



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Bright Ampomah

**Respondent:** Just Build UK Limited

## JUDGEMENT FOLLOWING PRELIMINARY HEARING

**Heard at:** On CVP                      **On:** 22/11/2021

**Before:** Tribunal Judge Lloyd-Lawrie acting as an Employment Judge

### Appearances

For the Claimant: Mr. Ampomah

For the Respondent: Ms. K Parker (Counsel)

## JUDGEMENT

1. The judgement of the Tribunal is that the claimant's claims of unlawful deduction from wages, wrongful dismissal and breach of contract were presented in time and that the Tribunal has jurisdiction to hear them. In the alternative, that it was not reasonably practicable for the Claimant to submit his claims within time and that he submitted them in a further reasonable period.
2. The claims brought by the Claimant, which are unlawful deduction from wages, wrongful dismissal and breach of contract do not have little or no reasonable prospects of success. It would therefore be inappropriate to strike out or order a deposit order in relation to any of the claims.

## REASONS

3. The first issue in front of me that must be considered is whether or not the Tribunal has jurisdiction to hear the claim.
4. The Claimant brings claims of unlawful deductions from wages, wrongful dismissal and breach of contract. When clarified with him he is looking for his wages up to and including the date of dismissal and his notice pay.

5. The Claimant gave evidence that he considered the conversation he had with the Operations Manager of the Respondent on 19/10/2020 where he was sent home to wait for the Respondent to obtain monies to be able to pay him and obtain the necessary equipment, to be an act of dismissal. He confirmed this numerous times but then appeared to consider that he was still employed, thus contradicting himself.
6. The Respondent's position is that the Claimant was dismissed with immediate notice in a meeting that took place on 30/10/2020 and that he was told that he would be paid notice. The Respondent states that the payroll run was 6/11/2020
7. The Claimant disputes he was dismissed on a meeting on 30/10/2020 but says that he was abused by the Operations Manager in that meeting and was told he had to give the work van back.
8. I find that it is more likely than not that the Claimant was dismissed on 30/10/2020 as the Claimant has not been clear as to whether or not he was dismissed but agrees that he was asked for the van to be returned on that day. The Respondent has stated in their ET3 that the Claimant was dismissed on 30/10/2020. I heard no evidence from the Claimant to contradict the evidence of the Respondent that the payroll that followed the dismissal was 6/11/2020. I therefore find that that was the dates that all remaining wages and notice pay should have been paid to him.
9. It follows that the limitation period for the unlawful deduction from wages aspect of claim would therefore have ended, but for ACAS conciliation, on 05/02/2021. It would follow that the claims in relation to notice pay would also have the same time limits, as that was the day those monies were due to be paid.
10. The Claimant complied with his obligation to start early conciliation with ACAS. He did this on 16/12/2020, well within the limitation period. The certificate was issued on 27/01//2021. The issue for the Claimant is that he issued against Euro Food. It has been stated by His Honour Judge David Richardson in dealing with an appeal against the decision of the Employment Tribunal in **De Mota v ADR Network and Anor 2018 ICR D6** that section 18A(8) focuses on the existence of a certificate and that Parliament had not meant to make the process overly complicated for an prospective Claimant. The purpose is to see whether information was provided to the relevant employer. In this case, despite the name issue, it is clear that the Respondent was aware of the issues in the case and was engaging with ACAS. The first certificate in the name of "Euro Foods" was in their file. Further, I find it entirely reasonable that the Claimant considered that as his payslips were in a different name to his contract, that he was confused as to the correct legal name of his employer. I find that this is an understandable error.
11. The case was first presented on 26/02/2021 with the first ACAS conciliation reference number. This would have been within time when adding the one month extension, when there is less than that period left on limitation period. The case therefore would have been in time on that date.

12. The Claimant claims that the Respondent contacted ACAS and said that the certificate had been issued in the wrong name. They therefore clearly had notice of it and therefore they are not prejudiced.
13. I find that the Claimant in fact did submit his claim in time or, if I am wrong in that, it was not reasonably practicable for him to present the claim in time as he had thought he was following procedures but conciliating with his previous employer and submitting his claim in the time limits that were extended by that period. I find that once the Claimant became aware that he had given the wrong company name to ACAS, he actioned it quickly and informed the Tribunal the day after he received the new certificate and the claim was accepted that day. I find that that was a further reasonable period in the alternative.
14. The Claimant has clarified that his unlawful deduction from wages claim relates to his wages that he was not paid leading up to his dismissal. The Respondent accepts that these have not been paid but has said that he caused significant amounts of damage after his negligence on 18/10/2020 when undertaking a repair and they claim that they can set off what is owed as the Claimant has signed a contract allowing for deductions in this situation. The Claimant has been clear that he was not in work on 18/10/2020 and pointed to the Employer's records in the bundle which show him as not being in work on that day. He also pointed out that the invoices in the bundle which the Respondent appear to say are the basis for why they can set off, are in the name of Euro Food, not Just Build UK Ltd. I find that, without hearing detailed evidence on the issue, it would appear, based on the evidence of the Claimant and the calculations of the Respondent in the unpaginated bundle, which state that the Claimant is owed wages of £3841.36, that it cannot be said that this claim has little or no reasonable prospects of success and there is an issue which requires determination at a full hearing.
15. Moving now to the wrongful dismissal claim. The Respondent openly states in correspondence that the dismissal letter to the Claimant was created on 19/11/2020. It states that the Claimant will be paid 1 week's notice and makes no mention of gross misconduct. His contract also states that he would be entitled to 1 week's notice and the Claimant confirmed that that is what he is claiming. The letter stated he would be paid that 1 week's notice on 06/11/2020. He was not paid these monies. I find that it cannot be said that the Claimant's wrongful dismissal claim has little or no reasonable prospects of success.
16. I now consider the Claimant's breach of contract claim. The Claimant from his ET1 has stated he is claiming his expenses. He broke this down in the hearing to relate to pure expenses, the failure to provide transportation and the failure to provide PPE. As these all, in the main, relate to the expenses the Claimant incurred in personally providing these items, I find that firstly, this claim has been plead from the start and due to the correspondence from the Claimant to the Respondent, I find that the Respondent was or should have been aware what the Claimant was claiming. I find that the Claimant does have a contract that allows expenses to be repaid to him. Whether or not these were reasonably incurred and should be repaid to him is a matter for final hearing but I find that

again, it cannot be said that this claim has little or no reasonable prospects of success.

17. The parties agreed that the Respondent's application for strike out due to the Claimant's alleged non-compliance with orders did not need further consideration based on the findings in relation to the above matters and the orders given at the hearing.

Judge A N Lloyd-Lawrie  
22/11/2021

Sent to the parties on 24 November 2021

For the Tribunal Office Mr N Roche