



# EMPLOYMENT TRIBUNALS

**Claimant** Mr Gabor Pap

**Respondent** Mr Aly Elsharkawy t/a iTECH SOLUTIONS

**Heard at:** Exeter

**On:** 5 November 2020

**Before:**  
**Employment Judge** Goraj

## Representation

**The Claimant:** in person

**The Respondent:** in person

## RESERVED JUDGMENT

### THE JUDGMENT OF THE TRIBUNAL IS that: -

1. The respondent has made unlawful deductions from the claimant's pay in breach of section 13 of the Employment Rights Act 1996 and the respondent is ordered to pay to the claimant the sum of £554.18 in respect of such unlawful deduction.
2. The respondent has also made unlawful deductions in breach of section 13 of the Employment Rights Act 1996 in respect of the claimant's accrued holiday pay and the respondent is ordered to pay to the claimant the sum of £210 in respect of such unlawful deduction.
3. The claimant is therefore awarded, and the respondent is ordered to pay to him, the total sum of £764.18.

4. The claimant's claim for breach of contract for notice is dismissed.

## **REASONS**

### **The conduct of the Hearing**

1. The hearing was conducted as a remote hearing to which the parties have consented/ not objected. The form of remote hearing was a video conference hearing by VH. A face to face hearing was not held because of the Covid pandemic and because it is in the interests of justice and in accordance with the overriding objective to minimise expenditure on time and costs.

### **Background**

2. By a claim form which was presented to the Tribunals on 5 September 2019, the claimant pursued claims for: - (a) a statutory redundancy payment (b) breach of contract for notice (c) arrears of pay and (d) holiday pay. The claimant stated in his claim form that he was employed by the respondent from 11 April 2019 until 28 July 2019. The claimant's claim for a statutory redundancy payment was rejected by the Tribunal as the claimant did not have the necessary qualifying service to pursue such claim.
3. The claimant's ACAS Early Conciliation Certificate records that the claimant's Early Conciliation notification was received by ACAS on 29 July 2019 and that the ACAS Early Conciliation certificate was issued on 23 August 2019.
4. By a response form which was presented to the Tribunals on 18 December 2019, the respondent disputed the claims. The respondent stated in the response form that the claimant had been employed from 1 June 2019 until 30 June 2019. The respondent further contended that the claimant had been paid all outstanding entitlements.
5. The respondent confirmed in an email to the Tribunal dated 13 January 2020 that the correct name of the respondent was as stated above. The respondent confirmed to the Tribunal at the start of the hearing that he trades under the name of iTECH SOLUTIONS which is not a limited company. This was accepted by the claimant and the pleadings stand accordingly.
6. The respondent made an application on 4 November 2020 to postpone the hearing on the grounds that he was experiencing depression and anxiety. This application was refused, the respondent was however informed that he could renew the application at the commencement of the hearing. The respondent did not renew his application. After discussion with the respondent it was agreed that if he experienced

any difficulties during the hearing he would advise the Tribunal however, no such concerns were raised.

### **Documents**

7. The Tribunal was provided with the separate copy bundles which were lodged by the parties with the Tribunal prior to the hearing. The Tribunal has also had regard to the further documentation submitted by the parties including in particular :- (a) the claimant's schedule of loss dated 20 July 2020 (b) the witness statement of the respondent dated 11 May 2020 and (c) the 2 witness statements submitted by the claimant.

### **Witness evidence**

8. The Tribunal heard oral evidence from the claimant and the respondent. The Tribunal did not hear any evidence from the claimant's supporting witnesses. The Tribunal has taken into account the contents of such statements. The Tribunal has however, placed limited weight on such evidence as neither of the witnesses attended the hearing for questioning and their statements, in any event, gave limited assistance on the matters in issue.

### **The commencement of the claimant's employment with the respondent.**

9. After discussion with the parties, and consideration of the available documents, including the claimant's contract of employment and his letter of resignation, it was agreed that the claimant commenced his employment with the respondent on 11 June 2019.

### **The claimant's contract of employment**

10. The claimant was issued with and accepted a contract of employment dated 11 June 2019 which is contained (in full) in the respondent's bundle. In brief summary the contract states that :- (a) the claimant was employed as a technician/retail worker (b) the claimant's rate of pay would be in accordance with the national minimum wage legislation calculated per shift for the hours which he actually worked (c) that the claimant's salary would be calculated on a monthly basis (d) the claimant's working hours would vary according to the workload but was not expected to exceed 40 hours per week however, the respondent could not guarantee the number of hours that would be offered (e) the holiday year ran from 1 January 2019 to 31 December (f) the claimant was required to serve a probationary period of 6 months and (g) during the probationary period the claimant was entitled to a one's week notice and was required to give one month's notice if he wished to leave.

### **The payslip**

11. The claimant was issued with a single payslip during his employment with the respondent (a copy of which is contained in the claimant's bundle). This payslip, which is dated 30 June 2019, is stated to be for the pay period between 15 June 2019 and 30 June 2019. The payslip records a payment due before statutory deductions of £903.10 (110 hours at 8.21 per hour) and a net payment of £881.01.

### **Outstanding payments for June 2019**

12. After discussion with the parties, it was accepted :- (a) (by the claimant) that he had received all monies due (in the total sum of £881.01 net) in respect of the period between 11 June and 30 June 2019 (b) (by the respondent) that the payments were paid in instalments the final 2 payments (of £455 and £251.01) being made on 7 and 11 July 2019 respectively) ( the respondent's bundle and witness statement) and (c) (by the respondent) that he had not paid the claimant any holiday payment. The respondent told the Tribunal that he did not believe that the claimant was entitled to any paid leave because he was still in a probationary period. There was a dispute between the parties as to whether the claimant had been overpaid by £35 which the claimant had taken from the till (about which it is accepted that the claimant had informed the respondent) on account of his wages. The claimant says that he repaid the monies which is denied by the respondent. The Tribunal is satisfied, on the balance of probabilities that the sum of £35 was returned by the claimant.

### **The claimant's resignation**

13. The claimant resigned his employment with the respondent by letter dated 28 June 2019. There is a copy of this letter in the claimant's bundle. In summary, the claimant stated that he had enjoyed his work with the respondent (which he stated had begun on 11 June 2019) and the opportunities which the respondent had given to him. The claimant also expressed a willingness to work out his notice period if the respondent so wished provided that he was given guarantees that his hours would be fully paid. The claimant made no reference in his letter of resignation to any losses caused by any delayed payments in salary.

### **The arrangements for July 2019**

14. It is agreed between the parties that they continued to have an on-going working relationship during July 2019. The parties disagree however about the nature of their relationship.

15. In brief summary, the claimant contends that he continued to work for the respondent as an employee working in the respondent's iT Tech business or, on occasions, working in the respondent's restaurant business until 25 July 2019. The claimant relies in support of his claims on his manuscript notes of days and overtime worked during July at page 10 of his bundle.
16. In brief summary, the respondent contends that the claimant ceased to be an employee on 30 June 2019 but that it was agreed that the claimant would continue to work on repairs and other Tech related work on a 50 per cent profit sharing basis until 16 July 2019. The respondent further stated that the claimant was given a laptop in part payment for such work and that he had acknowledged in February 2020 that the claimant was owed a further sum of £400 for work undertaken during such period.
17. The Tribunal has very limited documentary evidence to assist it in determining this matter. Having weighed the conflicting oral evidence and considered the claimant's manuscript notes of days and overtime worked (which the Tribunal went through with the claimant during his oral evidence) the Tribunal is satisfied, on the balance of probabilities, that the position was as set out below.
18. The Tribunal is satisfied, on the balance of probabilities, that it was agreed between the parties that the claimant would continue to undertake work as an employee at the respondent's TECH business as and when required between 1 July and 16 July 2019. The Tribunal is not satisfied that there was any agreed change of status or agreement for the claimant to work on a profit-sharing basis only as alleged by the respondent.
19. Having weighed the evidence the Tribunal is satisfied that the claimant worked as an employee of the respondent on the following days: -
  - (1) – 2 July 2019 – 8.5 hours.
  - (2) – 3 July 2019 – 8.5 hours.
  - (3) - 6 July 2019 – 9 hours.
  - (4) – 11 July 2019 – 8.5 hours.
  - (5) – 13 July 2019 – 9 hours.
  - (6) – 14 July 2019 – 7 hours
  - (7) – 15 July 2019 – 8.5 hours
  - (8) – 16 July 2019 – 8.5 hours

20. This gives a total number of hours worked during the above period of 67.5 hours for which the claimant was entitled to £8.21 gross per hour giving a total gross sum due of £554.18. When reaching the above total the Tribunal has discounted :- (a) the days when the claimant says that he attended the respondent's restaurant as he was unable to give a clear explanation of what he was doing on such days/ withdrew his claim for such days and (b) any dates after 16 July 2019. When discounting the dates after 16 July 2019 the Tribunal has taken into account in particular that respondent denies that the claimant undertook any work after that date and further that the claimant could not provide any breakdown of any hours worked during such period. In the circumstances the Tribunal is not satisfied that the claimant undertook any work for the respondent after 16 July 2019.
21. The respondent contended that the claimant was given on 30 June 2019 a laptop (which he contends was worth £309.99) which was tendered and accepted by the claimant in part payment for the claimant's wages in July 2019. The claimant denies that he accepted any property in settlement of his wages. The Tribunal is not satisfied that any laptop was given/ accepted by the claimant on such basis / that it is, in any event, appropriate to take into account any such property for the purposes of an unlawful deductions claim for salary.

#### **The claimant's holiday entitlement**

22. The claimant's contract of employment stated that the claimant's holiday year would run from 1 January to 31 December. The claimant was employed by the respondent for 5 weeks. The claimant had therefore accrued 3 days holiday as at 16 July 2019. The respondent accepts that the claimant had not taken any paid leave during his employment.

#### **The claimant's grievance**

23. The claimant contended in his evidence to the Tribunal that he had sent a written grievance to the respondent concerning the outstanding monies to which he had not received a response. The respondent denied receiving any such document. The claimant's bundle does not contain a copy of any grievance letter and he was unable to provide a copy to the Tribunal or to confirm the date of any such letter. In all the circumstances, the Tribunal is not satisfied, on the balance of probabilities, that any such grievance letter was sent/ received by the respondent.

### **Consequential losses**

24. The claimant contended in his schedule of loss that he had suffered consequential losses as a result of the delayed salary payments including that (a) he could not pay his bills because of the delay in payment by the respondent and had become homeless and (b) he had to give away various items of equipment as a result of his homelessness (as listed in his schedule). The claimant however also stated :- (a) in his schedule of loss that he had looked for and found a room after he had received the first instalment of salary on 12 June 2019 and (b) in his oral evidence that he had been homeless for 2 days (but could not confirm the dates). The claims are disputed by the respondent.
25. The Tribunal is not satisfied, as a matter of fact, that the claimant has established any consequential losses by reason of the late payment of his salary by the respondent. When reaching this conclusion the Tribunal has taken into account in particular that although the respondent accepts that the payment of salary was delayed :- (a) the June salary was not due for payment until 30 June 2019 (the claimant's contract and pay slip) (b) outstanding June 2019 payments were paid on 7/11 July 2019 (c) there is no reference to any consequential losses in the claimant's letter of resignation dated 28 June 2019 and (d) claimant has not provided any documentation in support of such claims (including in respect of outstanding bills or the alleged disposal of the goods referred to in his schedule of loss or any other documentation to show any connection between any losses and delay in salary payments) and (e) the claimant states in his schedule of loss that he obtained a new home as soon as he had received his first payment on 12 June 2019.

### **THE LAW AND REPRESENTATIONS**

26. The Tribunal has had regard in particular to the statutory provisions relating to unlawful deductions (sections 13 – 27 of the Employment Rights Act 1996.) and to the provisions of the Working Time Regulations 1998.
27. The Tribunal has also had regard to the representations which were made by the parties during the course of the hearing.

### **THE CONCLUSIONS OF THE TRIBUNAL**

#### **The claimant's claim for outstanding pay**

28. For the reasons explained at paragraphs 18 – 21 above the Tribunal is satisfied that the claimant continued to work for the respondent between 2 and 16 July 2019 and that he is entitled to outstanding

wages in the sum of £554.18 which have been unlawfully withheld/ deducted by the respondent. The Tribunal is not however satisfied, for the reasons explained at paragraph 25 above, that the claimant has sustained any recoverable consequential losses for the purposes of section 24 (2) of the Employment Rights Act 1996.

**The claimant's claim for holiday pay**

29. The Tribunal is satisfied, for the reasons explained at paragraph 22 above that the claimant had 3 day's accrued holiday outstanding as at 16 July 2019 which has not been paid by the respondent. The Tribunal is further satisfied, having regard to the hours worked by the claimant as set out at paragraph 19 above that the claimant is entitled to a further sum of £210 in respect of such outstanding holiday pay ( 8.5 hours x £8.21 (£70) X 3).

**The claimant's claim for notice**

30. The Tribunal is satisfied, for the reasons explained in particular at paragraphs 18 and 20 above, that following the submission of his notice on 28 June 2020 the claimant continued by agreement to work for the respondent until 16 July 2019 from which date he did not render any further services to the respondent. In the circumstances, the Tribunal is not satisfied that the claimant is entitled to any notice pay. This claim is therefore dismissed.

---

Employment Judge Goraj  
Date: 19 November 2020

JUDGMENT SENT TO THE PARTIES ON  
.....25 November 2020.....  
.....  
FOR THE OFFICE OF THE TRIBUNALS

As reasons for the Judgment were announced orally at the Hearing written reasons shall not be provided unless they are requested by a party within 14 days of the sending of this Judgment to the parties.