



EMPLOYMENT TRIBUNALS

Claimant: Mr S I Kapetanakis
Respondent: Historical Souvenirs Ltd
Heard at: Cardiff **On:** 18 November 2020
Before: Employment Judge P Davies

Representation:

Claimant: In person, assisted by Mr Pavlos Konstantineas, Interpreter
Respondent: Mr Frotan (Director)

JUDGMENT

The Judgment of the Tribunal is that:-

1. The Respondents do pay to the claimant damages of £392.32 in respect of breach of contract for failing to give proper notice of termination of employment.
2. All other claims are dismissed.

REASONS

1. This is a claim made by Mr Kapetanakis and received by the Tribunal on 15 June 2020. In the claim form the Claimant claimed unfair dismissal and in paragraph 9 of the claim form the Claimant says he wants to receive the money he should get from the furlough scheme plus compensation for being dismissed without notice. The Response from the Respondent company Historical Souvenirs Ltd denies any liability to the Claimant and says that members of staff were laid off with one week's notice pay.

2. The claim for unfair dismissal was rejected by the Tribunal because the Claimant did not have 2 years qualifying service. It is agreed that the Claimant commenced employment on 1 June 2019 and according to the Respondents the end of the employment was 31 March 2020. Unfortunately both the Claimant and Respondent have failed to provide relevant documents or written witness statements to the Tribunal as directed in correspondence from the Tribunal, but I have heard oral evidence from the Claimant and also from Mr Frotan on behalf of the Respondents.

3. My findings are as follows:-

The Claimant was paid a net figure of £850.03 per month. His work involved various duties including sale assistance and also included some engraving work. The Claimant was a full-time student and he worked on various days and for various hours during the week, but he was always paid the same sum of money of £850.03 and this sum was paid on a monthly basis into his bank account.

4. Unfortunately because of the 2020 pandemic Mr Frotan ceased trading in one of his shops at least on 23 March. There is some dispute between the parties about what contact they had regarding the termination of employment. Mr Frotan says there was a conversation on Sunday 22 March, the Claimant says his last working day was 21 March, but he does agree on 22 March he talked to Mr Frotan for about 10 minutes and Mr Frotan said that he was getting fired. There is some dispute about whether on 23 March there was communication about matters concerning termination of employment. Mr Frotan says that there was difficulty getting hold of the Claimant via a telephone. It is common ground that there was a WhatsApp communication. The Claimant said that was 23 March, Mr Frotan says on 24 March there was a WhatsApp with a P45.

5. The Claimant accepted that on 24 March a P45 had been received via WhatsApp and he tried to understand what all that meant. It is agreed there was some communication on 27 March where the Claimant was wanting to have clarity about the situation. Mr Frotan says the Claimant wanted confirmation that he should self-isolate in order to claim sick pay. I accept that evidence of Mr Frotan because the Claimant was in a difficult position because as he says as a full-time student he could not claim benefit. But of course there may be an entitlement to sick pay as an employee. Both parties agree there were discussions about the Claimant being furloughed.

6. This is against the background that the Claimant had been dismissed and sent his P45 as well as three other employees. That would have been either 23 or 24 March.

7. The decision of Mr Frotan was to terminate the employment of all his employees. The Claimant said that he was in a different situation because he could not claim benefit. I accept that Mr Frotan did genuinely contact his accountant and discuss furloughing only the Claimant and that during April and May the Claimant believed that he could be furloughed. However Mr Frotan told the Claimant that he did not meet the criteria for furlough according to the accountant, so the Claimant never was furloughed. In June 2020 because of his lack of money and job the Claimant moved to Germany where he obtained employment. The Claimant told the Tribunal he was seeking £2,000 as compensation.
8. In relation to the breach of contract claim, that is the non-payment of notice money, the Claimant agreed with Mr Frotan that there was a two week notice period agreed verbally between the parties. The Claimant says he has not been paid any notice money at all and all he received on 5 April 2020 was £650 into his bank account. The Claimant says that is only the money he was entitled to for the work he undertook in March and did not include any notice money. Mr Frotan says that the Claimant was only paid for the hours he worked in March but also received £281 for notice money.
9. I find that the Claimant was not paid his notice money. The figures do not add up as far as payment of one week's notice is concerned because on the basis of his pay the Claimant's weekly net payment should be £196.16. £281 is not that figure, but a figure far in excess. I accept the evidence of the Claimant that he had worked the hours he would normally work up to 21 March and therefore the one week that he did not work in March would equate to about £200 short in his payment and therefore £650 not £850 was only for the period that he worked in March. It did not include notice money. More than that, it should have been two weeks' notice because Mr Frotan said he did not pay the two weeks because he was hopeful of getting the Claimant back on the payroll. That is not a reason to withhold the notice money of two weeks.
10. Therefore, the Claimant is owed two weeks' notice money and in legal terms it is damages for breach of contract that the Tribunal awards. The breach of contract being failure to pay notice money in accordance with the verbal agreement. Therefore, the Respondent company is to pay the Claimant the sum of £392.32, that is, two weeks' at £196.16.
11. I will now deal with the other part of the claim of the Claimant that is his claim for money if he had been put on furlough. This claim must be dismissed. There is no legal right to be furloughed. It follows that there was no furlough agreement which needs to be in writing in any case between the Claimant and Respondent. The employer cannot be forced to

furlough any employee, so whether the accountant was correct in his advice or not there can be no liability of the Respondents to pay any money on the basis claimed by the Claimant.

12. It is irrelevant for this decision about any payment on the Claimant's HMRC account. Whatever the reason for that it is a matter for HMRC to investigate and to correct if it was incorrectly attributed. It cannot be, in law, determinative of any claim for furlough money.
13. And finally, in relation to computer files, the Tribunal has no power to make any order or injunction about those matters. If the parties cannot agree the position regarding those files it will be a matter for the Civil Courts if any claims are to be made. So no order will be made by the Tribunal as it is outside the Employment Tribunal jurisdiction, although I hope that following this Judgment the parties will be able amicably, to agree about the files.
14. Following the oral Judgment with reasons, the Claimant asked for written reasons. These are the reasons.

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Employment Judge P Davies
Dated: 7th December 2020

JUDGMENT SENT TO THE PARTIES ON 8 December 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS