EMPLOYMENT TRIBUNALS

Claimant: Geoffrey Bayliff

Respondent: Fileturn Limited

Heard at: South London (by CVP) **On:** 24 February 2021

Before: Employment Judge K E Robinson

REPRESENTATION:

Claimant: In person (with the assistance of Mrs Bayliff)
Respondent: Ms Stein, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. For the avoidance of doubt the original judgment under rule 21 promulgated on 24 October 2020 and made by Employment Judge Hyams-Parish is revoked.

2. The claimant's application for an amendment to his claim to include a claim of holiday pay fails and is dismissed.

3. The application for a preparation time order made by the claimant fails and is dismissed.

4. The claim for a further payment of notice pay fails and is dismissed.

5. No claim for unlawful deduction of wages has been made.

REASONS

1. Due to an administrative error a judgment was issued under Rule 21 of the 2013 Regulations. On reconsideration that judgment was revoked on the basis that the respondent had served its response in time.

2. The claimant made an application to me for an amendment to his ET1 to include a holiday pay claim. A discussion took place during the course of the hearing

with regard to that issue. The claimant had made no reference to a holiday pay claim in the original ET1. The claimant and his wife, who also attended to assist her husband in explaining his case, withdrew the application after the discussion. In any event I would not have allowed it for the reasons I gave to them orally at the hearing. No application for full reasons relating to that part of the judgment has been made by either party.

3. I heard an application for a preparation time order. The claimant and his wife informed me that they had used the services of a friend who had spent time helping them prepare their case. However, an award of costs against the respondent company was not appropriate in this matter. Neither the respondent nor its solicitors had acted in a way which was vexatious, abusive, disruptive or otherwise unreasonable. They had simply defended these proceedings which they were entitled to do. Both the company and the solicitors had prepared the defence on the basis that the company had paid to the claimant all that he was due. I made the decision on costs at the hearing not having decided whether the claimant would be successful or not with regard to his substantive complaint of breach of contract. I reserved the judgment because I wished to review the coronavirus regulations referred to below. I have reconsidered the question of costs on my own initiative, now that I have come to my decision, and confirm my original judgment that no preparation time order should be made.

4. With regard to the contentious issue of notice pay the essential facts are as follows. The claimant was furloughed. A large proportion of the employees at the respondent company had been furloughed during March 2020. The claimant was therefore placed on furlough from 1 April 2020 and his contract of employment was amended by the furlough agreement dated 20 April 2020. 80% of the claimant's monthly salary exceeded the £2500 cap. Consequently the claimant was paid a gross monthly amended wage of £2500.

5. The respondent's management reviewed the situation and by letter of 11 May 2020 informed the claimant that he was at risk of redundancy and ultimately the claimant was made redundant, was paid the capped statutory redundancy payment and on 18 May was given 12 weeks written notice which expired on 10 August 2020. The claimant was contractually entitled to 12 weeks' notice for his 15 years' service with the respondent company.

6. The claimant was paid 80% of his notice pay to 31 July 2020 and in view of the Coronavirus Regulations 2020 relating to calculation of week's pay, he was paid 100% of his notice pay from the 1 August to 10 August. The claimant sort, at this hearing, to have the whole 12 weeks' notice period paid at 100% of his wage.

7. The claimant suggested that that was a breach of contract.

8. The law to be applied is set out in the Employment Rights Act 1996 (Coronavirus Calculation of a week's pay) Regulations 2020. These regulations were introduced in order to confirm to both employers and employees that notice pay for furloughed employees should not be based on their furlough pay but on their pre furlough pay.

9. If an employee is entitled under his/her contract of employment to at least one weeks' notice more than the statutory minimum notice the regulations do not apply. That is not the case here.

10. The Regulations came into force on 31 July 2020 and are not retrospective.

11. Applying that law to the facts of this case I concluded that as the claimant had been paid notice pay to 31 July based on his furlough pay and thereafter notice pay based on his pre furlough pay, he had been paid his full entitlement with regard to notice pay. His contract had been amended by agreement in April 2020 to reflect the payment under the furlough scheme. Consequently, there has been no breach of contract and the claimant has been paid his proper contractual payment. This claim for breach of contract and or unlawful deduction of wages relating to the claimant's allegation that there has been a shortfall in his pay is dismissed.

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Employment Judge Robinson
Date: 8 March 2021