



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Greenwood

v

RFE International

Heard at: Cambridge

On: 23 January 2019

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Ms Nicola Smyrl, Solicitor

JUDGMENT

1. Terms having been agreed between the parties the claim is dismissed upon withdrawal by the claimant.
2. The respondent's application for costs is dismissed.

REASONS

1. The claimant made an application for unlawful deduction of wages in June 2018. In December 2018 following a change of legal advisers, the respondents wrote to the claimant advising him that it was paying his outstanding claims in respect of a shortfall in salary and his accrued but untaken holiday, and warning him to withdraw his claim before the tribunal, otherwise the respondent would make a costs application for the hearing that was listed for 23 January 2019.
2. The claimant stated that notwithstanding the payments received from the respondent, he believed monies were still outstanding; namely National Insurance contributions, contributions to his pension, bonus payments and a pay rise. However, it became apparent that he intended to pursue his claim for bonus payment and pay rise as part of a new tribunal claim for unfair dismissal and disability discrimination.

3. By letter of 3 January 2019, the respondent stated that any concerns the claimant had regarding National Insurance contributions should be pursued with HMRC. Regarding the claimant's claim for pension contributions, in the light of the case of Somerset County Council v Chambers UK EAT/0417/12 and also section 27(2)(c) of the Employment Rights Act 1996, those claims could not form part of a claim for unlawful deduction of wages and the claimant should not be permitted to amend his claim for unpaid pension contributions.
4. The claimant replied with an email of 4 January 2019 making clear that he was nevertheless pursuing his claim for lost pension contributions.
5. At the hearing, the only issues that remained between the parties were firstly whether the respondent owed one more day's unpaid salary to the claimant and secondly whether the claimant was entitled to unpaid pension contributions. The respondent accepted the claimant was entitled to the former. As regards the pension contributions, the respondent accepted that the claimant's pension contributions had been paid to the claimant as taxable salary, ie the claimant had been taxed on that amount, and the respondent's contributions had not been paid at all.
6. Although the respondent maintained that the claimant's claim for these amounts could not form part of his claim for unlawful deductions, it accepted that the sums were due to the claimant and after an opportunity to take instructions, the parties agreed terms.
7. In its application for costs, the respondent submitted that if the claimant had made clear at an earlier stage of the claim the nature and extent of his claim for pension contributions and particularised it, then the respondent would have paid the sums owed and it would have been unnecessary to have incurred the costs of the hearing.
8. I reject this application. I do not consider that the claimant has acted unreasonably in the way he has conducted these proceedings for the purposes of rule 76(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1.
9. It is not surprising that the pension aspect of the claim was not focused upon by the claimant until relatively recently, because until December 2018 the respondent had still been contesting the main substance of the claimant's claim. Further, the claimant's email of 4 January 2019 made clear that he was pursuing his pension claim and if the only reason that the respondent was resisting payment of it was the fact that the claimant had not particularised it, the respondent should have said so. But in fact, it did not respond to the claimant's email of 4 January 2019.

10. I also note that at the hearing today, the respondent accepted that its calculation of unpaid wages was erroneous since it today conceded that the claimant was entitled to payment of a further day's salary.

Employment Judge S Moore

Date: 14 February 2019

Sent to the parties on: 26 February 2019

.....
For the Tribunal Office