing. Absent timesheet evidence, I do not find the Claimant worked the extra hours he claimed.

The Claimant's Dismissal

32. The Respondent dismissed the Claimant without notice on 3 February 2023 for gross misconduct. It found that the Claimant had given a dishonest account of an accident at work in that he had claimed to have a serious accident on 4 January 2023 resulting in a serious injury when he had had no such accident.
33. The notice provision in his contract of employment says:

"We shall be entitled to dismiss you at any time without notice or PILON if you commit a serious breach of your obligations as an employee; or the terms of this contract; or if you cease to be entitled to work in the United Kingdom."
34. The evidence available to me to decide what occurred on 4 January 2023 and whether the Claimant was dishonest about it consisted of the following:
 - WhatsApp messages between the Claimant and Mr Mayheew
 - Telephone records for the Claimant's mobile phone for 4 January 2023
 - The email the Claimant sent to Mr Mayhew on 8 January 2023 providing his account of what occurred on 4 January 2023
 - The Claimant's medical certificate dated 13 January 2023
 - Screen shots from the CCTV footage taken from the foyer of the building in which the Claimant was working

- Email exchanges between Mr Mayhew and the Respondent's client about the CCTV footage
 - A further email dated 30 January 2023 from the Claimant to Mr Mayhew
 - The Claimant's letter of appeal dated 7 February 2023
 - The email from Mr Reid-Collins to Ms Watts on 16 February 2023
 - An email from the General Manager at 67 Grosvenor Street to Sue Watts dated 31 May 2023
 - What the witnesses told me at the hearing
35. My factual finding is that the Claimant did provide a dishonest account to the Respondent about a serious accident he claimed to have had, but did not actually have.
36. The Claimant said the accident took place on 4 January 2023. He claimed to be too unwell to return to work after that and was off sick until his dismissal on 3 February 2023.
37. In the account dated 8 January 2023 which the Claimant sent to the Respondent, the Claimant said that the accident took place in the basement of the property at 28 Grosvenor Street. He gave the time of 7:33 am He said that he spoke to the General Manager on duty at 67 Grosvenor Street when he found that the lights were not working. He then said that having tried to get the lights back on via the rider cupboard, he then used a ladder to check the wire in the ceiling. His account recorded what happened next as follows:
- “... but as soon as I opened few ceiling panels just saw that some ceiling panels fell off and hit me and loss my balance on the ladder and fell off from the ladder stubble with the ladder hit my head on the metal inside the ceiling panel and on the wall and landed on the floor I couldn't regained myself instantly on the floor for few 5-10 minutes to stand up try to switch breaker on and put back ceiling panels all lights came back but felt sharp pain on my neck and lower back and chest and dizzy. I managed to fix the fault and I tried to see if I can manage to carry on with other tasks but the pain was continuous manage to see if I can call any emergency service but was told to see if I can find my way to any A&E hospital to get myself checked properly and received medication.”*
38. The Respondent checked CCTV footage for that morning. Stills from the footage were included in the bundle. It showed the Claimant arrived at 28 Grosvenor Street at 7:09 am. He is then seen trying to fix the lighting problem in the riser problem. The stills show him resolving this and leaving the building at around 07:21 and leaving the building at 7:22. There is the further footage showing the Claimant arriving at 67 Grosvenor Street at 07:25 and then leaving there at 7:31. There was no evidence that the Claimant went back to the first location.
39. The Respondent's witnesses also told me that when the footage was viewed, the Claimant was captured helping himself to free sweets and could be seen walking easily and not appearing to be in any pain.
40. The Claimant did not deny that the CCTV footage was accurate, but claimed before me that the timings in it were wrong. This was contradicted by emails in

the bundle that confirmed that the timings had been checked. The timings of his telephone calls that day also show an inconsistency with his subsequent account.

Sick pay issue

41. The Claimant did not return to his job with the Respondent after 4 January 2023. On 13 January 2023, the Claimant saw his GP and was given a medical certificate (which he passed on to the Respondent) saying that he was unfit to work from 4 January 2023 until 3 March 2023. The reason given was “history of fall, back pain, generalised arthralgia, dizziness and nausea symptoms”. In fact, the Claimant told me that he obtained another job part way during this period and was able to go to work there.
42. The clause dealing with sick pay in the Claimant’s contract of employment says the Claimant was entitled to statutory sick pay during any periods of sickness absence. It also referred to the Respondent having the discretion to make a sickness payment of up to 5 days’ full pay in any 12 month rolling period.
43. According to the Claimant’s pay slips, he was paid as follows:
- | | |
|---------------|--|
| January 2023: | 2 days full pay at the rate of £144.23 per day
2 hours pay at the rate of £19.23 per hour
company sick pay of £576.93
sick pay of £317.93 |
| February 2023 | sick pay of £357.66
holiday pay as set out below |

Holiday Entitlement

44. The clause dealing with holiday in the Claimant’s contract says:
- “Our holiday year runs from 1 January to 31 December. You are entitled to 25 days paid holiday in addition to the usual public holidays during each holiday year or the pro-rata equivalent, if you work part-time.*
- If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year shall be calculated on a pro-rata basis rounded up to the nearest half day.”*
45. As at the date of his dismissal, the Respondent calculated that the Claimant had accrued 4 days of leave. The period they used was from 1 January to 3 February 2023.
46. The Respondent calculated the value of this as £576.92 and this was paid to the Claimant in his final pay on 26 February 2023 as shown on his final pay slip.

THE LAW

Unauthorised Deductions from Wages

47. Section 23(1)(a) of the Employment Rights Act 1996 allows a worker to make a complaint to an Employment Tribunal that her employer has made a deduction for her wages in contravention of section 13 of the same Act.
48. Section 13 is headed “Right not to suffer unauthorised deductions” and says:
- (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.”*
49. A deduction includes a complete failure to pay.
50. Wages is defined in section 27 of the Employment Rights Act 1996. It confirms that wages “means any sums payable to the worker in connection with his employment” and provides a non-exhaustive list of types of payment that are included in the definition. This includes holiday pay, sick pay and bonuses that are properly payable.

Notice Pay / Wrongful Dismissal

51. A claim of wrongful dismissal is simply a claim made on the basis that the Claimant’s contract of employment has not been terminated in line with its contractual termination provisions.
52. When considering a claim for wrongful dismissal, I must ask myself whether the Claimant was actually guilty of the conduct leading to the termination. I must be satisfied, on the balance of probabilities, that the Claimant’s behaviour was so

serious as to amount to gross misconduct. It is not enough for the Respondent to prove that it had a reasonable belief that the Claimant was guilty of such serious misconduct.

53. I must also be satisfied that the Respondent did not choose to waive its right to terminate the contract through delay. This will not arise, however, where the Respondent has sufficiently reserved its position with regard to the right to terminate summarily.

ANALYSIS AND CONCLUSIONS

Wrongful Dismissal

54. My decision is that there was an express provision in the Claimant's contract that enabled the Respondent to terminate the Claimant's contract without notice or a payment in lieu of notice in the event that he committed an act of gross misconduct.
55. I have found that the Claimant provided the Respondent with a false account of a serious accident at work. In my judgment, in doing so, the Claimant committed an act of gross misconduct. His account was dishonest. There were no special or mitigating circumstances that might justify him making up the account. The Respondent was therefore entitled to terminate his employment without notice or a payment in lieu of notice. The Claimant's claim for wrongful dismissal therefore fails.

Unlawful Deduction of Wages

56. The Claimant's claim that he was due, but not paid a bonus fails based on the facts that I have found.
57. The Claimant was not able to provide evidence to support his claims that he was entitled to double time when working on overtime. This was not what was stated in his contract nor did it reflect the practice that operated at the Respondent.
58. The Claimant was also not able to provide evidence that he worked overtime on the dates he cited. I was satisfied that the Claimant was paid his call out duty fee and for all overtime undertaken when doing call outs at the correct agreed rate. His claim for unpaid overtime therefore fails.
59. The Claimant's claims based on differences in his net pay on his pay slips is misconceived. Different rates of net pay are to be expected where gross pay changes on a month by month basis because of the payment of overtime and other payments.
60. The Claimant claims he was entitled to 25 days' holiday pay on termination of his employment. Although his contract refers to him having an annual entitlement to 25 days' holiday, this is for a full holiday year. The Claimant was only employed for part way through the 2023 – 2024 holiday year (which began on 1 January 2023) and therefore he was only entitled to holiday pay for the holiday entitled he

had accrued during that part year. That was correctly calculated by the Respondent as being four days and was paid to him. His claim for holiday pay therefore fails.

61. Finally, the Claimant argued that because he was absent from work sick and signed off for the month of January 2023 he should have been paid in full. The Claimant was signed off sick for the month of January 2023. However, under his contract of employment he was not entitled to be paid in full. At the discretion of the Respondent he could be and was, paid for 5 days in full as shown on his payslip. For the rest of the time he was off sick he received statutory sick pay. This was the correct way to proceed. The Claimant's claim for unpaid sick pay therefore also fails.

Employment Judge E Burns
23 September 2024

Sent to the parties on:

24 September 2024

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For the Tribunal:

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**Appendix
List of Issues**

Wrongful dismissal / Notice pay

1. What was the Claimant's notice period?

Although there is a dispute between the parties as to which document is the correct contract of employment, whichever contract is relied, it is not in dispute that the Claimant's notice period would have been one week. The Claimant values this at £672.

2. Was the Claimant paid for that notice period?

No.

3. If not, did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

The Respondent says the Claimant was summarily dismissed on 3 February 2023 due to gross misconduct and therefore notice was not payable.

Holiday Pay (Working Time Regulations 1998)

4. Did the Respondent fail to pay the Claimant for annual leave which the Claimant had accrued but not taken when their employment ended?

The Respondent says its leave year runs from 1 January to 31 December each year. It says that as at 3 February the Claimant was due 4 days holiday and he was paid this on termination of employment.

The Claimant claims he is owed 25 days holiday, which he values at £650

Unauthorised deductions

5. Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted?

The Claimant claims that the following deductions/non-payments occurred:

(a) He was not paid a bonus of £2,000 that he was told he would receive by Charles Mayhew because he was required to work on 7 buildings rather than 5;

(b) He was not paid overtime in respect of:

(i) 8 hours he worked on Saturday 25 July 2022 – he claims he was due double time for Saturday working and values this at £352

(ii) 4 hours he worked on Saturday 13 August 2022 – he claims he was due time and a half and values this at £528

- (iii) 8 hours he worked on Saturday 24 September 2022
 - (iv) Additional hours worked in July/August/September/October/November and December on emergency lighting which he values at £9,275
- (c) Deductions made from his wages in August, September, October, November and December 2022 as set out in his schedule of loss
- (d) He should have been paid in full in January 2023

The Respondent denies that the Claimant is owed any payments.