



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Aaminah Ali

Blooming Buds Limited

## JUDGMENT

**HELD AT** Birmingham **ON** 9 and 10 February 2017

**EMPLOYMENT JUDGE** Gilroy QC

### Representation

**For the Claimant:** Mr T Allsopp (Solicitor)

**For the Respondents:** Mr U Ahmed (Owner)

### **The judgment of the Tribunal is that:**

1. The Claimant's claim of breach of contract (non-payment of wages) is well founded and succeeds.
2. The Claimant's claim of breach of contract (failure to pay notice pay) is well founded and succeeds.
3. The Claimant's holiday pay claim is well founded and succeeds.
4. The counterclaim fails and is dismissed.
5. The Respondent is ordered to pay the Claimant the following sums:
  - (a) Non-payment of wages: £3,377.74.
  - (b) Notice pay £107.20.
  - (c) Holiday pay £136.32.

## **REASONS**

### **Evidence and Material before the Tribunal**

1. The Claimant gave evidence. For the Respondent, evidence was given by Mr Uzair Ahmed, essentially its proprietor.
2. The Tribunal was provided with an agreed bundle of documents [R1].

### **The Issues**

3. The central issue in the case was whether or not the Claimant was employed by the Respondent during the period which formed the basis of her claims. There was no dispute that she worked for the Respondent. There was no dispute that she was paid through its payroll system for part of that time. The issue for the Tribunal was whether, for the remainder of the period during which the Claimant worked for the Respondent, she did so as an employee. The Respondent accepted that if the Claimant was correct in her contention that she was employed during the relevant period, she was entitled to wages in the sum of £3,377.74, and holiday pay in the sum of £136.32. The amount claimed by way of notice pay (£107.20) was agreed, but the Respondent denied that the Claimant was entitled to that sum because, so the Respondent contended, she was not wrongfully dismissed.

### **Findings of Fact and Conclusions**

4. The Respondent is a children's nursery. The Claimant worked in that nursery and the origin of the relationship between the parties is that this was very much a family concern. When the nursery opened in or about December 2013, the Claimant, her husband (Mr Hussain Farah), Mr Uzair Ahmed and his wife (Mariyah) all worked in the business.
5. Mr Farah was originally the sole director of the Company and a 50 per cent shareholder with Mr Ahmed. Over the course of time, the relationship between Mr Ahmed and Mr Farah deteriorated and ultimately broke down. In the judgment of the Tribunal, the breakdown in the relationship between Mr Ahmed and Mr Farah has a central role to play in the parties coming before the Tribunal in relation to these claims.
6. The Respondent asserts that the Claimant was a volunteer - that she worked voluntarily for the Respondent business. She certainly started as a volunteer. Indeed she continued as such for a significant period.
7. The Claimant worked for a period of months without payment, as documented in a payment history that was provided to the Tribunal (at page 139 of [R1]).
8. The following matters are not in dispute:
  - (a) The Claimant was not paid when she began working for the Respondent in December 2013.

- (b) The Claimant signed a contract of employment on 21 March 2014 (page 43 of [R1]). Still she was not paid.
- (c) The Claimant started to receive payment with effect from August 2014. The payments she received were accompanied by wage slips, showing deductions in respect of income tax and national insurance contributions.
- (d) Mr Ahmed was aware that the Claimant was being paid from 6 October 2014 onwards. Indeed, from that date onwards, for at least 7 months, and on a monthly basis, he used an electronic device to gain remote access to the Respondent's bank account to make payment to the Claimant (see paragraph 18 below).

The main focus of the claims is the period from the signing of the contract on 27 March 2014 until August 2014.

- 9. In the judgment of the Tribunal, as far as employment status is concerned, there was a turning point in the relationship when the Claimant signed a contract of employment with the Respondent on 27 March 2014.
- 10. The contemporaneous documentation is instructive. There are some very brief notes from a meeting of the directors on 24 December 2014 (at page 90 of [R1]). There is no mention in those notes of Mr Ahmed complaining about or querying the Claimant being paid through payroll and that that had been happening since the beginning of October 2014. The same comment can be made about a document that seems to be dated 13 April 2015, relating to an agreement between the Respondent's owners, essentially Mr Ahmed and Mr Farah (at page 92 of [R1]), where, again, there is no mention of Mr Ahmed complaining about the Claimant being paid through payroll. In terms of evidence, the highest the Respondent can put it is that there was a meeting between Mr Ahmed and Mr Farah on 30 April 2015, which was preceded by an e-mail (at page 92A of [R1]) of 27 April 2015, that there was an agenda for that meeting (at page 92B of [R1]), and that agenda item number 3 concerned "Amena and Mariya Employment status". The reference to Mariya is plainly a reference to Mr Ahmed's wife and it would appear that, rather like the Claimant, Mr Ahmed's wife was also working for the business. The Tribunal was provided with copies of payslips in her name. In relation to that agenda item, there is no indication of any problem with the Claimant being paid through payroll and no other document was produced in evidence to suggest that, at the time, as far as the Respondent was concerned, there was any issue about her being paid.
- 11. When the relationship between the Claimant and the Respondent terminated (on either 10 or 22 December 2015 - the precise date is not material) the Claimant wrote to Mr Ahmed (on 16 December 2015), requesting, amongst other things, 4 months' wages that she maintained she was entitled to in respect of the period from 16 March 2014 until August 2014. There was no response from Mr Ahmed to that letter. It would appear that, on 17 December 2015, or shortly thereafter, the Claimant again pressed her claim for unpaid wages, again with no response from the Respondent.

12. When the Claimant left the Respondent, Mr Ahmed believed that she reported the Respondent to OFSTED and persuaded parents to remove their children from the Respondent nursery.
13. The Tribunal found it bizarre that an organisation could have detailed payslips, detailing the amounts of payment and tax codes and such when the people who are the subject of those wage slips were said to be volunteers.
14. Another tell-tale sign in this case is, perhaps, an appraisal document signed on 16 July 2015 by the Claimant and another employee of the Respondent, albeit Mr Ahmed said that he doubted the veracity of that document because the individual who had counter-signed it was someone who set up another nursery with the Claimant. Mr Ahmed asserted that, in the circumstances, this document could not be relied upon. In the Tribunal's judgment it is a reliable document and in that document the Claimant is seen as raising the issue of not being paid wages that were due to her. Her dates were not quite accurate, but the Tribunal saw no significance in this. It is plain to see the issue that the Claimant was raising, namely not being paid, and further that she was seeking to identify the period during which she had not been paid.
15. The Tribunal was shown a strange document (page 112 of [R1]), in the form of a letter from Mr Ahmed to the Claimant. It says as follows:

*“Dear Aaminah Ali,*

*As per our meeting on 03/11/2015 I would like to inform you that we are not in a position to employ you because of the number of children gone down. It is also because you clearly said that you are leaving after November 2015.*

*I wish you best of luck for the future.*

*Uzar Ahmed”*

The Claimant maintained that she did not receive the above document until 22 December 2015. Mr Ahmed said that she received it on 3 November 2015.

16. The letter begs the obvious question: Why would Mr Ahmed inform the Claimant that the Respondent was not in a position to continue to employ her if she was not an employee in the first place ?
17. It is also to be noted that in the Respondent's Response Form to the Tribunal claim (page 20 of [R1]) it is stated that Mr Farah was responsible for managing the Respondent's accounts until April 2015. Whatever is the correct position on this issue, on the Respondent's own case, for a period of 7 months (and therefore on 7 consecutive monthly occasions), he was using a device to communicate with the Respondent's bank to process payment for the Claimant in respect of what she says were her wages. It was not made clear to the Tribunal what Mr Ahmed suggested those payments should be described as.

18. The Respondent poses the question: why would the Claimant work in the initial period without being paid unless she was a volunteer ? In the judgment of the Tribunal, the explanation lies in the family relationship between the parties who set this business up. There was an expectation that monies would eventually be paid in a way that sometimes happens where relatives go into business together, as opposed to parties dealing with each other at arms length on the basis of strictly commercial arrangements.
19. The Tribunal was satisfied that matters changed when the contract of employment was signed in March 2014. Accordingly, it is the conclusion of the Tribunal that the Claimant was an employee for the duration of the period which forms the basis of her claim. Accordingly, both breach of contract claims (non-payment of wages and failure to pay notice pay) are well founded and succeed, the holiday pay claim is well founded and succeeds, and the counterclaim fails and is dismissed.
20. The Tribunal agrees with Mr Allsopp for the Claimant, that this was a straightforward matter complicated by the “baggage” of the dispute between Mr Ahmed and Mr Farah. The Tribunal also agrees that the first time Mr Ahmed challenged the Claimant’s entitlement to the monies she is seeking in these proceedings was in response to her Tribunal claim. It is the conclusion of the Tribunal that Mr Ahmed’s motivation for denying payment was because of the dispute with Mr Farah, compounded by his belief that the Claimant had reported the Respondent nursery to OFSTED and, that she had been responsible for persuading parents to remove children.
21. The notice pay claim is a claim of wrongful dismissal, the Claimant alleging that she was dismissed by way of breach of contract. The Claimant maintains that she was dismissed on 22 December 2015. Mr Ahmed claimed that she was dismissed 12 days earlier, despite the bizarre above-mentioned letter (see paragraph 16 above).
22. Mr Ahmed maintained that the Claimant was banned from the Respondent’s premises. No written evidence to that effect was produced before the Tribunal. No satisfactory reason was given for the dismissal. There was no proper cogent evidence to support a claim that the Claimant acted a breach of contract justifying dismissal. Accordingly, the Tribunal concluded that the Claimant was entitled to the sum claimed in respect of notice pay.
23. That leaves only one matter, namely the claim for holiday pay. Mr Ahmed helpfully indicated that the Respondent’s case was that the Claimant was not employed and therefore she was not entitled to any holiday pay. He conceded, however, that if the Tribunal found that she was employed, the sum claimed by way of unpaid holiday was not disputed. On the basis of my conclusion that the Claimant was indeed an employee of the Respondent, the holiday pay claim succeeds.

Employment Judge Gilroy QC  
24 April 2017

Date sent to parties  
24 April 2017