# THE INDUSTRIAL TRIBUNALS

**CASE REF: 10476/20**

**CLAIMANT:** **Christopher Rollo**

**RESPONDENT:** **Citibus Ltd t/a Dublin Coach**

## JUDGMENT

The unanimous judgment of the tribunal is that the claimant's contract was not breached and his claim to the tribunal is therefore dismissed.

**CONSTITUTION OF TRIBUNAL**

**Employment Judge:** **Employment Judge Sturgeon**

**Members:** **Mr A Barron**
**Mr B Heaney**

**APPEARANCES:**

**The claimant appeared in person and represented himself.**

**The respondent was represented by Ms Bobbie-Lee Herdman, of Counsel, instructed by Ms Orlagh O'Neill, Solicitor, of Carson McDowell Solicitors.**

**AMENDMENT OF TITLE**

1. At the commencement of the hearing, the tribunal clarified with the parties the proper name for the respondent. Ms Herdman confirmed that the correct title for the respondent was not Dublin Coach Ltd trading as Citibus Ltd but rather Citibus Ltd trading as Dublin Coach. There was no dispute, in relation to this point, from the claimant. Accordingly, the tribunal therefore amends the title of the respondent to Citibus Ltd trading as Dublin Coach, as set out above.

**THE CLAIM**

2. The claimant brought a claim for breach of contract. The claimant's belief was that he should have been paid €130 per trip as opposed to €130 per day during the course of his employment with the respondent. The respondent denied the claimant's claim in its entirety.

## THE ISSUES

3. The issues for the tribunal were therefore as follows:-

   (i) Should the claimant have been paid €130 per trip as opposed to €130 per day during the course of his employment?

   (ii) If yes, has the claimant's contract of employment been breached?

   (iii) If yes, what amount is due and owing to the claimant?

## CONTENTIONS OF THE PARTIES

4. In his submissions, the claimant contended that his contract of employment was a legal document signed by both parties (i.e. himself and the respondent, his employer). The claimant submitted that this contract clearly stated that he should be paid €130 per trip from Belfast to Dublin and not €130 per day. The claimant submitted that, throughout the course of his employment, from August 2019 until March 2020, he has therefore been underpaid and that he should now be owed a sum of €14,200.00 to compensate for the underpayment of his wages.

5. Counsel for the respondent conceded that the claimant's contract of employment did state €130 per trip as opposed to €130 per day. However, the respondent contended that the discrepancy in the rate of remuneration, stated on the contract, was clearly explained to the claimant at the date of signing his contract (i.e. 19 August 2019). The respondent submitted that the claimant clearly understood what his actual rate of pay was when signing the contract. The respondent further submitted that, where there is ambiguity in a contract, a Tribunal is obliged to look at the commercial common sense of what that contract intended. Furthermore, the respondent submitted that the claimant acquiesced in the rate of pay being €130 per day and he continued to work for the respondent, both after being informed of the correct rate of pay, in August 2019, and again in January 2020 when he sought clarification on the rate of pay. It was the respondent's contention that, if there was a breach of contract, the claimant acquiesced in that breach. The respondent concluded that the parties had a clear agreement and that there was no breach of contract.

## SOURCES OF EVIDENCE

6. The tribunal heard oral evidence from the claimant and, on behalf of the respondent, from Mr Ciaran Foley. The tribunal also considered a number of documents submitted by the parties and included in the tribunal bundle.

## FACTS OF THE CASE

7. Having heard the oral evidence given by all the witnesses at the hearing and considered all the documents referred to in evidence, the tribunal found the following relevant facts:-

   (i) The claimant's employment with the respondent began on 20 August 2019. The claimant's contract of employment did state that his remuneration for driving the Belfast to Dublin route was €130 per trip. At the outset, the

respondent accepted that this was an error and it should have stated €130 per day. It was common case between the parties that, for the duration of his contract of employment, the claimant was paid €130 per day from the commencement of his employment. The claimant's wages were transferred directly to his bank account on a weekly basis.

(ii) At the commencement of his employment, the claimant had an induction day. This induction was carried out by Mr Foley. One aspect of the induction process was in relation to employee contracts. It was common case between the parties that this aspect of the induction was delivered by Ms Cathriona Byrne, an employee of the respondent organisation at that time. Ms Byrne made the claimant aware, on this induction day, that his rate of pay would be €130 per day as opposed to €130 per trip. The claimant accepted, under cross-examination, that he was made aware of this discrepancy. This tribunal therefore finds that the claimant knew, from the commencement of his employment, that his rate of pay was €130 per day as opposed to €130 per trip.

(iii) The claimant made a further inquiry about the discrepancy, in his contractual rate of pay, on Thursday 16 January 2020, in an email to Cathriona Byrne. On that occasion, Ms Byrne clarified with the claimant, on Friday 17 January 2020, that the contract should read €130 per shift as opposed to per trip.

(iv) The claimant made no further queries regarding his rate of pay thereafter.

(v) The claimant's employment with the respondent organisation terminated on 2 March 2020.

**STATEMENT OF LAW**

8. A contract of employment between an employer and an employee remains the primary source of rights and obligations between an employer and employee. The terms of the contract are legally enforceable obligations that establish the basic rights and duties of the employer and employee. Statutory regulation often supplements, qualifies and occasionally replaces those rights and obligations. However, a proper analysis of the written employment relationship should always include an examination of the contract of employment.

9. An employment contract is subject to the same basic principles that apply to all contracts. Consequently, the following have to be present:-

(i) An offer;
(ii) An acceptance of that offer; and
(iii) Consideration (something of benefit passed between the parties);
(iv) Intention to create a legal relationship;
(v) Certainty (i.e. the terms of the contract must be sufficiently clear and certain for the Courts to construe); and
(vi) Legality: illegal contracts of employment will not be enforced by the Courts.

10. The terms of a contract of employment are either express or implied. Express terms are specifically agreed between the employer and the employee.

11. The text of ***Harvey on Industrial Relations and Employment Law*** indicates that there may be a tendency to think of express terms as being purely written terms but, in line with ordinary contract law, the parties may also conclude an oral contract, or more significantly in the employment sphere, oral terms as well as written. These might arise, for example, from discussions at the recruitment stage or at interview which may reflect the actual agreement, especially if the employee is then just given a fairly standard contract which does not refer to the issue or issues in question. The equal status of written and oral terms can be seen as suiting the often relatively informal realities of employment.

12. In the case of ***Investors Compensation Scheme Limited v West Bromwich Building Society [1998] 1 ALL ER***, the then House of Lords (now the Supreme Court) held that a Court would, as a matter of common sense, normally apply the presumption that words were to be given their natural and ordinary meaning, if it was clear from the background that the parties, for whatever reason, had used the wrong words or syntax or that something must have gone wrong with the language used. This case held that the Court was not obliged to attribute to the parties an intention which they plainly could not have had. This case summarised the principles by which contractual documents should be construed. The principles may be summarised as follows:-

    *(i)* *"Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*

    *(ii)* *The background … includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*

    *(iii)* *The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible in an action for rectification. The law makes this distinction for reasons of practical policy …*

    *(iv)* *The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words of syntax.*

    *(v)* *"The rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless*

*conclude from the background that something must have gone wrong with the language, the law does not require Judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in* ***Antaios Cia Naviera SA v Salen Rederierna AB, The Antaios [1984] 3 ALL ER 299 at 233***, [1985] AC 191 at 201:

"… *If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense"*."

13. In the case of ***Rainy Sky S.A and Others v Kookmin Bank [2011] UKSC 50***, Lord Clarke stated, at paragraph 30, that:-

"……*where a term of a contract is open to more than one interpretation, it is generally appropriate to adopt the interpretation which is most consistent with business common sense".*

**CONCLUSIONS**

14. The tribunal has reached the following conclusions having applied the legal principles above to the facts found:-

(1) The key issue for this tribunal to determine was whether or not the claimant should have been paid €130 per trip as opposed to €130 per day during the course of his employment.

(2) It was conceded, by the respondent, that the wording of the employee's contract was very confusing in how it was phrased and required an explanation from Ms Cathriona Byrne to all employees.

(3) Throughout the course of his cross-examination, the claimant conceded that he understood, when it was explained to him by Ms Cathriona Byrne on 20 August 2019 at his induction day, that his rate of pay would be €130 per day as opposed to €130 per trip. The tribunal therefore concludes that the claimant knew, from his very first day in the position, that the written contract was not correct and that he knew that his rate of pay would be €130 per day.

(4) The tribunal also concludes that the claimant, despite knowing, on 20 August 2019, about the discrepancies in salary stated on his contract and that his rate of pay would be €130 per day, continued to work for the respondent organisation.

(5) The tribunal is also satisfied that the claimant made a further query, into his rate of pay, on 16 January 2020. On this occasion, it was clearly explained to the claimant that the rate of pay was a daily rate of pay as opposed to a rate for a round trip from Belfast to Dublin to Belfast. Again, the tribunal concludes that the claimant continued to work for the respondent organisation completely aware of the correct rate of salary.

(6) Had the claimant received payment of €130 per trip, this would have equated

to €260 per day, meaning that the claimant's hourly rate of pay would have been in the region of €26 per hour. Mr Foley confirmed in evidence that the *"going rate"* for a bus driver for Bus Eireann, at that time, would have been in the region of €17.50. Taking this to its logical conclusion, it would mean that had Mr Rollo been entitled to €26 per hour, he would have been well in excess of the industry norm. The tribunal concludes that a payment, of €26 per hour to the claimant, and indeed many other drivers, would not have been financially viable nor was it the intention of the respondent to pay this amount.

(7) The tribunal had considerable sympathy with the position the claimant found himself in. He was presented with a very poorly worded contract which, at first glance, gave the impression that the claimant was to receive €130 per trip. However, given that the claimant accepted that he was informed of this discrepancy, in the stated payment amount, by Ms Cathriona Byrne, on the date of signing his contract, leads the tribunal to the conclusion that the claimant's contract was not breached. The claimant was expressly told, orally, by Cathriona Byrne, that his rate of pay was €130 per day.

(8) Accordingly, the tribunal has concluded overall that the claimant has not been able to discharge the burden on him to show his contract of employment was breached and the claimant's claim for breach of contract therefore fails.

**CONCLUDING COMMENTS**

15. Whilst the tribunal has concluded that the claimant's contract has not been breached, the tribunal nevertheless had serious concerns about the wording of the claimant's contract in relation to payment. The respondent accepted that the contract was not as clear as it possibly should have been and it has since taken steps to rectify the wording of the contract in relation to the payment clause.

16. It is unfortunate that this amended contract was not available to the claimant, at the date of signing his contract of employment, as it would have avoided the claimant pursuing this claim. The tribunal suggests that the respondent should review its employment contracts regularly to avoid further ambiguities of this nature.

**Employment Judge: EJ Sturgeon**

**Date and place of hearing: 22 September 2021, Belfast.**

**This judgment was entered in the register and issued to the parties on:**