



EMPLOYMENT TRIBUNALS

Claimant
Mrs M Jakuba

v

Respondent
Blue Arrow Ltd

Heard at: Leeds
On: Tuesday 13th June 2017
Before: Employment Judge D N Jones
Appearances
For the Claimant: In person
For the Respondent: Not in attendance

JUDGMENT

1. The respondent made unauthorised deductions from the wages of the claimant in failing to pay to her the holiday pay which was properly due.
2. The respondent shall pay to the claimant the sum of £149.95 in respect of such unauthorised deductions.
3. The respondent shall pay to the claimant the further sum of £390 in respect of the Tribunal fees incurred to bring the claim.

REASONS

1. The claimant has not received the same holiday entitlement to employees of Farmers Boy, the client to whom the respondent assigned her during the period particularised in the claim form. For the year 1 April 2016 to 31 March 2017 the claimant has taken holiday but has not been remunerated at the rate had she been recruited by Farmers Boy. The claimant clarified at the hearing that the total underpayment is in the sum of £149.95.
2. In failing to pay these sums for holiday the respondent is in breach of Regulation 5 of the Agency Workers Regulations 2010 (the Regulations); that is her right to the same basic working and employment conditions as she would have been entitled to had she been recruited by the hirer, Farmers Boy. It submitted a response in which it relied upon a derogation from Regulation 5, pursuant to a contract it purported to have entered into with the claimant. The contract attached to the response was between a company named Temporary Recruitment Services Limited and an employee named in an attachment sheet

which was not enclosed. It was dated 21 May 2012.

3. The claimant has worked for the respondent for two years. By paragraph 4.1 of the response, the respondent agreed with the dates of employment provided by the claimant.

4. By email dated 12 June 2017, at 18.09 hours, the representative of the respondent informed the Tribunal that it would not attend the hearing due to commercial considerations but it would instead make a payment of the sums claimed at 09.00 on the morning of the hearing, today. It added that for the avoidance of doubt it did not admit liability to the claim.

5. The claimant knew nothing of this until she attended the Tribunal to present her case. She checked her bank account but no payment had been received.

6. The Tribunal accepted her claim was made out. The respondent has not established any derogation to Regulation 5 applied, under Regulation 7 or otherwise. That sum falls within the definition of wages under Section 27 of the Employment Rights Act 1996 (ERA) and the sums were properly payable within the meaning of Section 13(3) of the ERA as a consequence of the provisions of the Regulations.

7. The claimant has had to incur the cost of Tribunal fees of £390 to recover what she was entitled to and an award for that amount is also made against the respondent under rule 76(4), the claimant having succeeded.

Employment Judge Jones

Date: 14 June 2017