



EMPLOYMENT TRIBUNALS

Claimant:

Mr S Holt

Respondent:

International Automotive Components Group Limited

Heard at: Liverpool

On: 11 September 2020

Before: Employment Judge Shotter (sitting alone)

Appearances

For the claimant: In person

For the first respondent: Ian France, director

JUDGMENT

The JUDGMENT of the Tribunal is the claimant's claim for breach of contract is not well-founded and is dismissed.

REASONS

Preamble

1. This final hearing by CVP and telephone is to decide the claimant's breach of contract claim for backpay negotiated by Unite the Union when negotiations were finalised on 23 August 2019 after the claimant's effective date of termination on 26 July 2019. The claim is for approximately £1000 in total.
2. In a claim form received by the Tribunal on the 10 December 2019 following ACAS early conciliation that took place between the 12 November and 5 December 2019, the claimant claimed the basis of his claim for unpaid wages was contractual. He clarified this further in an email dated 21 April 2020. The

claimant relied on clause 8 of his contract of employment in his argument that new rates of pay were applied retrospectively as agreed between the respondent and Unite and this was an entitlement in his contract when it was in force. The claimant having worked the backpay period at a lower rate of pay, believed he should be entitled to the differential other employees had received. In oral evidence the claimant pointed out that not to receive the increase would mean he worked for a lower rate of pay compared to other employees. The claimant has elaborated on his argument further in an undated witness statement.

3. In its Grounds of Response, the respondent disputes the claimant's claims maintaining the respondent makes backdated payments negotiated with the union to employees currently employed on the date the agreement is reached i.e. 23 August 2019, and that as the claimant's last working day was 26 July 2019 which was the effective date of termination agreed between the parties, he was not entitled to any additional payment.
4. In an Agenda a list of issues for the Tribunal to decide was agreed with the parties and is paraphrased as follows:
 - (1) Does the claimant's contract of employment detail any entitlement to pay increases awarded post-employment?
 - (2) Is there a Unite the Union Back Dated Agreement?
 - (3) Does the claimant's contract of employment state that the rate of pay will be in line with the current collective agreement?
 - (4) Is there a right under the claimant's contract to future collective agreements?

Evidence

5. The Tribunal heard oral evidence from the claimant and from Mrs Wendy Williams, HR manager, both of whom I found to be credible witnesses who tried their best to give honest evidence. There was little dispute on the facts with the exception of the claimant's belief that Unite had a "Unite the Union backdated wage agreement" that would enable him to claim backpay negotiated after the effective date of termination. The claimant's oral evidence was that he was not a member of the union, had not seen the document but believed it existed with no basis for reasonably holding such a belief and so the Tribunal found.
6. The Tribunal was referred to a bundle of documents, including the claimant's witness statement, which it read beforehand and took into account. Having considered the oral and written evidence and oral submissions presented by the parties (the Tribunal does not intend to repeat all of the oral submissions, but has attempted to incorporate the points made by the parties within the body of

this judgment with reasons), it has made the following findings of the relevant facts.

Facts

- 7 The respondent was in the business of developing and manufacturing automotive products operating out of three plants within the United Kingdom.
- 8 The claimant was employed by the respondent from 4 February 2013 to 26 July 2019 the effective date of termination, as a maintenance engineer and issued with a statement of main terms and conditions of employment dated 21 January 2013 which he signed, and referred to in these proceedings as the contract. There are no contractual provision providing for backpay negotiated in a collective agreement after the effective date of termination to be paid to ex-employees. There is no express or implied reference to a Unite the Union Back Dated Agreement and the Tribunal concluded there was no such agreement in existence and one could not be reasonably implied in the contract.
- 9 The relevant clauses to be found in the contract are 8 and 19 which are as follows:
 - 9.1 Clause 8: “Basic pay will be as per the **current** Collective Agreement between IAC Halewood and Unite the Union...” (the Tribunal’s emphasis).
 - 9.2 Clause 12 in the contract provides wages will be paid on the 15th of each month two weeks in arrears and two weeks in advance.
 - 9.3 Clause 19: IAC Halewood operates a sole agreement with Unite the Union for hourly paid employees, this agreement forms part of the Contract of Employment.
- 10 A two-year collective agreement dealing with a number of matters including pay, sickness absence and attendance management was agreed between Unite and the respondent on the 13 March 2013 which provided for pay increases back paid to 1 June 2016 and 2017. It is agreed between the parties that this Collective Agreement was the current Agreement during the claimant’s employment up to and including the effective date of termination on the 26 July 2019 following the claimant’s resignation to take up a position with the respondent’s competitor.
- 11 The respondent only makes backdated payments to those employees currently employed on the date the pay agreement is reached with Unite the Union. Pay negotiations had been taking place between the respondent and Unite the Union since June 2018 which were finalised on the 23 August 2019. The pay deal agreed covering the years 2018, 2019 and 2020. It was agreed any backdated increases for the period from June 2018 to end of September 2019 would be paid to all employees in the 15 October 2019 pay. Existing employees received the new hourly rate in their 15 October 2019 pay following the pay increase made on the 1 October 2019. As the claimant was not an employee he did not receive the pay increase.

- 12 During the pay negotiations the claimant resigned by email on the 10 July 2019 on notice. In oral evidence the claimant stated that at no stage had he been made aware of the fact that he would lose the benefit of pay negotiations and the right to back pay when he put in his resignation, the inference being that he was entitled to the backdated pay increases as a result of the respondent's silence. The Tribunal found no evidence that the respondent was as a matter of contract obliged to warn the claimant that following his resignation he would forgo any right to pay increases if negotiated after the date of termination of employment when he would be classified as a leaver/ex-employee.
- 13 After the effective date of termination pay negotiations continued during the period when the claimant was no longer employed by the business and his contract of employment had ended. In oral evidence the claimant stated his employment contract continued insofar that he remained entitled to the pay increases on the basis that the negotiations had commenced during the term of his employment. The claimant believed, with no supporting evidence, that the contract continued to exist until the back-dated pay increases has been fulfilled. There was no basis for the claimant's belief that his employment contract continued after the effective date of termination when he commenced working for another employer.
- 14 On the 23 and 28 October 2019 the claimant emailed the respondent regarding the conclusion of the wage negotiations inquiring about back pay as follows: "unless there is a specific clause in my contract of employment or in the wage agreement specifying that you have to be currently employed with the IAC at the time of the conclusion of the wage agreement, there is no reason that I should not be paid the money...The union officials at IAC said I would be entitled to the back pay before I left the company..." the Tribunal heard no evidence whatsoever about who in the Unite union advised the claimant of this, and when it was explored by the respondent prior to this hearing, there was no response from Unite.
- 15 Wendy Williams took legal advice and made contact with Unite via Roy Moore, senior shop steward on site and Dave Kennedy, branch officer, in an email sent 25 November 2019. Reference was made to a "Unite the Union Backdated wage agreement" and the claimant seeking backdated pay increases "despite him leaving IAC before the pay negotiations were completed." Wendy Williams found that there was no custom and practice of employees being paid backdated pay after leaving employment and Unite did not produce any document or evidence that would have assisted the claimant in any way. Unite did not respond to the email.

Law and conclusion

- 16 Collective agreements seek to regulate the employment relationship and this often includes pay. The claimant's contract at clauses 8 and 19 is subject to the collective agreement in force affecting his pay. During the claimant's employment leading to the effective date of termination the "current" collective agreement in force was that of the 13 March 2013 and the calculation of the claimant's basic pay was in accordance with that agreement. In short, terms agreed in relation to the

claimant's basic pay on the 13 March 2013 had been incorporated into his employment contract. In other words, it formed part of his contract. Contrary to the claimant's belief terms that were in the process of being negotiated could not regulate the contract of employment and the only term relating to wages binding the parties was that in the collectively agreed pay dated 13 March 2013 incorporated into the claimant's contract.

- 17 There was no contractual provision, express or implied, that an ex-employee who no longer had a contract of employment, would be contractually entitled to increases in pay collectively negotiated after their employment had terminated. There was no custom and practice that back dated payments would be made in such circumstances.
- 18 A breach of a contract of employment occurs when a party fails to fulfil an obligation imposed by the terms of the contract. The Tribunal's stating point is the claimant's contract of employment and there is no evidence before the Tribunal that the respondent was in breach of an employment contract no longer in existence when a wage increase was collectively agreed.
- 19 Turning to the agreed issues, namely, the first issue, does the claimant's contract of employment detail any entitlement to pay increases awarded post-employment the Tribunal found it did not.
- 20 With reference to the second issue, namely, is there a Unite the Union Back Dated Agreement the Tribunal found on the evidence before it that there was no such agreement.
- 21 With reference to the third issue, namely, does the claimant's contract of employment state that the rate of pay will be in line with the current collective agreement, the Tribunal found that it did and the claimant was paid in line with the collective agreement current during his employment.
- 22 With reference to the fourth issue, namely, is there a right under the claimant's contract to future collective agreements the Tribunal found there was no such right.
- 23 In conclusion, claimant's claim for breach of contract is not well-founded and is dismissed.

11.9.20 _____
Employment Judge Shotter

Judgment & reasons sent to the parties on:

Case Number: 2415245/2019

14 September 2020

For the Tribunal: