



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant MR S AUSTEN AND
Respondent MICHAEL GILLETT INSTRUMENTS LIMITED

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 3RD MARCH 2020

EMPLOYMENT JUDGE MR P CADNEY MEMBERS:
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR M GILLETT

JUDGMENT

The judgment of the tribunal is that by consent:-

1. The claimant's claim for unpaid wages is well founded and the respondent is ordered to pay the claimant £4296.72.
2. The claimant is granted permission to amend his claim as set out below.
3. The respondent is granted permission to serve an amended response.

4. The case will be listed for a 1 day hearing on 17th August 2020 to determine the amended claims for unpaid notice pay and unpaid redundancy pay.

Reasons

1. By a claim form submitted on 8th October 2019 the claimant brought a claim for unpaid wages in August and September 2019. The respondent submitted a response one day out of time which was rejected (although in any event it admitted the claim), and EJ Harper directed that the case be listed for a remedy hearing. Thus, at present the only claim before me is that claim. However, since that time the claimant has submitted a Schedule of Loss setting out further unpaid wages, and also claims for notice pay and redundancy pay arising from his dismissal on 11th November 2019. Fortunately, both parties have adopted an entirely reasonable, sensible, and practical approach to the litigation
2. Unpaid wages – The respondent does not dispute that the amounts set out in the schedule are owed to the claimant. He has not objected either to the claimant being given permission to amend his claim to include further claims for unpaid wages until 11th November 2019, nor to judgment being entered for those sums as they are not in dispute, and accordingly judgment is entered for the claimant for the undisputed sum of £4296.72.
3. Notice Pay/Redundancy Pay – Similarly the respondent does not object to the claimant being given permission to amend his claim to include claims for unpaid notice and redundancy pay; and the claimant does not object to the respondent being given permission to submit an amended response.
4. However, it was not possible to resolve those claims today. There is no dispute that claimant is entitled to both, but there is a fundamental dispute as to the claimant's period and length of employment and therefore as to the calculation of the amounts of both. The claimant asserts that he has been employed by the respondent since 8th July 2013; whereas the respondent contends that his period of employment started in May 2017. The matters set out below are simply an explanation of what I have been told this morning and are not findings of fact and are not binding in any way on any future tribunal.
5. The parties have explained to me that initially they were in a somewhat complex contractual arrangement. In broad terms the claimant worked from his own workshop

and appears, on the basis of the documentation before me, to have sent invoices to both the respondent and SmithBrewer Limited. SmithBrewer Ltd is a shareholder of the respondent and apparently paid the claimant directly for services supplied to the respondent. There is an email from the claimant dated 17th March 2016 which describes the “ambiguities” in his position and asking to become directly employed by the respondent. The respondent asserts that this situation changed in May 2017 when the claimant was integrated into the respondent’s business and placed on the respondent’s payroll. Thus, the respondent accepts that from that point the claimant was an employee. If this is correct his claims for notice and redundancy pay would be based on two full years continuous service.

6. The following questions need to be resolved. Prior to May 2017 was the claimant:-
- i) An employee or in self-employment; and
 - ii) If he was an employee of whom? (i.e. the respondent or SmithBrewer Ltd); and
 - iii) Subject to the answers to the questions above for how long was he employed by the respondent; and
 - iv) What are the correctly calculated amounts owed for notice pay and redundancy pay?

EMPLOYMENT JUDGE CADNEY

Dated: 4 March 2020

Judgment sent to parties: 5 March 2020

FOR THE TRIBUNAL OFFICE