



EMPLOYMENT TRIBUNALS

Claimant: Mr S S Digpal
Respondent: Bidvest Noonon (UK) Limited
Heard at: East London Hearing Centre (by CVP)
On: 1 November 2024
Before: Regional Employment Judge Burgher

Appearances

For the Claimant: In person
For the Respondent: Mr C Moran (Director of Employee Relations)

JUDGMENT

- 1 The Claimant's complaints for unlawful deduction of wages in April 2024 succeeds. The Respondent is ordered to pay the Claimant the sum of £580.80 in this regard. Since the Claimant will be liable for tax on the elements relating to pay, the gross figure is used.**
- 2 The Claimant's claims for interest, consideration for breach of contract and 'administrative fees' in respect of emails fail and are dismissed.**
- 3 The Respondent is ordered to pay the Claimant the sum of £429.00 in respect of preparation time order pursuant to rule 76 of the 2013 ET rules.**
- 4 Therefore the total sum that the Respondent is ordered to pay to the Claimant is £1009.80.**

REASONS

Preliminary

1. The Respondent did not submit an ET3 contested the claim. The Respondent wrote to the Tribunal on 2 October 2024, following receipt of a letter that a rule 21 judgment could be issued. It requested an extension, following informing the Claimant on 10 October 2024 and received an email on 31 October 2024 from the Tribunal informing them that the hearing would go ahead and any application for extension of time could be made then. No ET3 was submitted to support an extension of time request. However, Mr Moran stated that the Respondent accepted that the sum of £580.80 was due to the Claimant but did not accept the Claimant's other claims.

2. The Claimant objected to there being an extension of time or subsequent postponement of the hearing, which he stated would be severely prejudicial to him. He stated that he was a litigant in person, the Respondent is a professional company and has still failed to submit an ET3 which it had more than enough time to do.

3. I considered the guidance in the case of Grant v Asda UKEAT/0231/16/BA where Simler J President stated at paragraph 18 that:

“The approach set out by Mummery J was subsequently adopted in relation to the 2004 Rules in Pendragon plc (t/a CD Bramall Bradford) v Copus [2005] ICR 1671 EAT. In our judgment, it applies with equal force to the 2013 Rules. So, in exercising this discretion, tribunals must take account of all relevant factors, including the explanation or lack of explanation for the delay in presenting a response to the claim, the merits of the respondent's defence, the balance of prejudice each party would suffer should an extension be granted or refused, and must then reach a conclusion that is objectively justified on the grounds of reason and justice and, we add, that is consistent with the overriding objective set out in Rule 2 of the ET Rules.”

4. I concluded that the balance of prejudice favoured the Claimant in refusing the request for extension of time. The Respondent has conceded the claim for unpaid wages and had not produced an ET3 despite having sufficient opportunity to do so. I considered that the matter could be fairly progressed by allowing Mr Moran to ask relevant questions to clarify the position.

Evidence

5. The Claimant gave evidence under oath and referred to tabs in a bundle of miscellaneous papers. The Claimant was taken through the summary of claims document that he produced.

5.1 . £580.80 pay for April 2024

April 2024 - 16 hours per week, at the rate of £12.10 per hour (following a pay increase for the month), as per the below breakdown:

1st April - 7th April 2024 - 16 hours x £12.10 = £193.60;

8th April - 14 April 2024 - 16 hours x £12.10 = £193.60;

15th April - 21 April 2024 - 16 hours x £12.10 = £193.60;

Total 3 weeks owed for April 2024 = **£580.80**

The Respondent accepted this sum was due.

5.2. £15.21 statutory Interest at the rate of 8 % Daily rate = loss x 0.08/ 365 (£580.80 x 0.08 = £0.13). Daily rate = £0.13 Approx. Amount of accrued interest = daily rate x number of days (between the date of loss to the date of this document) £0.13 x 117 days = £15.21

I informed Mr Digpal that the Tribunal did not have jurisdiction to award this sum for these claims.

5.3. £500 consideration for breach of contract.

Compensation payment for a breach of employment contract, and non-payment (also late wage payment) of wages. This would also be considered as part of damages for the claim.

The Claimant frankly stated that he was lucky enough to be able to pay all his bills by working elsewhere and borrowing money from family. He did not have any evidence of losses arising from late payment. In respect of breach of contract the Claimant sought to claim for April 2024 pay (subject to the unlawful deduction of wages claim) as additional compensation. This claim would be double recovery and failed.

5.4. £1000 Administrative fees due to being compelled to engage in countless email correspondence and attending meetings from April 2024 to September 2024. There were 26 administrative tasks listed relating to the breach of contract claim. He stated that different amounts of time were spent on each task, with some requiring more effort than others. To account for this, he capped his claim for these tasks at £1,000, which he considered a reasonable amount in connection with this claim in approximately five months from April 2024 trying to assert my contractual rights.

I informed the Claimant that I interpreted this aspect of the claim as a claim for preparation time order pursuant to rule 76 of the ET rules.

Preparation time order

6. The Claimant referenced 26 emails as administrative tasks. In evidence he stated that some took 2 hours, others 1 hour and as such he was claiming 1.5 hours for each email.

7. Mr Moran stated that there were two attempts to settle the claim offering the full amount of the April 2024 claim. The Claimant declined these offers. The Claimant stated that the COT3 terms were onerous.

8. I considered that this claim should never have reached the Tribunal for final determination. The Respondent ought to have offered the full sum earlier than it did in

August 2024 and the Claimant should have accepted what would have been standard terms regarding taxation of sums involved.

9. For the purposes of rule 76 of the 2013 ET rules I consider that the Respondent has been unreasonable in the conduct of the litigation in not conceding liability sooner that it did in this hearing. I also consider that it is appropriate to exercise my discretion to order the Respondent to pay the Claimant a preparation time order in respect of its unreasonable failure to concede. Had it done so the matter may have been resolved without a hearing.

10. When considering the amount of preparation time order, the maximum amount is £33 per hour in this case. Having considered the Claimant's evidence and the fact that he could have settled the case far sooner had he agreed to a COT3, I consider that an order for 13 hours preparation time order is appropriate. This amounts to **£429**.

11. Therefore, the total sum that the Respondent is ordered to pay to the Claimant is **£1009.80**.

**Regional Employment Judge Burgher
1 November 2024**