

JERSEY / JUDGMENT

Mangles, I., Mr v IJT Direct Limited

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Jersey Employment Tribunal This award, (subject to the right of appeal to the Royal Court, as set out in the Law) is legally binding and is the final decision of the Tribunal. Each party, if applicable, is responsible for establishing their liabilities with regard to Social Security and Income Tax payments. Case Number: 1212-216 / 06 Applicant: Ian Mangles Respondent: IJT Direct Limited Case Summary: Constructive unfair dismissal' No contract; Discretionary bonus. Hearing on 2 July 2007 Before: Mr David le Quesne, Chairman Mrs Sue Armes, Panel Member Mr Paddy Kirwan, Panel Member Representation: For Applicant: Mr Mangles represented himself For Respondent: Mr Anthony Moxon represented the respondent ("IJT"). 1 Mr Mangles makes three claims: · that he had no written particulars of employment as stipulated in part 2 of the Law, · that he was not paid a bonus to which he was entitled, and · that he was unfairly constructively dismissed. 2 Mr Mangles was employed from May 2006 by IJT. IJT was a new venture, in Jersey, set up by or on the instigation of Mr Moxon, who was a director of Bentham Limited, a company selling inkjets and printers from the UK. The business of IJT was similar to that of Bentham, but it was part of what is known in Jersey as the 'fulfilment industry', whereby low value goods supplied by Jersey companies are free of VAT. Mr Mangles' job was to set up this new venture and then run it. He had known Mr Moxon well for many years, having worked for his UK company. Indeed, for about 3 months Mr Mangles had lived with Mr Moxon and his wife. Particulars of Employment 3 The Respondent agreed that Mr Mangles was not given particulars of his employment, so we only have to decide what penalty, if any, to impose. 4 We regard a failure to provide to an employee the required particulars of his employment as a serious matter. Not only is it a breach of the law, but often, as in this case, it leaves room for argument as to what were the terms of employment. In this case, we believe that it was, at least to some extent, left up to Mr Mangles himself to prepare his contract of employment at the same time as preparing the contract for the other IJT staff. 5 We have decided that IJT should pay a fine of £250.00, which should be paid by arrangement with the Secretary to the Tribunal. Bonus 6 Mr Mangles told us that his remuneration package agreed with Mr Moxon on behalf of IJT included an annual bonus of £50,000 to be paid quarterly. Because there were no written particulars of the employment, we had to determine this issue on the basis of the evidence we heard. We were able to determine it solely on the basis of Mr Mangles' own evidence. 7 What Mr Mangles told us was that he discussed the bonus with Mr Moxon before the employment started, and that: -it was to depend upon overall sales of the company; -it was dependent on whether the business had gone as predicted; -it was not agreed how the bonus would be calculated; -it was within Mr Moxon's discretion; -no criterion was set for the bonus. It could have been gross value of turnover. -he took it as implicit that it would be based on performance as against projected figures. -Mr Moxon

had traditionally assigned bonuses on a whim. 8 It well may be that Mr Mangles and Mr Moxon did agree that an annual bonus would be paid; Mr Mangles' evidence that he chased for payment and was not told that there was no such agreement suggests this to have been the case. However, Mr Mangles' evidence drove us to the conclusion that there was not sufficient certainty about the terms of the bonus payment for the agreement to be enforceable. The statements of Mr Mangles referred to on paragraph 4 above show how it would be impossible for any court or tribunal to hold that there was a binding agreement. There may have been an understanding or 'gentlemen's agreement', but that is not enough to create a binding legal obligation. Mr Mangles admitted that the payment was to be discretionary. This in itself is not consistent with an entitlement to the bonus. He further agreed that the method of determining if a bonus should be paid, and if so how much, was not agreed. We asked Mr Mangles how, if we were to find that there was an agreement for a bonus, we were to calculate the amount of bonus due to him, and he was unable to help us. This revealed a fundamental problem for him: there was no agreement on how to determine his entitlement. 9 In these circumstances, we adjourned to consider the matter before the respondent had opened its case, and we decided that the claimant could not succeed in this part of his claim, and when we returned to the hearing I informed Mr Mangles that his claim for a bonus was dismissed. Unfair dismissal 10 Mr Mangles' case was that he was treated by his employer in such a way that he could not be expected to continue in his employment. Specifically, he relied upon harassment and abuse by Mr Moxon and upon the failure to pay the bonus. 11 A failure by an employer to comply with the terms of the contract of employment can be sufficient reason for the employee to terminate his employment; it can amount to constructive unfair dismissal. However, the failure to pay the bonus cannot form a ground for such a claim because we found that there was no entitlement to the bonus. We therefore have to determine this claim on the basis of what we refer to as the 'harassment' claim. 12 The harassment allegedly consisted of many telephone calls from Mr Moxon to Mr Mangles, both at work and out of work, and of abuse by Mr Moxon of Mr Mangles in telephone calls and at meetings. 13 The evidence of witnesses leads us to conclude that Mr Moxon probably is a forceful and direct man, and we accept that what he said, particularly if something had been done wrongly or badly, might have contained bad language. We can also accept that Mr Moxon did telephone Mr Mangles frequently, and that, if there was a problem, there would have been many and late calls. 14 Mr Mangles and Mr Moxon knew each other well. They were in a business in which the pressure could be intense: new business was crucial, and prompt attention to satisfying orders was critical. We have asked ourselves whether Mr Moxon changed from the man whom Mr Mangles well knew to a much more demanding and abusive man, and we do not think this was the case. 15 Our decision on this point is determined mainly by two matters. First, in the many email exchanges between Mr Mangles and Mr Moxon, there is not one in which Mr Mangles complains that Mr Moxon is harassing him in the way alleged, and there was no other evidence to support this allegation. Second, in his resignation email, Mr Mangles wrote on 11th October 2007 to Mr Moxon: "Good evening Anthony, I will post you a letter to confirm this, but I'm resigning from IJT Direct. I will work my contracted hours until the end of the month, but I have decided to accept the position offered to me in Cambridge. May I wish you every success in the future and thank you for the experience I have gained (and enjoyed) whilst working for you. Sincerely, Ian Mangles" We put to

Mr Mangles that this was not the resignation letter of an employee who was leaving because he had not been paid £25,000 he believed was due to him and who had been forced to leave due to that and to abuse and harassment. His answer was that he wanted to leave amicably and that, had he thought it through, he would have worded it differently. We cannot accept that explanation. 16 Mr Mangles wrote an email to Mr Moxon on 10th October, just before he resigned, saying: The bottom line is that I want to keep working here, but it's getting harder and harder to see the justification of doing so. I have been offered jobs in Cambridge which pay more than I am receiving now....". We cannot believe that this letter was written by a man who was on the brink of leaving his job because of harassment. 17 We do not think that Mr Mangles left his employment because of the alleged harassment, and we therefore dismiss his claim for unfair dismissal. David Le Quesne 17th July 2007.

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