



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimants Mr R Glanville
Respondent Infinite Software Ltd

Employment Judge: Mr J S Burns

Appearance

Claimant: In person

Respondent: Ms Biana Balmelli (Counsel)

Heard on 2/9/2020 on CVP

Judgment

1. The Claimant's application to amend his claim (to add a claim for the value of a hoverboard) is dismissed.
2. The claim (for £500 deducted from wages) fails and is dismissed
3. It is declared that the Claimant from January 2020 onwards was the lawful owner of the IphoneX which he retained when leaving his employment with the Respondent
4. The Respondent's application for costs against the claimant is dismissed.

REASONS

For paragraph 1 above

1. On a fair reading of the ET1 the claim was limited to £500 being the sum deducted from the Claimant's salary for a phone which he retained when leaving his employment. Although in the course of the ET1 the Claimant stated that he had been promised but had not received a hoverboard as part of his remuneration, he had in box 9.2 of his ET1 expressly disclaimed this by including the words "*however this can be forgotten*". At the beginning of the hearing I asked the Claimant about this and he stated that these words were a mistake and he did wish to claim the value of the promised hoverboard (£8000) in these ET proceedings.
2. The Respondent had not prepared to meet a discrete claim about the hoverboard and an adjournment would have been necessary if I had permitted the amendment. This would have disrupted and delayed the trial over the phone issue. No good reason was shown by the Claimant for not claiming for the hoverboard clearly when he issued his ET1. Instead he left the matter to the beginning of the trial before seeking to add this substantial new element.
3. If the Claimant wishes to pursue the hoverboard claim further he is at liberty to try to do so in the County Court.

For paragraphs 2 and 3 above

4. I was referred to a bundle of documents and a formal witness statement from Mr G Scott (CEO of the Respondent) I heard evidence from the Claimant and then from Mr Scott.

5. The Claimant worked for the Respondent from 1/2/2018 to 31/12/2019. At the beginning of his employment he was using his own personal android phone for work. Mr Scot used to disapprove of that and say that the Claimant needed a better phone for his work. On 27/3/2028 Mr Scott texted the Claimant as follows: *"Your new SIM card is here. I'll get you an iPhone X when you return"*. These words are slightly ambiguous but are consistent with the Respondent providing a new phone for the Claimant to use in his work, while the Respondent retained ownership of it. The words fall short of making a gift to the Claimant.
6. A few months later Mr Scott went with the Claimant to the Apple shop in London and bought a new IphoneX. Mr Scott handed this to the Claimant. At no time did Mr Scott or anyone else on behalf of the Respondent tell the Claimant that the phone was a gift or present to him or that it was his personal property.
7. At a later date the Claimant was involved in entering the serial number of the IphoneX on the ledger which records equipment and other property owned by the Respondent company. This is a strong indication that the Claimant was aware and accepted that he had not been given the phone.
8. Mr Scott did give as gifts certain items of electrical equipment to other employees but I accept that these were exceptional cases. There was no general policy that any equipment which the employees were allowed to use would thereby become their property.
9. The Claimant decided to leave his employment and there was a conversation on his last day which was the 22nd or 23rd December 2019. The Claimant handed in various equipment but did not hand back the IphoneX. There was then a conversation about this. There was a divergence in the evidence about this but I prefer Mr Scott's evidence. I find that on that occasion (i) the Claimant did not assert that the IphoneX was his property or that it had been a gift to him (ii) he said he would like to be able to keep the phone so he would not lose his personal data (iii) Mr Scott said that the Claimant could keep the phone but it would cost him £500 which would be deducted from his salary and (iv) by words or conduct the Claimant signified his agreement to this by shaking hands and leaving with the IphoneX in his possession.
10. After the Claimant found that £500 had been deducted from his last salary he started a correspondence by text and email with the Respondent.
11. For example on 24/1/20 the Claimant wrote: *"I might give the Iphone back. I think £500 is too much for it. Also I can get the 11 for the same price in Hong Kong"*, on 25/1/2020 he wrote *"can you let me know if there is something else we can arrange more along the lines of what Beth was offered for the Ipad?"* and on 11/2/2020 he wrote *"I had asked to give the phone back and be paid my salary. What I asked on my final day was to back up the phone so that I didn't lose my data photos on it..."*
12. This correspondence is inconsistent with him having asserted a claim to the phone as his property at the point that he left his employment, and tends to support the Respondent's version of events.
13. For the above reasons I find that the IphoneX was purchased by the Respondent and put in his possession to use for work but never given to the Claimant as his personal property. It

remained at all times the property of the Respondent until late December 2019 when by agreement it was sold by the Respondent to the Claimant for £500.

14. Section 13 of the Employment Rights Act 1996 states as follows: “*An employer shall not make a deduction from the 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 workers contract, or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction*”. If a deduction contrary to this is made then under section 24 the ET must order the employer to pay the deducted sum to the employee.

15. The Claimant had signed an employment contract with an ancillary “deduction from pay” agreement dated 4/5/2018 in which clause 9 provides as follows: *On the termination of your employment you must return all our property which is in your possession or for which you have responsibility. Failure to return such items will result in the cost of the items being deducted from any monies outstanding to you. This is an express written term of your contract of employment.*

16. Ms B Balmelli did her duty by drawing my attention to the case London Underground v Jaeger EAT 805/97 which I have considered but do not think assists the Claimant here. There was no question of a discretion being exercised. Clause 9 unambiguously covers the deduction of the £500 and the fact that Mr Scott flagged up in advance the figure which would be deducted, and the Claimant agreed to it, thus also completing a sale agreement, does not detract from this.

17. The IphoneX cost about £1000 new two and a half years ago and is worth about £375 now. I find that in December 2019 £500 was the proper figure to choose and agree on as the cost of the item to be deducted by way of the sale price.

18. Hence the Claimant is not entitled to be paid the £500 which was deducted in consideration of his (agreed) retention by way of purchase of the IphoneX.

For paragraph 4 above

19. I do not find that the Claimant has acted unreasonably in pursuing the claim. His claim was based on hopes rather than facts but he has proceeded in an honest, genuine and polite fashion. The costs warnings were sent very late indeed. The Respondent has succeeded on the basis of a witness statement and bundle of documents served very late and I received only after the hearing had started.

NOTE

The hearing was held over CVP. The tribunal considered it as just and equitable to conduct the hearing in this way. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. One member of the public attended. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties. No requests were made by any members of the public to inspect any witness statements or for any other written materials before the tribunal. The participants were told that it was an offence to record the proceedings. The tribunal ensured that the witness/es, who were all in different locations, had access to the relevant written materials. I was satisfied that the witness/es were not coached or assisted by any unseen third party while giving evidence.

2201805 2020

J S Burns Employment Judge
London Central
2 September 2020
For Secretary of the Tribunals

Date sent to the Parties 03/09/2020