



EMPLOYMENT TRIBUNALS

Claimant: Mr M Szlacheta
Respondent: Logical Recruitment Partners Limited
Heard at: East London Hearing Centre
On: Thursday 11 June 2020
Before: Employment Judge W A Allen QC

Representation

Claimant: In person (by telephone)
Respondent: Did not attend

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was A - audio fully. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are in the tribunal file, the contents of which I have recorded. The order made is described below. This open hearing was listed on Courtserve along with a notification to members of the public as to how they might seek to observe the hearing.

JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent is to pay the Claimant a total sum for unlawful deduction from wages of £187.11 comprising:
 - a. £77 for 7 hours worked and not paid at all at a rate of £11 per hour;
 - b. £68.31 for 25.3 hours worked which were recorded on the payslips as having been paid at the wrong lower rate of £8.30;
 - c. £18.20 underpaid into the Claimant's bank account when £91.30 was recorded on his payslip (at the £8.30 rate) and only £73.10 paid into his account;

- d. **£23.60 underpaid when £118.69 was recorded on his payslip (at the £8.30 rate) but only £95.09 was paid into the Claimant's account.**
2. **No award is made on the Claimant's claim for holiday pay.**
3. **The Tribunal lacks jurisdiction to hear the Claimant's claims for unfair dismissal and redundancy pay because the Claimant does not have the requisite level of 2 years service as an employee.**
4. **No award is made on the Claimant's claim for notice pay (wrongful dismissal) which is dismissed.**
5. **All other claims are dismissed.**

REASONS

1 By ET1 claim form presented on 31 July 2019, the Claimant brought claims of unfair dismissal, redundancy payment, notice pay, holiday pay, arrears of pay, 'other payments' and breach of contract in relation to his brief engagement with the Respondent which lasted from 16 April 2019 to 24 April 2019.

2 On 7 September 2019 the Claimant was warned that he was not entitled to bring a claim for unfair dismissal as he did not have 2 years of qualifying service as an employee. He was invited to respond to that point in writing by 16 September 2019. He did not respond.

3 A notice was sent on 7 September 2019 informing the parties of a final hearing on 16 January 2020 and making case management orders.

4 The Respondent was notified of the claim and given until 7 October 2019 to submit an ET3 response form. The Respondent did not submit a response and has taken no part in the proceedings. A Companies House Check on 14 December 2019 and today indicated that the Respondent is still an active company.

5 On 3 January 2020, the Respondent was informed that, as it had not entered a response, judgment may now be issued.

6 Neither party attended the hearing on 16 January 2020.

7 On 27 January 2020 the parties were notified that the hearing would be relisted and that remedy would be determined at the re-listed hearing. The Claimant was notified that if he did not attend, his claims would be dismissed. The Claimant was reminded that he needed 2 years of service as an employee to claim unfair dismissal or a redundancy payment.

8 On 4 February 2020 the parties were notified of today's hearing date.

9 On 10 June 2020 the parties were notified that today's hearing would go ahead by telephone.

10 On 10 June 2020 and 11 June 2020 the Claimant submitted a number of documents to the tribunal by email including communications to him from Chantelle Nadauld referring to him as a 'temporary employee' whose 'holiday pay is included in your hourly rate'. Messages included: the statement "For the avoidance of doubt, during your placement you are an employee of Logical Recruitment Partners"; "£11 pay rate per hour".

11 The messages set out:

11.1 times and dates in the period from 16 April 2019 when the Claimant would be required to work;

11.2 a communication dated 24 April 2019 when the Claimant was told that his services were no longer required;

11.3 a calculation of 25.3 hours worked in the period 17 April 2019 to 24 April 2019;

11.4 a demand for full payment due from the Claimant dated 9 May 2019.

12 The Claimant attended today's telephone hearing. He explained the sums sought which were also set out in his ET1 claim form. I explained to him that the tribunal lacked jurisdiction to hear any unfair dismissal or redundancy pay claims and that therefore no awards could be made under those heads, which he accepted.

13 He explained the following:

13.1 He was informed at the outset of his engagement with the respondent that he would be paid £11 per hour and given his hours. In fact when he received his payslips, they did not record all hours worked and recorded a lower rate of pay (£8.30 per hour) and then when he looked at his bank account, the amount actually received was lower than the amount on the pay slips.

13.2 In total the Claimant said that he was not paid at all for 7 hours – at £11 per hour, this come to a subtotal of £77.

13.3 The Claimant's said that the hours which he was paid for were recorded as 25.3 hours at £8.30 per hour – the underpayment compared with the hourly rate of £11 totalling £68.31.

13.4 The Claimant said that he received two payslips and two payments into his bank account – both payments being less than the amounts stated as due on the payslips:

- 13.4.1 the first payslip recorded £91.30 due but only £73.10 was paid into his account – the difference being £18.20;
- 13.4.2 the second payslip recorded £118.69 due but only £95.09 was paid into the Claimant's account – the difference being £23.60.
- 13.5 These amounts came to a total of £187.11, which was awarded to the Claimant. There may be reasons – even good reasons – why deductions were made – but it was for the Respondent to provide those reasons and on the evidence before the tribunal, this order could be made.
- 13.6 The Claimant felt that he should receive holiday pay on top of the £11 per hour. He did however accept that the documents that he had sent to the tribunal indicated that the rate of £11 per hour included holiday pay. To 'roll up' holiday pay in this way is not in compliance with the law which is designed to encourage workers to take time off – however given that he had entered into this arrangement, I did not consider that the Claimant had suffered financial loss and therefore no award is made on the Claimant's claim for holiday pay.
- 13.7 The Claimant had not been employed for 1 month and therefore had no entitlement to statutory notice pay under section 86 Employment Rights Act 1996. There was no evidence before the tribunal of any entitlement to contractual notice pay. Therefore no award is made on the Claimant's claim for notice pay, which is dismissed.
- 13.8 The Claimant wishes to claim damages for breach of contract on the basis that he had originally been promised more work than actually given. There was insufficient information before the tribunal to conclude that the Claimant had any contractual entitlement to such additional work and also it was very unclear that the tribunal would have jurisdiction to deal with such a claim in any event and that claim was dismissed.
- 13.9 No evidence was presented in relation to any other arrears of pay or 'other payments' and therefore no other awards were made and those claims were dismissed.

Employment Judge WA Allen QC
Date: 11 June 2020