Case Number: 3311064/2020 (V)

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr K Abayomi	**v**	Cordant Security Limited

Heard at: Watford by CVP **On**: 19 April 2021

Before: Employment Judge Quill (sitting alone)

Appearances

For the Claimant:
For the Respondent:

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote / paper hearing on the papers which has been consented to / not objected to by the parties. The form of remote hearing was [insert the code and description from the list above]. A face to face hearing was not held because [insert e.g. it was not practicable and no-one requested the same or it was not practicable and all issues could be determined in a remote hearing / on paper]. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have recorded. The order made is described at the end of these reasons. [The parties said this about the process: [add]]"

JUDGMENT

1. The claims for breach of contract and/or unauthorised deduction from wages are not well founded and they are dismissed.

REASONS

1. I had a bundle of documents that was an agreed bundle of 82 pages and during the hearing I received an additional document from the claimant's side. There was one witness from each side, the claimant's witness statement was in the bundle. The witness statement by Danny Stoughton on behalf of the respondent was sent to me separately. Each of the witnesses gave evidence on oath and was questioned by the other side and by me.

2. The claims were presented in time following early conciliation and the termination of employment. If there were any claims for either notice of pay or redundancy pay, then they were dismissed on withdrawal by Employment Judge Lewis on 6 April 2021 and the claimant clarified before me that he was not claiming holiday pay.

3. The claim as paraphrased and the list of issues that I had to decide was that the claim alleges that he was promised regular work but he did not get regular work and therefore did not get the income that he was expecting. He was not alleging that he was guaranteed a certain minimum level of weekly pay, even if he did not do any work. So, the facts as I find them to be are as follows.

4. The claimant did one particular training shift for the respondent and he was paid for that. That was 22 April. Prior to starting work for the employment, the claimant had signed a contract and it is in the bundle between pages 39 to 50 and amongst other clauses, that included clause 7.4, which says:

> "there is no obligation on the company to make available all or part of the minimum hours in any particular months or weeks or to spread them evenly over the year or to provide them at particular intervals you acknowledge that there may be periods when no work is allocated to you.

5. The minimum hours that were guaranteed by the contract were 366 hours, but the measure period for that was a period of one year, so in the first year, 15 April 2020 to 14 April 2021, and then a year that ran after. That is according to the black and white contract, at least signed by the claimant.

6. The claimant having completed his training shift and made himself available for work from May 2020 onwards. He was not contacted in the first few days of May. The reason he was not contacted was because there was no work available for him. This was of course in the early period of lockdown, and the claimant did not have any clients who wanted services to be provided to them in that week. The claimant sent an e-mail to the respondent on 10 May in which he pointed out that he had not been contacted. Before that the claimant telephoned Danny Stoughton, the Operations Manager on 7 May and had a conversation about why he had not been offered any work and at that time Mr Stoughton told him and told him truthfully that the reason he had not been contacted yet was because all of the client's requirements were already being met and that there were no additional shifts available. Mr Stoughton suggested that the claimant should stay in touch and that he would be offered work in the future if it did become available. On 10 May, the claimant sent an e-mail to the respondent pointing out correctly that he hadn't been offered any shifts up to that stage. He also made an assertion that he had been promised during the induction period and he would be getting 20 hours per week.

7. After the claimant's e-mail, in the later part of May, there was frequent contact from the respondent from Mr Stoughton to the claimant and the reason for those attempts to contact the claimant were to attempt to offer him shifts to do, that was because some shifts were available which were potentially

suitable for the claimant. The claimant did not reply promptly to the attempts to contact him and this went on until late May/early June when the respondent decided that because of the claimant's failure to keep in touch, the probation period was not passed and the employment would be terminated. Other than the one shift itself, the training shift on 22 April, there were no dates on which the claimant actually did any work for the respondent.

8. The law that I have to take into account in terms of unauthorised deduction from wages, that is governed by the Employment Rights Act, in terms of breach of contract, that is governed by the ordinary Common Law principles for contract and in simple terms that each party will be bound by what their agreement is. So, in an employment contract typically that would be an agreement on behalf of the employer to pay sums to the employee and on behalf of the employee to do work for the respondent. The specific details of what work would be done and what pay will be made will be governed by the contract itself. In the employment context that is potentially modified by the need to consider cases such as Autocleanse and Uber to the effect that it is appropriate for an Employment Tribunal to have regard to the unequal bargaining position that the parties find themselves in, so Autocleanse in particular, if I were to find that the true agreement reached between the parties was not reflected in the written agreement and that the claimant had only signed a particular written agreement that did not actually match the true agreement, then I could certainly look behind the black and white written agreement and make a decision about what the actual contract was that had been agreed between the parties.

9. My analysis in this case is that it is common ground between the parties and that the claimant was an employee of the respondent and my finding is that the terms that were agreed were as per the written contract that the claimant signed around 6 April 2020 prior to starting work for the respondent and prior to his training. If at any stage the claimant had been given additional information about how regular his hours might be, that did not actually form part of the contract. In any event, the contract suggested that he would have a minimum number of hours over the first years, so the 366 hours would be provided to him over the first year. Of course, that assumes that he remains in their employment for the full year. But if he had done so, and not received at least 366 hours, then there would have been a claim that he could have brought either in the Employment Tribunal or in the courts. However, that did not happen. This written agreement is not a sham. It is what the parties agreed between themselves. As it turned out, for various different reasons, the claimant was not actually provided with work, in part that was because there was a downturn in available work because of the pandemic and in part that was because the claimant did not get back in touch with Mr Stoughton promptly when Mr Stoughton contacted him or attempted to contact him to arrange specific shifts for him.

10. Either way, regardless of the specific reasons why the work was not done by the claimant, there was not any breach of contract by the respondent in terms of what it agreed to do in terms offering the claimant work or in terms of paying him for any work which he did actually perform.

11. For those reasons the breach of contract claim fails.

12. The unauthorised deduction from wages claim, if any, also fails because there was no work done by the claimant for which he was not paid the correct sums.

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Employment Judge Quill

Date: 14 July 2021

Sent to the parties on: .....

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For the Tribunal Office