



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R da Silva
Mr G Elson
Mr J Agate
Mr W Harvey
Mr R Blackledge

v

Bacerius Investments Ltd &
Delesius Investments Ltd
(together as Trustees of Sutton Place)

Heard at:
Before:

Reading Employment Tribunal
Employment Judge George

On: 21 March 2024

Appearances

For Mr R da Silva: Self-representing.
For Mr G Elson: Did not attend, written representations received.
For Mr J Agate: Did not attend, given notice of hearing.
For Mr W Harvey: Did not attend, given notice of hearing.
For Mr R Blackledge: Self-representing.
For the Respondent: Did not attend, given notice of the hearing.

JUDGMENT

The claim by Mr R da Silva: 3305876/2022

1. Permission is given to Mr R da Silva to amend his claim to include a complaint that he is entitled to a redundancy payment, unpaid holiday pay on termination of employment and breach of contract in respect of failure to pay notice pay.
2. Mr R da Silva is entitled to a redundancy payment in the sum of £1,557.69.
3. Mr R Da Silva is entitled to holiday pay accrued and not taken on termination of employment. The respondent shall pay to the claimant £778.88 gross of tax and national insurance in respect of holiday pay.
4. The claim for unauthorised deduction from wages succeeds. The respondent shall pay to Mr R Da Silva £6,750.00 gross of tax and national insurance which is calculated as the sum of:

- a. Unpaid wages for March, April May and June 2022 of £2,250.00 per month gross.
5. The claim for notice pay succeeds. The respondent shall pay to Mr R da Silva £2,250.00 which is calculated gross.
6. The total award in respect of Mr R da Silva is £11,336.57 some of which will be subject to tax and national insurance as appropriate.

The claim by Mr G Elson: 3305877/2022

7. Permission is given to Mr G Elson to amend his claim to include a complaint that he is entitled to a redundancy payment, unpaid holiday pay on termination of employment and breach of contract in respect of failure to pay notice pay.
8. Mr Elson is entitled to a redundancy payment in the sum of £6,230.70.
9. Mr Elson is entitled to holiday pay accrued and not taken on termination of employment. The respondents shall pay to Mr Elson £1,350.05 gross of tax and national insurance in respect of holiday pay.
10. The claim for unauthorised deduction from wages succeeds. The respondents shall pay to Mr Elson £5,400.00 gross of tax and national insurance which is calculated as the sum of:
 - a. Unpaid wages for March, April and May 2022 of £1,800.00 per month gross.
11. The claim for notice pay succeeds. The respondents shall pay to Mr Elson £4,153.85 which is calculated gross of tax and national insurance.
12. The total award is £17134.60 some of which will be subject to tax and national insurance as appropriate.

The claim by Mr J Agate: 3305878/2022

13. The claim by Mr J Agate (Case No: 3305878/2022 is struck out under Employment Tribunal Rule 37(1)(d) because it has not been actively pursued.

The claim by Mr W Harvey: 3305879/2022

14. The claim by Mr W Harvey (Case No: 3305878/2022) is struck out under Employment Tribunal Rule 37(1)(d) because it has not been actively pursued.

The claim by Mr R Blackledge: 3313551/2022

15. The employment tribunal does have jurisdiction to consider Mr R Blackledge's claim for a redundancy payment, unauthorised deduction from wages, unpaid

holiday pay on termination of employment and breach of contract in respect of failure to pay notice pay because it was not reasonably practicable for him to present the claim within three months of the relevant date but he presented it within a reasonable further period.

16. Mr R Blackledge is entitled to a redundancy payment in the sum of £11,134.50.
17. Mr R Blackledge is entitled to holiday pay accrued and not taken on termination of employment. The respondents shall pay to Mr Blackledge £3,385.42 gross of tax and national insurance in respect of holiday pay.
18. The claim for unauthorised deduction from wages succeeds. The respondent shall pay to Mr Blackledge £12,787.36 gross of tax and national insurance which is calculated as the sum of:
 - a. Unpaid basic pay for March, April, May and June 2022 of £8,417.86 gross of tax and national insurance;
 - b. Back pay of £2,482.14 payable in May 2022;
 - c. Employer's pension contributions in the months March to June 2022 in the sum of £764.76 and
 - d. Overtime payments in the sum of £1,122.60.
19. The claim for notice pay succeeds. The respondent shall pay to Mr R Blackledge £4,395.16 which is calculated gross of tax and national insurance contributions.
20. The total award is £31,702.44 some of which will be subject to tax and national insurance as appropriate.

REASONS

1. At the remedy hearing on 21 March 2024, Mr da Silva attended and gave evidence in support of his claim on oath and provided supporting documentation. Mr Blackledge, in error, initially attended at Watford Employment Tribunal but travelled to Reading where the hearing resumed on his arrival. He gave evidence in support of his claim on oath and provided supporting documentation.
2. As originally worded, the claim form presented by the first 4 named claimants jointly with Mr A Forgan was limited to a complaint of unauthorised deduction from wages. Mr da Silva confirmed that they had presented the claim on 22 May 2022 before receiving the letter dated 20 May 2022 which told them that their employment would be terminated on 31 May 2022 and

the amounts of the payments they were due to receive and which are not contested by the respondent.

3. The procedural history of the claims brought by the first 4 named claimants (which I have gleaned from the tribunal file) includes an apparent initial failure on the part of the tribunal to acknowledge their claims specifically and some confusion about communication directly with them. As a result that they were not informed about the hearing in Mr Forman's case on 17 January 2023 when his claim was amended to include the other complaints which Mr da Silva also wishes to pursue. In those circumstances, I accepted that it was not until today's hearing that Mr da Silva understood that there was a need to amend his claim to include all of the relevant types of complaint in respect of which the evidence shows he is clearly owed money. I granted permission to amend his claim as set out in para. 1 of the judgment.
4. Paragraph 2 of the above judgment was given orally for reasons which were briefly outlined at the hearing and are not now repeated. The parties are entitled to written reasons for that judgment but any request for written reasons must be sent to the tribunal within 14 days of the date on which this written record of the judgment is sent to them.
5. The following reasons are given for paragraphs 7 to 14 of the above judgment which was decided on in the absence of the relevant parties.
6. On 20 September 2023, I caused letters to be sent to the then remaining claimants (all those named in the heading to this judgment) warning them that I was considering striking out their claims because they had not been actively pursued.
7. Mr Elson replied confirming that he was owed the money. A notice for today's hearing was sent to him by email on 22 November 2023 which included the information that the parties must bring copies of any evidence with them and that they may produce written representations to be considered at it. Like Mr da Silva, Mr Elson's claim was originally presented prior to the employees being told that their employment was to be terminated on grounds of redundancy.
8. On 20 March 2024, Mr Elson emailed the tribunal enclosing a letter date 20 May 2022 informing him of his redundancy and setting out various payments which the respondent accepted were owing to him as at that date and in respect of his termination of employment. He also included a payslip setting out payments which the respondent clearly accepted were due but which have, on Mr Elson's account not been paid.
9. Mr da Silva was able to provide the tribunal with mobile phone numbers for Mr Elson, Mr Harvey and Mr Agate. The clerk was able to speak to Mr Elson and Mr Agate but could not reach Mr Harvey. Both Mr Elson and Mr Agate said that they were aware of the hearing but had not realised that they needed to attend the hearing and were not now available.

10. Mr Elson seemed to me to be clearly intending to pursue his claim based upon the emailed response to the strike out warning letter and his recent email of 20 March 2024. The response entered by the respondent merely disputes the assertion on the face of the claim form that wages for February 2022 were then unpaid and that is not pursued. In those circumstances, bearing in mind that when a party has not attended a hearing I can dismiss the claim or proceed in their absence, taking into account what I know about the reasons for their absence, I decided that I could rely upon the documentation provided by Mr Elson. It is strikingly similar to that provided by other claimants and, in the context of the claim as a whole, nothing would be gained by refusing to take into account the information provided in writing by Mr Elson. I take his statement "All I want is what I am due for the hours worked and the redundancy" and the attached evidence of the sums owed as an application for his claim to include all complaints necessary to enable him to be awarded those sums and grant permission for him to amend his claim, broadly for the reasons explained in relation to Mr da Silva above.
11. Neither Mr Harvey nor Mr Agate have responded to the strike out warning letter at all. I am satisfied that they were sent the notice of hearing and were aware that the hearing was taking place but have not initiated any correspondence or communication with the tribunal. In those circumstances, they have taken no steps to address my concern that they may not be pursuing their claims. The only information I have about the reason for their non-attendance is that Mr Agate informed the clerk when contacted that he had not realised that his attendance would be needed.
12. I have re-read the notice of hearing which is in standard format. It is clearly notifying the claimants of a hearing of their claim and other claimants either attended or submitted documentation. I do not accept that explanation. Neither Mr Harvey nor Mr Agate have taken any steps in the litigation at all beyond being included in a form which was present on their behalf by Mr Forman. I conclude that they are not actively pursuing their claims and they are struck out.
13. Reasons for the judgment in respect of Mr Blackledge were given orally at the hearing and are not now repeated.

Employment Judge George

Date: ...21 March 2024.....

Sent to the parties on: .05/04/2024.....

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For the Tribunal Office

Note

Reasons for paragraphs 1 to 6 and 15 to 20 of the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by a party at the hearing or a written request is presented by a party within 14 days of the sending of this written record of the decision.