

DJT



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr A Sufan

AND

Respondent
Grocery UK Limited

HELD AT Birmingham **ON** 30th June 2017

EMPLOYMENT JUDGE Macmillan

Representation

For the Claimant:

In person

For the Respondent:

Mr Enath Khan, manager

JUDGMENT

The claimant's complaints of non-payment of holiday pay and breach of contract fail and are dismissed.

REASONS

1. This claim, brought by Mr Sufan who was employed by the respondents as a delivery driver, contains a number of elements. They relate to failure to pay notice pay, non-payment of wages on a number of occasions, non-payment of holiday pay, non-payment of paternity pay and non-payment of interest on loans made by Mr Sufan to the company. Apart from the complaint in respect of holiday pay they all appear to be brought as breach of contract claims. Mr Sufan has given evidence to me and has represented himself. The respondent has been represented by Mr Enath Khan, who is described as their accountant but appears to be the manager of the business.

2. The respondent's principal defence is that whether there is merit in any of these claims or not they are nothing to do with Grocery UK Limited but with other businesses for whom Mr Sufan worked. I am indebted to Mr Khan for a careful explanation of the not very complex corporate background which Mr Sufan has not challenged and which I therefore take to be an accurate

description. There is no question here of associated businesses. It is a matter of families and friends from the same community owning and working in similar types of business. Mr Sufan is an insider, not an outsider because in addition to being an employee of Grocery UK he and Mr Enath Khan are joint owners of two businesses informally described as Bismillah Meats and Birmingham Meats although he is a minority shareholder in both.

3. The corporate background, so far as it is relevant, is as follows. Mr Enath Khan and his brother Mr Azam Khan each owned 10% of the shares of a business called Birmingham Catering for whom the claimant worked as an employee. Mr Enath Khan sold his shares and left that business in early 2014. Also in early 2014 his brother Azam set up a new business, the respondents, Grocery UK Limited. He is the sole owner but has little or nothing to do with the day to day running of the business which is all done by Mr Enath Khan. That business started trading in early 2015. It deals in non-perishable items which it sells online, delivery being affected by the usual delivery agencies. The third business is Eman Limited, an old established business not owned by either Azam or Enath Khan neither of whom have shares in it. Azam Khan is however the manager of that business that role being his only, or certainly his principal, form of employment.

4. The claimant contends that he has at all times which are material for the purposes of this claim been employed by Grocery UK Limited and that all of the text messages and emails on which he relies in support of his various claims are between himself and Grocery UK Limited or individuals controlling that business. He dismisses as forgeries two documents both apparently bearing his signature which have been produced by the respondent. The first is a contract of employment showing that he started work for the respondents only on 1st November 2015. The other is a letter giving him four weeks notice of the termination of his employment a little over a year later on 30th November 2016 which he appears to have signed to acknowledge receipt. The date on which his employment ended according to his claim form is the date on which that notice expired. I find it very difficult to believe the claimant's denial that the signatures are his and his claim that he was working for the respondent much earlier than November 2015, not least because on 17th July 2016 he sent a text message to Mr Enath Khan which, after greetings, posed this question – "was I working for you from 4th April 2014 to 5th April 2015. If yes, do you have a copy of P60". That suggests that the claimant is not at all clear who his employer was at that time.

5. The claimant has shown to me his driving license claiming that the signature on it demonstrates that the signature on the contract of employment is a forgery. It does nothing of the sort. Forgery is a very grave accusation to make and like all allegations of fraud in civil proceedings requires a high degree of proof. There are many more similarities between the signatures than dissimilarities but his assertion that somehow the respondent has obtained a copy of his signature and has reproduced it on both documents must be wrong as the two signatures are not identical. I accept the evidence of Mr Enath Khan that he was present when the claimant signed both the contract of employment and the letter. That being so I find as a fact that the claimant's employment did not start with the respondents until 1st November

2015 and was terminated by four weeks' written notice. Those findings dispose of two elements of this claim immediately. The first is the claim for paternity pay which dates from May 2015 and the second is the claim for notice pay. The claimant was employed by the respondents for a year but received four weeks notice during which he was paid, being more than the statutory minimum.

6. All of the claimant's claims are characterised by their vagueness. All that is certain is that he worked part-time for this respondent. However, I am satisfied that he also worked for other employers, although he strenuously denies it. When working for the respondents he was paid a flat rate irrespective of the number of hours worked: the national minimum wage x 24 hours a week. He was paid monthly. It is common ground that he regularly worked fewer, and on Mr Khan's evidence considerably fewer, than 5 hours a day, his contractual hours. He was however always paid the flat rate. He may sometimes have worked more hours but on the basis of the 'swings and roundabouts' principle I am satisfied he was never paid less than his contractual entitlement.

7. I note that if any of these claims had been brought under Part 2 of the Employment Rights Act 1996 as claims for unlawful deductions for wages – they would have been out of time. None of the claims were brought until after the employment was terminated. The claims are as follows. The first is in respect £56.00 which the claimant spent on Azam Khan's personal home shopping. This claim must fail for the primary reason that the claimant has accepted all along that it is a private matter between him and Azam Khan, but I am also satisfied from the claimant's own text messages that he was instructed by Azam Khan to take money from the till to reimburse himself.

8. The next claim is for four deductions of £60 each from wages around the beginning of 2016. The claimant relies on an exchange of text messages with Azam Khan. The text messages are not easy to decipher. They do suggest rather erratic payment of wages but it is very difficult to extract from them a coherent message that four lots of £60 were deducted. But given the corporate background I am not able to say on the balance of probabilities, and it is for the claimant to satisfy me, that these text messages are about the claimant's employment with Grocery UK Limited. I accept Mr Enath Khan's evidence, which is not challenged, that it is he and not Azam Khan who runs the day to day affairs of Grocery UK and in particular the wages side and so it is very unlikely that the claimant would be directing text messages about underpayment of wages to Azam, But there is a more fundamental difficulty for the claimant. Grocery UK pays its employees monthly. All the complaints in the text messages appear to be about weekly payments. On the balance of probabilities I accept Mr Enath Khan's suggestion, which the claimant denies, that this claim and the text messages relied on, are about work which the claimant was doing for Eman Limited of which Azam is the manager and which does pay its employees weekly. That finding disposes of all of the complaints about non-payment of wages. In my judgment they all relate to work done by the claimant for Eman Ltd not the respondent.

9. There are other objections to the claims as well. Something which the respondents might wish to consider in future is keeping a record of drivers' hours just in case there is a challenge made that they are paying less than the national minimum wage. But the claimant is equally guilty here; he keeps no record of the hours that he works and if his claim is that on any given day or in any given week he worked more than the hours for which he was paid he is incapable of proving it because he has no record. Not only is there no record, his oral evidence about the number of hours he worked is so vague as to be incapable of amounting to proof even on the balance of probabilities.

10. The next claim is for holiday pay which has never been properly quantified. The summary of his claims which he put before the Tribunal at the start of these proceedings simply says that he will let the court decide how much is due to him. He was told that this was insufficient and that he had to quantify the claim so that the respondent knew the case it had to meet. He eventually suggested it was 13 days because he could prove that on 13 days when the respondent's calendar showed that he was on leave he was in fact working for them. On closer examination that turned out to be only 11 days. As Mr Khan rightly pointed out in evidence, the document produced by the claimant at the start of the proceedings but which the claimant did not refer to in evidence, in fact suggested that he had only been on leave for 5 or 6 days. The claimant's evidence on this point is very inconsistent. But the documents which the claimant has produced to show that he was at work on the days when the respondent claims he was on paid leave clearly show that he was working for Eman Limited, not the respondent. Some of them are from Eman Limited's email address, some are from an employee who I am satisfied is an employee of Eman Limited not of the respondent. The holiday pay claims must therefore fail as well. The claimant has not satisfied me, indeed has not come close to satisfying me, that he has not had his full entitlement to paid holiday from the respondent.

11. The remaining claim is for £46 of bank interest. This arises because the claimant contends that on an occasion when he went to make a purchase on the respondent's credit card from a cash and carry, the credit card was declined and he used his own debit card at the respondent's request to make the payment which was around £1800. This put him into overdraft which in turn caused him to incur interest payments. Apart from the fact that such written evidence as there is strongly suggests that this was a transaction on behalf of Eman Ltd, the claimant no evidence to support the figure he puts forward as being the interest he incurred. He suggested in evidence that the interest rate might have been 18% but on the other hand that it might have been 1.8%. He claims to have calculated that the amount due to him is £46 but he has not produced the calculation nor any supporting documents. He claims that the money was repaid to him after only six weeks but £46 interest over a six week period on a debt of under £1,800 suggests a significantly higher rate of interest than would be applied to an overdraft. I am not satisfied either that the interest - whatever it amounted to - was incurred on behalf of Grocery UK Limited, and I am certainly not satisfied that the interest was £46 or any figure close to it. The claimant has simply failed to produce even the most basic evidence necessary to demonstrate that that kind of loss, or indeed any loss, was incurred.

12. In short, the entirety of the claimant's claim fails. I am not satisfied that any of the shortcomings in his employment which he has outlined in these proceedings relate to employment with Grocery UK Limited and I am not satisfied that whoever they relate to the claimant has demonstrated that the claims he makes are justified. The claims therefore fail and are dismissed.

Employment Judge Macmillan

Date: 30th July 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON 1 August 2017