



EMPLOYMENT TRIBUNALS

Claimant: Miss Chloe Louise Meakin

Respondent: Dr Rasib & Partners

Heard at: Birmingham

On: 24 February 2020

Before: Employment Judge Hindmarch

Representation

Claimant: In Person

Respondent: Dr Ahmed (Counsel)

RESERVED JUDGMENT

The complaint of unlawful deduction from wages/breach of contract is upheld and the sum of £3,354.32 is awarded.

REASONS

1. This case came before me for hearing on 24 February 2020. The hearing was listed for 3 hours. At the outset it became clear that the Claimant, a litigant in person, had not received the Respondent's bundle of documents. Dr Ahmed, Counsel for the Respondent, agreed to obtain an additional copy of the bundle and time was offered to the Claimant to prepare both before giving evidence herself and before cross examination of the Respondent's witness. This meant the case did not conclude until the afternoon. As Dr Ahmed had an afternoon commitment it was agreed I would reserve judgement.
2. By an ET1 filed on 14 June 2019, following a period of Early Conciliation from 10 April 2019 to 15 May 2019, the Claimant brought a complaint in respect of unpaid wages. I heard evidence from the Claimant and from Mrs S Rasib, Managing Partner of the Respondent. There were two sets of documents: the bundle provided by the Respondent and those supplied by the Claimant. I refer within this decision to the Respondent's bundle and the Claimant's documents where necessary.
3. The Claimant began working for the Respondent, a GP Practice, on 11

September 2018. She received a job offer letter from the Respondent dated 17 August 2018. A copy of this is in the Claimant's documents, number 2, which referred to the role being '*as an Apprentice ... on an hourly rate of £3.70*'.

4. The Claimant was issued with an 'Apprenticeship Agreement', a copy of which is in the Respondent's bundle at pages 1-8. This provides as follows:

"Apprenticeship Agreement in England and Wales

2. *Your role is an apprentice*
 - 2.1. *You are employed as an apprentice and report to Managing Partner*
 - 2.2. *You will have regular meetings with your mentor who is Sam Rasib to review your progress, agree targets for your apprenticeship and discuss any problems or issues you may have*
 - 2.4. *We recognise that your role as an apprentice means that we are responsible for ensuring you receive training and support in the workplace.*
4. *Salary*
 - 4.1. *Your basic salary is £3.70 per hour.*
5. *Hours of work, training and rules*
 - 5.3. *You are required to attend a training course run by one of our nominated learning providers. We will release you from your duties to attend such training as is reasonably required to complete your apprenticeship and obtain Intermediate Level Apprenticeship in Business Administration."*

5. The Respondent's proposed '*learning provider*' at the time was Babington College. The Respondent had used the College in connection with other apprenticeships. Between the Claimant commencing work for the Respondent and 19 September 2018 the Claimant met with a representative of the College. The Claimant says she was told the purpose of the meeting was for the College to assess her Maths and English qualifications and to consider the appropriate level of course for her; it was not an enrolment. On 19 September 2018 the College emailed the Claimant however stating '*As discussed at your enrolment, you are required to start working on elements of your qualification*'. It appears Mrs Rasib saw this email and believed the Claimant was enrolled with the College.
6. The Claimant in fact heard nothing from the College for several months. She was not provided with any training by them. Mrs Rasib told me that Babington College would normally take '*about 3 months*' to start training and she was not concerned. What is clear is that the Respondent provided the Claimant with some induction and '*on the job*' training and allowed her to do some on-line training, but there was no training provided by the College.
7. The Claimant and Mrs Rasib met to review the Claimant's progress on 2 October 2018 and 27 November 2018 but the notes (Respondent's bundle page 12-49) do not reveal either party mentioning the College and the provision of the training course by the College. On 20 December 2018 the Claimant emailed the College copying in Mrs Rasib to raise concerns that she '*still (hadn't) started the course*' (Respondent's bundle at page 10). On

the same day Mrs Rasib emailed the Claimant confirming there would be a meeting on 15 January 2019 *'to get you to the next step of your apprenticeship'*. The Claimant replied to the email and then received a further email from Mrs Rasib, *'your email prompted me to chase the College. I had called them a couple of time (sic) previously and was advised that someone would call back but never did. Receiving your email allowed me to escalate the matter'*.

8. The meeting on the 15 January 2019 did not in fact take place. On that date the College emailed the Respondent to say *'Unfortunately we are not able to enroll Chloe ... due to delivery capacity'*, a copy of this is at page 12 of the Respondent's bundle.
9. Upon receipt of this Mrs Rasib emailed a contact of hers on 15 January 2019 seeking an alternative provider, page 13 of the Respondent's bundle. The response was to suggest a provider called Solvo Vir. On 28 January 2019 Mr Rasib reviewed the Claimant's performance and recorded in her notes, page 53 of the Respondent's bundle – *'I would like Chloe to start focusing on getting her apprenticeship started'*.
10. On 15 February 2019 the Claimant signed an 'Apprenticeship Agreement' with Solvo Vir and with a start date of 15 February 2019 (Claimant's documents 4 and 5). On the same day the Claimant signed up to a Career Development Plan – Claimant's document 6.
11. The Claimant received £3.70 an hour throughout her time working for the Respondent. Her contract was terminated by the Respondent on 26 March 2019. She is claiming that before 15 February 2019 she was not actually working as an apprentice as she was not receiving training from Babington College and thus that she should have been receiving the National Minimum Wage during this time. She calculates her losses at £3,354.32 and the Respondent, whilst disputing liability, accepts this calculation.
12. After hearing evidence I heard submissions from both parties. Dr Ahmed's view was that the apprenticeship rate of pay was the correct rate given that the Claimant had entered into a clearly labelled Apprenticeship Agreement. In his submissions he accepted there was a delay in relation to a training provider being appointed to actually train the Claimant, but said that was no fault of the Respondent's. It had used Babington College before and was entitled to believe the Claimant had enrolled and that Babington College were progressing the training.
13. In the Claimant's submissions she asserted she had been used as *'cheap labour'* and that she had not had any training by the College during the period in question.
14. I found both the witnesses (the Claimant and Mrs Rasib) were truthful and doing their best to assist the Tribunal. I accept that after the Claimant had started work with the Respondent, Mrs Rasib believed she had enrolled with Babington College however it is not in dispute that the Claimant was not in fact ever provided with any training by that College. No training course with an external provider was put in place until the Solvo Vir course in February 2019.

15. I cavassed with Dr Ahmed the type of apprenticeship he was contending was held by the Claimant. He informed me as per the Agreement given to her by the Respondent, it was 'an Apprenticeship Agreement in England and Wales'. In May 2015 the Apprenticeships, Skills, Children and Learning Act introduced the concept of an 'approved English Apprenticeship' in England, where the Claimant was of course working. What is clear is that to be a genuine apprenticeship in practice (notwithstanding the label given by the parties to the relationship), the apprentice must be offered off the job training by an external provider. The Agreement given to the Claimant specifically referred at clause 5.3 to the requirement that the Claimant attended a training course and that she would be released from her duties to attend. In fact, no such course was put in place for the Claimant for the first 6 months of her working for the Respondent. The Respondent was thus in breach of contract.
16. I accept that apprentices receive a lower rate of National Minimum Wage than other employees. However they need to be engaged on apprenticeship agreements as defined in the Regulations. I find this was not in fact the case here. No training provider was put in place until February 2019. At that time a 12 month apprenticeship agreement was put in place. Prior to this no off the job/College/training provider was in fact being provided to the Claimant and in my view she was thus not an apprentice and was therefore entitled to the (non-apprentice) minimum wage and her claim must succeed.

Employment Judge Hindmarch
4 MARCH 2020