



EMPLOYMENT TRIBUNALS

Claimant

(1) Mr Stephen Black
(2) Mrs Deborah Farrell

v

Respondent

Cre8 Futures Limited

Heard at: Norwich

On: 31 July 2020

Before: Employment Judge Tynan

Appearances

For the First Claimant: In person

For the Second Claimant: In person

For the Respondent: Mrs Tomlin, Director

JUDGMENT

1. The Tribunal has no jurisdiction to determine the First Claimant's complaints that he was unfairly dismissed and that he was entitled to a redundancy payment. Accordingly, those aspects of his claim are dismissed.
2. The Employment Tribunal determines that the Second Claimant is entitled to a redundancy payment and Orders the Respondent to pay her the sum of **£1,038.40** in respect of her redundancy.
3. The First Claimant's and the Second Claimant's complaints that the Respondent made unlawful deductions from their wages is well founded and the Tribunal Orders the Respondent to make the following payments to them:
 - a. to the First Claimant, the sum of **£2,630.75**
 - b. to the Second Claimant, the sum of **£2,630.37**

REASONS

1. By a claim form presented to the Employment Tribunal on 24 September 2019, the First Claimant has brought complaints against the Respondent of unfair dismissal, for a redundancy payment and that he is owed wages, notice monies and his holiday pay.
2. By a claim form presented to the Employment Tribunal on 4 November 2019, the Second Claimant has brought complaints against the Respondent for a redundancy payment and that she is owed wages, notice monies and her holiday pay.
3. The Respondent had produced a bundle of documents for the hearing. The Hearing Bundle is indexed and paginated and runs to 172 pages. In the course of the hearing I was in fact referred to only a limited number of documents. The Bundle did not include copies of a contract of employment for either Claimant, though in his evidence to the Tribunal the First Claimant said that he had been issued with a contract of employment in September 2018 and that this was in the same form as for other staff.
4. None of the parties had prepared witness statements for the hearing, in the case of the First Claimant and the Respondent notwithstanding a Case Management Order that they should do so and that they should exchange these witness statements ahead of the hearing in May 2020. In the case of the Second Claimant, it was less clear that such an Order had been made. Given the risk of a significant adjournment which would be prejudicial to all the parties' interests, I decided that I should proceed to hear the case notwithstanding that there were no written statements.
5. In the case of the Respondent, Mrs Tomlin adopted a statement that she had made to the Respondent's Insolvency Practitioner regarding the circumstances in which the company had ceased operating. That statement is to be found at pages 135 – 137 of the Hearing Bundle. She was questioned about it extensively by the First Claimant.
6. For his part, the First Claimant adopted his claim form, specifically Section 8.2 of the claim form, as his evidence, albeit the details of his complaint at Section 8.2 are fairly limited. Similarly, Mrs Farrell adopted her claim form as her statement of evidence in this matter. She was not cross examined by the Respondent.
7. Section 94 of the Employment Rights Act 1996 gives employees a right not to be unfairly dismissed. However, Section 108 of the 1996 Act additionally provides that an employee must have sufficient qualifying length of service to bring a claim of unfair dismissal. The qualifying period of service is two years. Section 135 of the 1996 Act also gives employees a right to a redundancy payment. That right is also subject to a two-year qualifying period of service (s.155 of the 1996 Act).

8. I heard a great deal of evidence as to the reasons why, and the circumstances in which, the First Claimant's employment terminated. He disputes that his role was redundant and alluded in his evidence to a potential conspiracy by Mr and Mrs Tomlin to deprive him of his share in the business that they had established together. There is great bitterness and animosity on both sides, as is evident from the emotions that were on display at the hearing, a year on from their working relationship having come to an end.
9. The First Claimant disclosed at Tribunal that he had raised concerns with Ofsted and Norfolk County Council as to the standard of educational provision at the school which the Respondent was operating. For their part, the Tomlins hold the First Claimant personally responsible for the condition of the school's premises and which they allege led to them having to vacate the premises and seek accommodation elsewhere. They accuse the First Claimant of locking them out of the premises with the result that they were unable to retrieve essential materials, including pupil records, which in turn added to Ofsted's concerns. This is strenuously denied by the First Claimant who claims he had to secure the building to prevent what he described as asset stripping, including the removal of property not in fact owned by the Respondent.
10. In all of this, the Second Claimant is a somewhat bemused bystander.
11. It may come as a considerable disappointment to the Tomlins and to the First Respondent that I do not need to, or indeed intend to, make any specific findings on their allegations and counter allegations. This is because I find that the First Claimant does not have sufficient continuous service to be eligible to claim unfair dismissal or a redundancy payment.
12. In reaching that conclusion I have regard to the claim form presented by the First Claimant. In particular I have regard to page 4 of the form which is at page 4 of the Hearing Bundle, in which Mr Black stated that his employment started on 1 September 2017. It is not in dispute that his employment ended on 9 July 2019 and as such that means he does not have sufficient qualifying length of service to bring a claim of unfair dismissal, or to seek a redundancy payment.
13. In his evidence to the Tribunal, the First Claimant alluded to the fact that he had undertaken unpaid work for the benefit of the company over the course of the summer months of 2017. However, I note it was also his evidence to the Tribunal that a contract of employment had only been issued to him in September 2017 and indeed, that as a director of the company he may have had some input to that process. He believes that the contract may have referred to a commencement date of 1 September 2017. There was certainly no other evidence before me, no evidence in either the Hearing Bundle or in any other document to hand at Tribunal, that demonstrated that any work that the First Claimant was doing, or indeed that the Tomlins were doing, to establish the school prior to 1 September 2018 was done as an employee of the Respondent. I find that

he and they did those things as founding shareholders and directors and investors in the business.

14. The position is different as regards the Second Claimant. It is accepted by all parties that she commenced her employment with the Respondent earlier on 1 June 2017 and accordingly that she does have sufficient qualifying length of service to claim a redundancy payment. She was dismissed with effect on 9 July 2019, meaning that she had two years' continuous service at her effective date of termination of employment. Her date of birth is 21 May 1961, meaning that she was over the age of 41 throughout her employment with the Respondent. I calculate that her weekly wage was £346.13 and accordingly that she is entitled to a redundancy payment of £1,038.40 ($2 \times 1.5 \times £346.13$).
15. The Claimants complain about the same unlawful deductions, namely that they were not paid for 1 July 2019, being the day before they received written confirmation that their employment was being terminated. It was not in dispute on either side that the Claimants had been paid on 25 June 2019 and that this payment covered their wages up to and including 30 June 2019. They are each owed one day's pay for 1 July 2019. In the case of the First Claimant, I calculate that his daily rate of pay was £69.23 ($£1,500 \text{ per month} \times 12 \div 260$). In the case of the Second Claimant, her daily rate of pay was £69.22 ($£1,499.91 \times 12 \div 260$).
16. Neither the First Claimant, nor the Second Claimant, were paid for their notice period. Again, it was not disputed on either side that they were each entitled to 2 weeks' notice from the Respondent to terminate their employment. In the case of the First Claimant, he is entitled to the sum of £692.31 (gross) in respect of his notice period ($£1,500 \times 12 \div 26$). In the case of the Second Claimant, she is entitled to the sum of £692.21 (gross) in respect of her notice period ($£1,499.91 \times 12 \div 26$).
17. In so far as it may be relevant to record the net pay amounts, in the case of the Second Claimant her net notice pay would have been £599.96. I do not have the net figures for the First Claimant as these were not provided by him, albeit the sum would not be greatly different from the amount for the Second Claimant.
18. Turning finally to the issue of holiday pay. The Respondent does not dispute that the Claimants had accrued annual leave in the course of their employment. They had each worked the entire academic year. That academic year commenced on 1 September each year.
19. Staff at the school receive their pay pro-rata so that their pay continues through all normal school holidays. It was readily accepted by Mr Tomlin in his evidence to the Tribunal that the Respondent should have paid both Claimants through to 31 August 2019. The Respondent's inability to pay them in lieu of their accrued holiday does not excuse it the obligation to make this payment.

20. Both Claimants' employment was terminated on 1 week's notice. Had their employment been terminated in accordance with the notice provisions in their contract, their employment would have terminated on 16 July 2019. The Respondent's position is that the academic school term would have ended on 24 July 2019. Accordingly, the Claimants have no claim to wages in respect of the period 17 July to 24 July, their employment having been lawfully terminated. They are however, entitled to holiday pay in respect of the holiday which they had accrued through the academic year, namely for the period 25 July 2018 to 31 August 2018. I calculate that to be a period of 27 working days. Accordingly, the First Claimant is entitled to the sum of £1,869.21 in respect of accrued but outstanding holiday pay (£69.23 x 27 days). The Second Claimant is entitled to the sum of £1,868.94 in respect of accrued but outstanding holiday pay (£69.22 x 27 days).
21. I shall make declarations to this effect and Order the Respondent to pay these various sums to the Claimants. They will be subject to deductions for income tax and employee National Insurance contributions as appropriate.

Employment Judge Tynan

Date: 2 September 2020

Sent to the parties on: 9 September 20

For the Tribunal Office