



EMPLOYMENT TRIBUNALS

Claimant: Miss L Banks

Respondent: Kiddiwinks Day Nursery Limited

HELD AT: Manchester

ON:

13 June 2017

BEFORE: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: Did not attend

Respondent: Mr G Bealey, Consultant

JUDGMENT

1. The title of the respondent is amended to Kiddiwinks Day Nursery Limited.
2. The complaint of unlawful deductions from pay fails and is dismissed.
3. The claimant is ordered to pay to the respondent £185.00 by way of a preparation time order.

REASONS

1. The claim form was presented on 10 April 2017 and brought a claim of unlawful deductions from pay in relation to outstanding wages. The claim form did not specify the figure which was owed.
2. On 18 April 2017 notice of the hearing today was issued together with an order requiring the claimant to provide a statement of the remedy she wanted the Tribunal to award. That statement had to be provided by 16 May 2017. No remedy statement was provided.

3. The response form of 25 May 2017 said that the claimant had been paid by cheque sent by recorded post on 3 March 2017. The Royal Mail had been unable to deliver the cheque, but the claimant had never collected it and it had been returned to the respondent on 13 April 2017. It was sent out by recorded post again the following day, and was then cashed by the claimant and payment left the respondent's bank account on 20 April 2017.

4. By a letter of 8 June 2017 the Tribunal wrote to the claimant to ask her whether she proposed to withdraw the claim in the light of the content of the response form. No response was received.

5. The claimant did not attend the hearing today. The Tribunal had received no contact from her. The respondent attended and provided a witness statement from Claire Fox-Tristram which confirmed the facts as summarised in paragraph 3 of these reasons and provided copies of the relevant documents. I accepted that evidence.

6. It was apparent that prior to the presentation of her claim the respondent had tendered payment. The claimant had received notice that a recorded delivery had been attempted at her address, but failed to collect that item. Had she done so she would have received payment prior to lodging the claim form. Further, the claimant had been paid some ten days after presenting her claim. The claim was therefore dismissed.

7. Mr Bealey applied for a preparation time order on the basis that the claimant had acted unreasonably in lodging the claim or in the alternative in failing to withdraw it once payment was made. The respondent had placed the claimant on notice of such an application by email of 7 June 2017. He provided a breakdown of the five hours spent (excluding the hearing itself) claimed at a rate of £37 per hour. I accepted that the time had been reasonably spent and that it was appropriate for the claimant to be ordered to pay that amount. She was unreasonable in not responding to Tribunal orders and correspondence, and in not withdrawing her claim. Her unreasonable conduct had caused the respondent to incur the costs of preparing for this hearing. The claimant must reimburse the respondent in respect of those costs.

Employment Judge Franey

13 June 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 June 2017

FOR THE TRIBUNAL OFFICE