



EMPLOYMENT TRIBUNALS

Claimant: Mr Samuel Prempeh

Respondents: (1) Regency Security Group (UK) Ltd
(2) First Payroll STM Ltd

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 24 November 2020

Before: Employment Judge Jones

Representation

Claimant: written representations
1st Respondent: no attendance or representations
2nd Respondent: Ms Averis (Director)

JUDGMENT

The Tribunal reconsidered the judgment of 20 July 2020 and confirmed it.

The claim is dismissed.

REASONS

1. This was a remote hearing, which has been consented to by the parties. The form of remote hearing was a fully remote video hearing. A face to face hearing was not held because it was not practicable and all issues could be addressed in a remote hearing. The documents that I considered are referred to below. The judgment that I made is as described above and explained below.
2. The employment tribunal claim in this matter was issued on 27 February 2020. It was served on both Respondents on 7 March. Neither Respondent sent the Tribunal a response to the claim on the prescribed form.
3. The Tribunal wrote to the Claimant on 16 May 2020 requesting information which it would consider when deciding whether it was appropriate to issue a default judgment under Rule 21 of the Employment Tribunals

(Constitution & Rules of Procedure) Regulations 2018. The Tribunal wanted information on the remedy that the Claimant wanted and on what basis it was claimed. There was no response to that letter.

4. The Claimant failed to give the Tribunal the information it asked for. He did not give details of the money that he was asking the Tribunal to order the Respondent to pay.

5. The Claimant failed to give sufficient details of his complaint and on 20 July, in addition to his non-attendance at the hearing; the Tribunal considered that the Claimant had failed to prove that he was owed any wages by either Respondent. The claim was struck out.

6. By email to the Tribunal dated 24 July, the Claimant complained that this decision was unfair and that he had not had an opportunity to make representations to the court about his case. Ms Averis also complained that she had not been able to address the court on this matter.

7. This reconsideration hearing was arranged to allow the Tribunal to consider whether the judgment should be reconsidered as the parties had not had an opportunity to address the Tribunal. After the July hearing, the Tribunal discovered that conflicting information had been given to the parties about whether to dial in to the hearing or wait to be telephoned by the Judge. Both parties had been waiting for a call whereas the Judge had been waiting for them on another line.

8. Both parties were notified of today's hearing.

9. The Claimant wrote to the Tribunal on 23 November to apologise for not writing to the Tribunal earlier, as ordered. He stated that he had been unwell. He gave the following details:

- a. That it was the first time that he had worked with the company and that he had only worked one shift for this as a door supervisor, between 10pm and 4am on 31 December 2019.
- b. In his ET1 he stated that it was a friend who had told him that if he did this work, he would be paid £150 net. In his most recent letter he stated that he was told that he would be paid £140 for the shift. He did not say who said that to him.
- c. He was then told by the 1st Respondent that he should complete a form with the 2nd Respondent in order to be paid.
- d. He complains that the 2nd Respondent deducted £19 and paid him £121 and that his was an illegal practice.
- e. He also complains that he knew of other people who worked on the shift with him and that they were all paid at different rates.

10. The Claimant did not attend today's hearing but the Tribunal took his written representations and the contents of his ET1 into account in making its decision on this matter.

11. Ms Averis from the 2nd Respondent attended the hearing. The matter remains undefended. However, in accordance with Rule 21 (3) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the Tribunal allowed her to provide further information on the breakdown of the payments made to the Claimant as shown in the document entitled 'payment record' which the Claimant attached to his email.

12. Ms Averis had previously sent the same payment record to the Tribunal on 10 November, to show the payment made to the Claimant and the relevant breakdown.

13. The Tribunal's judgment is that it is unlikely that the Claimant was an employee of either the 1st or 2nd Respondent. He did not provide any evidence of employment with his ET1 or subsequently to the Tribunal.

14. The Tribunal's judgment is also that the Claimant worked a single shift for the 1st Respondent as either a worker or on a self-employed basis. The 2nd Respondent is the payroll company who administer the pay. They do not have a contract with the Claimant. He completed a form on 6 January for the 2nd Respondent in which he provided his bank details for payment and confirmed that he had read and agreed to the sole trader terms of services and appointed them to act as his agent for invoicing and payment purposes only.

15. The Claimant was entitled to a gross payment of £139.99 for the single shift that he worked on 31 December 2019. He was engaged to work that shift by the 1st Respondent. The 1st Respondent referred him to the 2nd Respondent for payment. Once the Claimant completed the form, the 2nd Respondent processed the payment to him. The 1st Respondent instructed the 1st Respondent to deduct £13 from each worker as a 'Client deduction'. That amount is a set fee, which is set by the 1st Respondent. The 2nd Respondent also deduct £5.87 as an accountancy fee. This fee was to cover the cost of professional indemnity and public liability insurance cover which the 2nd Respondent has in place for those whose pay they administer. The 2nd Respondent treated the Claimant as self-employed which is why there were no deductions for tax and national insurance. The Claimant was paid the net sum of £121.13. The claim is therefore for £18.87.

16. The Claimant did not have a contract with either the 1st or 2nd Respondent for a net sum of £140 or £150. He has given two different figures in his documents to the Tribunal. The Respondents were not bound by any representations made to the Claimant by his friend.

17. The Tribunal's judgment of 20 July is reconsidered to allow the Claimant to prove his claim.

18. The Tribunal has considered the Claimant's written representations and the comments made by the 2nd Respondent in correspondence and in today's hearing.

19. It is this Tribunal's judgment that the Claimant has failed to prove that he is an employee of either Respondent. It is likely that he was a worker for the 1st Respondent. He worked one shift. The Claimant has failed to prove that there was an unlawful deduction of £18.87 made from his wage for the shift worked on 31 December 2020. The Claimant was paid correctly.

20. The claim fails and is dismissed.

Employment Judge Jones
Date: 25 November 2020