



Case No: 2501732/2023 & 2502500/2023

THE EMPLOYMENT TRIBUNALS

Claimant: Mr C Wrightson

Respondent: Rise Elevator Limited (in voluntary liquidation)

Heard at: Newcastle

On: 20 November 2024

Before: Employment Judge Legard (sitting alone)

Representation:

Claimant: In Person

Respondent: Did not attend and was not represented

JUDGMENT

The Judgment of the Tribunal is that:

1. Case no 2501712/2023 is dismissed upon withdrawal by the Claimant.
2. The claim for a failure to consult under regulation 15 TUPE is dismissed upon withdrawal by the Claimant.

3. The claim for notice pay is well founded and succeeds. The claimant is awarded the sum of £15000
4. The claim for car allowance is well founded and succeeds. The claimant is awarded the sum of £1800.
5. The claim for unpaid pension contributions is well founded and succeeds. The Claimant is awarded the sum of £750.
6. The claim for unpaid bonus entitlement is not well founded and is dismissed.
7. The Respondent's contract claim is not well founded and is dismissed.

REASONS

1 BACKGROUND

- 1.1 By a claim form presented on 20th July 2023 (attempted early conciliation having taken place between 21st May and 23rd June 2023) the Claimant ('C') brought claims in respect of unpaid notice pay; pension and car allowance. He also brought a claim in respect of an unpaid quarterly bonus.
- 1.2 On 19th January 2024 the matter came before EJ Loy for a preliminary hearing upon which the issues were summarised and identified. The Claimant at that stage was contemplating proceeding against Ascendant Lifts Ltd and Mr Chappell as well as Rise Elevator Limited. He has subsequently withdrawn his claims against both.
- 1.3 The Claimant also withdrew his claim for unfair dismissal which was subsequently dismissed on 20th March this year. Furthermore, during today's hearing, the Claimant made clear that he was no longer pursuing a claim under regulation 15 of TUPE Regulations (alleging a

failure to inform or consult) and I therefore proceeded to dismiss the same upon withdrawal.

1.4 As part of its response, the Respondent ('Rise') advanced an employer's contract claim maintaining, amongst other things, that the Claimant had made unauthorised or fraudulent payments to himself out of company funds during the course of his employment. The Claimant settled a response to the above claim denying the same in its entirety.

1.5 On 13th June this year liquidators were appointed by the creditors of Rise. Rise was not represented today; no-one appeared on its behalf and the contract claim was not pursued. In any event, having heard evidence from the claimant, I found that it was without foundation. For those reasons, I dismissed the same.

1.6 By a further case management hearing before Employment Judge Moss on 5th June 2024, this matter was set down for hearing today.

2. **EVIDENCE**

2.1 I heard sworn oral evidence from the Claimant. I was referred to a number of documents, including his written statement, contained within a very well prepared bundle provided by him. At the conclusion of the evidence the claimant was given an opportunity to address me on any matter that had not been canvassed before me during the course of his oral testimony.

2.2 I am grateful to the Claimant for the professional and cordial manner in which he conducted himself and presented his case before me.

3. **FINDINGS OF FACT**

- 3.1 My findings of fact are founded upon the balance of probabilities. The Claimant is a 54 year old individual with a strong track record in the lift industry. His statement incorporates a potted CV from which it can be seen that he is, on any view, an experienced executive with specialist knowledge of the industry.
- 3.2 In July 2022 he was approached by a Mr Ken Chappell with a view to becoming the Managing Director of a small lift company called Rise Elevator Limited ('Rise'). Rise is a company that specialised in the supply, installation, maintenance and repair of stairlifts. There is a LinkedIn text message from Mr Chappell to the Claimant inviting him to discuss this proposal and explaining that it was a small independent company with growth prospects and that, should he accept the role, that he would enjoy full control and autonomy.
- 3.3 Mr Chappell had brought Rise in early 2022 for what the Claimant believes was a purchase price of c. £300k. The Claimant accepted the offer (his previous employment with Kleeman Lift Ltd nearing its natural end) and commenced his employment with Rise on 15th August 2022.
- 3.4 A copy of his contract of employment is in the bundle. Amongst other things, it provides for a basic annual salary of £60k and an entitlement to a quarterly bonus based on 10% of net profits (before tax). The net profit figure was to be calculated by reference to net sales less direct cost of sales and administrative expenses. The bonus calculations were made by reference to quarterly figures (eg quarter ending 28th February) and paid at the end of the following month (eg 31st March). Any entitlement to a bonus fell away if employment terminated for any reason at or prior to a date when the bonus might otherwise be payable.
- 3.5 The Claimant was also entitled to an employer pension contribution up to a maximum of 2.5% of gross salary. His employment was subject to a 6

month notice period and, following successful completion of that period, his notice period was one of 3 months. Notwithstanding the fact that he was ostensibly subject to a 6 month probationary period, the Claimant was informed by Mr Chappell in September 2022 that he had successfully completed that period. The Claimant was also contractually entitled to a company car allowance. His holiday entitlement was 25 days plus public holidays and the leave year ran from 1st January. No carry over was permitted.

- 3.6 Prior to accepting the offer to become Rise's MD, the Claimant received an email dated 26th July 2022 purporting to show that Rise's sales for the year 2021 were in the region of £1m with an operating profit of c.£425k. I have also seen some unaudited accounts for Rise for the year ending March 2023 which show a positive P & L balance of c.£30k. However, by February 2023, it had become clear to both the Claimant and Mr Chappell that Rise was struggling financially and there was insufficient cash in the business with which to meet its obligations, including salaries. There were, at this time, five employees – two engineers; one driver; one administrator and the Claimant.
- 3.7 It is the Claimant's belief that Rise was generating sufficient cash in order to enable it to remain a viable trading entity. However, he maintains that the cash difficulties encountered by Rise were in part due to Mr Chappell's incompetence and rush to complete the sale without undertaking an appropriate level of due diligence; in part due to the previous owner retaining valuable contracts (no doubt in breach of the share purchase agreement) and in part due to Mr Chappell using Rise's corporate funds in order to pay for the shares themselves. He believes that the amount paid out of corporate funds for this purpose amounts to approximately £90k. Unfortunately however he has been unable to provide any documentary evidence in support of the same.
- 3.8 In fact the Claimant has been frustrated in his attempts to obtain evidence with which to support his suspicions and that remains the case today.

Nevertheless, whatever the reason or reasons may have been, it was abundantly clear that Rise was in serious financial difficulties by the end of February 2023.

- 3.9 The following day, the Claimant and Mr Chappell met. Mr Chappell informed the Claimant that he was going to place Rise in liquidation. Some cash was transferred from Ascendant Lifts Ltd in order to meet a salary shortfall. The Claimant made clear that the notice periods of all employees, including his own, must be honoured and Mr Chappell agreed. They both then travelled to the office, informed the remaining employees as to what was happening and the Claimant handed in all of his equipment, gave the engineers a lift home and did not work again for Rise. He accepts that his employment terminated on 1st March 2023.
- 3.10 The maintenance and repair element of the business was to be transferred to Ascendant Lifts Ltd and it is this that originally gave rise to a claim by the Claimant under the TUPE regulations. Various potential difficulties with this claim were highlighted to him by EJ Loy during the course of the case management hearing (for example the inevitable difficulty he would face in showing that he was assigned to the maintenance and repair part of the business) and he informed me at the start of today's hearing that he no longer sought to advance such a claim. In those circumstances I dismiss the same upon withdrawal.
- 3.11 The Claimant claims his notice pay (gross £15,000); car allowance payable over the same period amounting to £1800 and loss of employer pension contributions calculated in the sum of £750. He does not pursue a claim for accrued and unpaid holiday pay. He also claims an entitlement to a bonus which he calculates in the sum of £13500. He has arrived at that sum by approximating what the gross operating profit would have been but for disposals, depreciation and Mr Chappell's alleged extraction of money which 'from memory' the Claimant believes to be £90k.

4. CONCLUSIONS

- 4.1 I am satisfied that the Claimant did not, at any time, waive his right to his notice pay or indicate to Mr Chappell that he was prepared to 'walk away' on 1st March without a backward glance. On the contrary, I find that the Claimant explicitly made clear that all notice periods should be honoured, including his own. I therefore award the claimant 3 months notice pay. I award this sum gross but have warned the Claimant that should he succeed in enforcing this Judgment that he will have to account to HMRC for tax.
- 4.2 I am also satisfied that the Claimant has proved his entitlement to company car allowance and pension contributions for the same period. I therefore award him the further sum of £1800 and £750 respectively.
- 4.3 Unfortunately I am unable to make an award in respect of any unpaid bonus entitlement. Whilst I am sympathetic to the Claimant on this matter, I lack the necessary evidence with which to make a finding let alone a calculation. It seems to me that, for whatever reason, Rise was in serious financial difficulties by the end of February; it required a loan from another company in order to meet salary shortfall and it is inconceivable that it would have been able to make any bonus payments to any member of staff let alone the Claimant. The underlying reasons for this financial situation may have been mismanagement, incompetence or a combination of the two and may well have fallen outside the Claimant's control but, in the absence of any clear and cogent evidence to support the Claimant's suspicions, I am unable to do anything other than dismiss this element of his claim.

Employment Judge Legard

20th November 2024