

JERSEY / JUDGMENT

David Dore v Erin Bisson t/a Express Cabs

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Jersey Employment and Discrimination Tribunal Employment (Jersey) Law 2003 NOTIFICATION OF THE TRIBUNAL'S

JUDGMENT

Reference: [2017]TRE060 & [2017]TRE061 Applicant: David Doré Respondent: Erin Bisson t/a Express Cabs Hearing Date: 21 JUL 2017 Before: Advocate Mike Preston, Deputy Chairman For the Applicant: The Claimant in person For the Respondent: The Respondent in person THE TRIBUNAL'S

JUDGMENT

Introduction

1. The Deputy Chair sat alone on 21 July 2017 in what was listed for a Case Management Meeting. Both parties had issued strike out applications and the Deputy Chair sat to determine those, with the intention of issuing directions for the future conduct of this matter depending upon the outcome. As will be seen, there was no need to issue such directions.
2. In the case of the Respondent, she sought to strike out the claims made in the JET1 form for unpaid wages, holiday pay and notice pay. In the case of the Claimant it was to strike out the counterclaims made in the JET3 form for parking expenses and damages for loss of reputation.
3. The Respondent confirmed that if the JET1 was struck out she would not pursue the claims that she had made in the JET3 in any event. JET1 - claims
4. The Claimant made the following claims;
 - a) that he had worked from 1 April 2016 until 17 August 2016, a total of 98 working days without any payment;
 - b) that he had been wrongfully dismissed, not having received one weeks' notice pay to which he was contractually entitled; and,
 - c) that he was owed holiday pay based on 4% of what he ought to have been paid over the 98 days that he had worked.

5. The Claimant also complained that he had not received a Grievance Procedure, a Disciplinary Policy nor itemised payslips from the Respondent. He also complained that no ITIS or Social Security payments had been made on his behalf.
6. It was agreed that the Claimant had been employed to drive a taxi owned by the Respondent pursuant to a Zero Hours' Contract (the "Contract") signed by the Claimant on 17 March 2016 and by the Respondent on 22 March 2016 but stated to be effective as from 1 April 2016.
7. The Contract provided that the Claimant would "be paid only for hours worked" and stated that there might "be times when no work is available....and the [Respondent] has no duty to provide you with any work at such times."
8. As to holiday pay, the Contract provided that the Claimant would be "paid for as it is earned on the basis of an additional 4% pay for each contracted hour worked".
9. As to notice pay, after an initial probationary period of 4 weeks, a 1 week notice period would apply until the Claimant had been employed for 26 weeks when statutory notice periods would apply.
10. It was accepted by the Claimant that he had worked very little over the period in question. When asked how much he had worked he was unable to provide any particulars at all, saying that he had not been provided with any records of his hours by the Respondent. He had kept no records himself. In the main, he had been "available for work" and so, in his opinion, he was working and should be paid as if he had been driving. When he had worked, he confirmed that he had kept any fares paid to him by passengers.
11. The Respondent countered that the Claimant had not worked a single hour and the Contract clearly stated that if he was not working he would not be paid. There was no question of him being paid when he was waiting to be given a job. No records had been kept by her for the simple reason that he had done no work. This was literally a zero hours' contract, where zero hours had been worked. The Respondent was interested to hear that her employee had apparently been working and not accounting to her for the income that he generated as she would have expected to have received the "takings" and then paid wages from that money. However, her primary position was that there had been no such money.
12. As to holiday pay, it followed that if no hours were worked, no holiday pay was due. Again, the Claimant had kept no records of the work that he said that he had done but argued that he should receive holiday pay even for hours that he spent waiting to be allocated work. The Respondent repeated her point that if no work was done there was no entitlement to holiday pay. Essentially, the claimant was entitled to 4% of nothing.

13. As to notice pay, the Claimant said that he had resigned by email dated 17 August, which stated that he was writing “to inform you that I have today resigned”. There was no notice given and the Respondent stated that the Claimant had simply ended the relationship with no intention of working any notice period. The Claimant left it to the Deputy Chair to decide, in those circumstances, whether notice pay was due. JET3 – counterclaims
14. As to the Respondent’s counterclaims, it was apparent that they were at best half-hearted. The Respondent claimed for the cost of keeping her car parked near the Claimant so that if he was called upon to work, he could do so. However, she accepted that there was no agreement between the parties as to the payment of car parking expenses. As to damages for loss of reputation, the Respondent did not seriously pursue this claim.
15. It was the Claimant’s position that the counterclaims were either vexatious or they had no prospect of success. The Law
16. The Employment and Discrimination Tribunal (Procedure) Order 2016 (the “Order”) provides at Article 24 (1) that, either on its own initiative or on a party’s application, the Tribunal may strike out all or part of a claim on various grounds including on the basis that “it is scandalous or vexatious or has no reasonable prospect of success”. DECISION
17. The Deputy Chair carefully considered all of the matters before him and the applications that were made by both parties. It is the case that if neither party had made an application to strike out, he would have acted on his own initiative and struck out both the JET1 and the JET3.
18. The Deputy Chair decided that none of the claims made by the Claimant had any prospect of success, let alone a reasonable prospect. The claim for unpaid wages was doomed to fail as even on the Claimant’s own case, it ran contrary to the express terms of the Contract. The Claimant accepted that he did not actually work very much and had no records of what little he had worked. This was in circumstances where he was only entitled to pay for hours that he could prove that he worked. It was the Deputy Chair’s view that there was no prospect of proving that he had worked at all. Likewise, his claim for holiday pay had no prospect of succeeding. Finally, the Claimant accepted that he had resigned without giving any notice. In such circumstances, he was not entitled to notice pay and must have known that was the case. The Claimant’s claims were dismissed in their entirety.
19. To the Respondent’s credit, she conceded that if the Claimant’s claims were dismissed, she would not pursue the counterclaims. However, it is right to say that by this concession, she was not giving up very much. The counterclaims were the Respondent’s reaction to what were by any measure absurd claims from the Claimant. That did not mean that they had any merit. In the Deputy Chair’s judgment, the counterclaims had no prospect of success and would be dismissed.

20. These proceedings were frankly a waste of everybody's time and the Deputy Chair has no hesitation in bringing them to an end. Signed: Advocate Mike Preston, Deputy Chairman
Dated: 24 July 2017 Judgment and Reasons sent to the parties on 25 July 2017 For the Tribunal Office
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