



EMPLOYMENT TRIBUNALS

Claimant: Derwent Training Association Limited

Respondent: Mr Michael Smith

Heard at: Leeds (by video) **On:** 12 June 2023

Before: Employment Judge T Knowles

Representation

Claimant: Ms I Bayliss, Counsel

Respondent: Did not attend

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's correct title is Derwent Training Association Limited.
2. The Claimant's counterclaim of breach of contract is well founded.
3. The Respondent is ordered to pay to the Claimant the sum of £10,125.00 damages for breach of contract.

RESERVED REASONS

Issues

1. The Respondent has previously withdrawn his claims against the Claimant and this case solely concerns the Claimant's counterclaim for recovery of their costs incurred in relation to training course completed by the Respondent within the last 12 months of his employment.
2. Accordingly, this issues for me to determine is what were the terms of the agreement between the parties and is the Respondent in breach of those terms.

Evidence

3. This hearing was undertaken by video.

4. The Claimant was represented by Ms Bayliss of Counsel.
5. The Claimant produced a bundle of documents, 153 pages.
6. Ms C Gavaghan, Chief Executive Officer, gave sworn evidence on behalf of the Claimant and produced a written witness statement.
7. The Respondent did not attend today, but instead provided written submissions. The arguments presented by the Claimant can be found within the bundle of documents at pages 46, 56 and 111.
8. References to numbers in brackets are to page numbers in the bundle of documents.

Findings of fact

9. I made the following findings of fact on the balance of probabilities.
10. The Respondent began employment with the Claimant on or around 21 August 2019.
11. The Respondent signed an employment contract (60).
12. The contract contains the following provision:

21 EDUCATION AND TRAINING

The Company will on occasion, where a business need is identified, support you through formalised further education and/or training. Where the Company has agreed to support further education or training, certain conditions will apply as detailed below:-

- Should you not complete the course for whatever reason you will be required to refund the course fees/training cost in full;*
- Once you have successfully completed the course or training the Company reserves the right to require you to refund all of the costs associated with the course or training should you leave the Company within 12 months of the course completion.*

13. On 1 July 2022 the Respondent completed a 2-year PGCE course (90). The course fees were £7,185.
14. On 6 August 2022 the Respondent completed a TAQA Level 3 Certificate in Assessing Vocational Achievement (89). The course fees were £811.
15. On 7 August 2022 the Respondent completed a City and Guilds Level 2 Diploma in Electrical Installations (147). The course fees were £2,399.
16. On 9 August 2022 the Respondent gave notice to terminate his employment.
17. On 22 August 2022 the Claimant sent to the Respondent an invoice in the sum of £10,395 to recoup the training fees listed above.
18. On 21 October 2022 the Respondent's employment terminated by reason of his resignation.
19. Between 28 December 2022 and 25 May 2023 the Respondent has made 6 payments of £45 to the Respondent, total £270.
20. There is no agreement between the parties to the effect that the Respondent can repay the Claimant in instalments. One was discussed but no agreement was reached.

21. The outstanding balance due from the Respondent to the Claimant is £10,125.

Submissions

22. The Respondent's documents can be summarised as posing an argument that the training costs for the PGCE and TAQA course are to be broken down into modules, and that some modules having been completed earlier than 12 months before the end of his employment are not recoverable.

23. The Respondent draws a distinction between programmes and course in support of his resistance to paying for PGCE and TAQA courses.

24. The Respondent accepts liability for the Electrical Installations diploma.

25. The Respondent does not argue that the provision in his contract is invalid, void or voidable.

26. The Claimant has made the following submissions:

11. The Claimant's offer letter makes clear what 'completing' means: The Company will financially support your Level 3 and Level 5 Certificates in Education; when you have completed your Level 3 you will receive a salary uplift of £500. In addition, when you have completed your Level 5 then you will receive a further salary uplift of £500. [100]. This makes it clear that the entire level needs to be complete before it will be considered so and a salary uplift is given.

12. MS began is Level 3 (TAQA) and Level five (PGCE) in 2020 and completed in in 2022. It is clear from the wording of the offer letter that the completion date would be that when the entire course was completed and he was entitled to a salary uplift, not the completion of any modules that went towards the qualification. This is what 'completion' means.

13. Supporting this, is the ordinary meaning of the word 'complete' in the context of academic and vocational courses. Everyone has experience of doing academic course, whether they be GCSE's O Levels, A Levels or degrees. We are all familiar with the fact that you have modular tests that count towards your final grade. You are usually given certificates from the examining body making clear your mark and grade. This does not mean that the course is completed or the certificate is worth anything alone.

14. This is clear from the evidence MS has provided eg [89] he was awarded "a certificate of unit credit" towards his Level 3 TAQA, the certificate makes clear that this mark is to count towards a complete qualification and is not a complete qualification in and of itself. His final certificate says "the holder has a number of formal credits by which this course was achieved", making clear that at this point it was completed.

15. Strongly supportive of the Respondent's argument that the ordinary reasonable understanding of completion of a course means the completion of the qualification, MS seems to have understood this himself, as he only approached the Respondent for a pay rise having completed the qualification.

The Law

27. I have jurisdiction to hear the Claimant's complaint under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

28. In **Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd** [2018] EWHC 163 it was held that "*the court's task is to ascertain the objective meaning of the language which the*

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parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has 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, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.”

Conclusions

29. The Claimant’s submissions are preferred to the Respondent’s.
30. The Respondent was at liberty to agree with the Claimant that training costs would only become repayable in relation to individual modules of courses completed within 12 months of him leaving but there is no such agreement.
31. The same point can be made of the Respondent’s perceived distinction between programmes and courses.
32. The ordinary meaning of “course completion” is, in relation to the relevant courses, when he received the award of the qualification.
33. It matters not that there were modules completed earlier towards the course completion.
34. The Respondent acknowledges that the clause is valid. There is no suggestion in this case that the clause is invalid, void or voidable.
35. The Respondent is in breach of his contract of employment and the sum owed by him to the Claimant is £10,125.00.
36. The Claimant is awarded that sum as damages for breach of contract.

Employment Judge T Knowles
12 June 2023