



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr M Piggott

The 50plus Organisation Limited

Held at: Watford

On: 1 June 2017

Before: Employment Judge Manley

Claimant: In person

Respondents: Mr R Runswick, director

JUDGMENT having been sent to the parties on 15 June 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

1. By a claim form presented on 25 January 2016 the claimant brought a number of complaints for sums of money to which he alleged he was entitled.
2. The respondent presented its response accepting that some sums were due but not all those alleged by the claimant. There were some delays in the matter coming to a hearing because of a mix up about tribunal fees.
3. At the commencement of this hearing to determine the claims, the tribunal judge discussed and agreed that the issues were as follows:
 - a) Whether the claimant was entitled to payment by the respondent for 40 hours per week even if he didn't work those hours;
 - b) Whether the claimant had been underpaid with respect to some jobs he had carried out as set out on a list provided by him;

- c) Whether the respondent was entitled to deduct £200 from the claimant's wages in 2013 because of damage to a customer's curtains;
- d) Whether the respondent was entitled to deduct a sum of £1508.97 from the claimant's final wages for damage to a vehicle;
- e) What was the correct amount of holiday pay outstanding?

The facts

- 4. The claimant worked as a "*multi skilled maintenance partner*" (handyman) for the respondent between November 2012 and September 2015. The respondent is a relatively small business with 4 people in the office including Mr Runswick and 4 "field staff". Its business is as a property maintenance company for letting agencies and direct customers. The business started about 15 years ago
- 5. The written statement of employment agreed between the parties contained some relevant clauses. The first was that clause 6 read "*You are employed to work full time. Your normal working hours will be 40 hours per week*".
- 6. Clause 5.1 said that the rate of pay is "*45% of customer revenue brought in this being defined as 45% of man hour revenue brought in ex VAT and 45% of the materials sold ex VAT*". Clause 5.2 stated that the claimant would be provided with a vehicle. It also read "*You are responsible for the vehicle, which is to be returned to 50plus as and when required in 'good condition', free from damage and unfair wear and tear as described within the British Vehicle Rental and Licensing Association Guidelines as attached. Failure to return the vehicle in the appropriate condition to 50plus will result in charges for reinstatement*".
- 7. Finally, of relevance here, clause 7 set out the holiday arrangements which said "*Holiday pay will be equal to your average rate of pay over the 12 weeks before the holiday*".
- 8. The claimant accepted that his weekly hours of work had fluctuated over his time with the respondent although his evidence was that he worked at least 40 hours per week up until around June 2015 when it reduced dramatically. Mr Runswick, on behalf of the respondent denied that the claimant's hours had reduced dramatically from June. He showed me payslips which indicated payments of around £2500 per month for June and July. I looked at payslips from January 2015 showing amounts which varied between £749 in March (when the claimant was on holiday) to £2250 in April with January and February being £1829 and £1232 respectively. I cannot see evidence that there was a reduction from June though there was in August.

9. The respondent had deducted, Mr Runswick said by agreement, a sum of £200 from the claimant's wages in 2013. There had been no claim for this sum before these proceedings.
10. The claimant provided a list of jobs for which he says he was underpaid. It appears that some of these jobs were for time he had not spent on the job and that he had not understood that payment excluded the VAT element. The claimant could not show me any underpayments.
11. When the claimant left his employment and the vehicle was returned, the respondent took the view that the vehicle was in a bad condition and that clause 5.2 of the contract applied. I was shown invoices totaling over £2200 for repairs etc but the respondent decided to deduct the sum of £1508.97 from the claimant's final wages. This was because this was (approximately) the sum due to the claimant.

The law and submissions

12. Part 2 of Employment Rights Act 1996 (ERA) makes provisions with respect to deductions from pay. In broad terms, the worker has the right not to suffer "unlawful deductions" except in limited circumstances. Section 13 (1) b) ERA makes one of the exceptions where:-

"the worker has previously signified in writing his agreement or consent to the making of the deduction"

13. An employment tribunal shall not consider a complaint unless it is made within three months of the deduction under section 23 ERA unless it finds it was not reasonably practicable for the complaint to be made in time.
14. Parts of the claimant's claim necessitates consideration and interpretation of the contract between the parties. In particular, I must consider what the parties intended the relevant clauses to mean, applying, where possible, the ordinary everyday meaning of those words.
15. Both parties told me what their respective cases were. The claimant believes that he is entitled to the sums as set out in the list of issues, including untaken holidays, he believes of 11 days. We also discussed, at some length the jobs under issue 3 b) above to ascertain whether anything was outstanding.
16. The respondent agrees that some holiday pay is due to the claimant and it has been calculated on his average pay as in the contract and that shows £377.25 due. The respondent submits that it is entitled to deduct the sums for the curtains and the vehicle under the contract and that no other sums are due to the claimant (apart from the holiday pay).

Conclusions

17. Having heard the oral evidence of the claimant and Mr Runswick and considered the written documents, I find the following.
18. The claimant's complaint of unlawful deduction of wages with respect to reduced hours of work and alleged underpayment for work fails. Although the wording in the contract could lead to some confusion because of the mention of 40 hours per week, I cannot find that the claimant understood that meant he had guaranteed hours at that level. He accepted that work fluctuated throughout his employment and he was paid the rate of pay set out in the contract. He has not shown any underpayment from the list of jobs shown to me.
19. The claimant's complaint of unlawful deduction of wages with respect to £200 deducted in 2013 fails as it is out of time and the tribunal has no jurisdiction to hear it. I heard no evidence that it was not reasonably practicable for that complaint to have been presented in three months.
20. The claimant's complaint of unlawful deduction of wages with respect to his calculation of holiday pay fails but he is entitled to unpaid holiday pay as calculated by the respondent within the terms of the contract in the gross sum of **£377.25**. It is ordered that the respondent pay the sum due after deduction for tax and national insurance.
21. The claimant's complaint of unlawful deduction of wages with respect to the deduction made for damage to the vehicle succeeds. The claimant had not signified his consent to such a deduction and he is entitled to his final salary in the gross sum of **£1681.73** and expenses of **£105.80**. It is ordered that the respondent pay the sums due after deduction for tax and national insurance.
22. I also order the respondent to pay a 50% contribution in the sum of **£195** towards tribunal fees as the claimant has succeeded in part.

Employment Judge Manley

JUDGMENT SENT TO THE PARTIES ON
5 August 2017

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNAL