



EMPLOYMENT TRIBUNALS

Claimant: Mr D Glover

Respondent: R1 Carrington Blake Recruitment Limited
R2 Payroll Village Holdings Limited

HEARD AT: BURY ST EDMUNDS **ON:** 24th May 2017

BEFORE: Employment Judge Postle

REPRESENTATION:

For the Claimant: Mr I Tyes, Lay Representative.

For the Respondents: Mr A Adjei, Director of both Respondents.

RESERVED JUDGMENT

1. The Tribunal makes a declaration the Claimant has suffered an unlawful deduction of wages in the sum of £3,229.93.

REASONS

1. This case previously had Preliminary Hearing on 8th December 2016 at which it was decided by Employment Judge Sigsworth that the matter was not ready to proceed and was postponed and re-listed to today's date.
2. It would appear that the case turns on what was agreed with the Claimant and understood by him at the outset of his recruitment by the first Respondent. In simple terms his understanding of what was agreed about his rate of pay was entirely different from that of the Respondent. The Claimant believes that it was agreed his basic pay per hour was to be £12.34, but was actually paid £9.91 per hour as basic pay with holiday pay

said to be in addition to this figure. There was also shown on his pay slip an administration charge of £23 being deducted from his weekly pay.

3. The Respondents will say in essence that employees are apparently offered two alternative systems of calculating their pay, a pay as you earn rate and an LTD or umbrella rate. The higher LTD rate incorporates to the knowledge and the consent of the employee an element to comprise holiday pay and an administration fee for Payroll Village and employees National Insurance. After the deduction of these sums, the employee is then left with the appropriate hourly rate not less than the National Minimum Wage, and in this case £9.91 per hour.
4. The Claimant asserts that he was not told about this arrangement when he entered into the employment and assumed that the £12.34 per hour was his true hourly rate. The Claimant further asserts that it did not incorporate the elements that the Respondents say that it does and thus even if the LTD Payroll System was a valid one the Claimant says he did not agree at any stage to that rate or give his written authority for any deductions.
5. In this Tribunal we have heard evidence from the Claimant who gave evidence through a prepared witness statement.
6. For the Respondents we heard evidence from Mr S Lambert a Consultant who dealt with the Claimant's recruitment at the early stages, and Mr Adjei a Director of both Respondents. The Tribunal also had the benefit of two bundles of documents, the first consisting of 31 pages and the second consisting of 105 pages.
7. As there are two bundles unless otherwise stated I will be referring to page numbers in the bundle consisting of 105 pages.
8. The Claimant's evidence was that the initial offer he accepted for work with the Cambridge Local Authority as a Business Support Officer which commenced on the 30th March 2015 and ended on the 22nd July 2016 was for a rate of pay at £12.34 per hour and that the only agreed deductions were for Income Tax and employees National Insurance. The Claimant asserts that he never agreed to any deductions for an administrative fee or holiday pay, and challenged those deductions as soon as he became aware of them on receiving his first pay slip. The Claimant was expecting his holiday pay to be paid in addition to his salary as per the Claimant's acceptance email of the 19th March 2015 (page 4) which reads:-

"Dear Tracey, I am writing in response to your voicemail offer.

I'm happy to accept the offer, subject to details of the contract starting immediately. My understanding of the contract is as follows:

6 months, 37 hours per week at £12.34 per hour based at the Mill Road Depot.

Please find details of my references for the last two positions as requested ... signed by the Claimant"

This email was addressed to Cambridge Council and copied to Carrington Blake Recruitment Limited, particularly a Stephen Lambert.

9. There is no evidence that the Claimant's understanding of the terms and conditions, and pay was disputed either by the Local Authority or Stephen Lambert or anyone at Carrington Blake Recruitment Limited following this email.
10. After the commencement of the Claimant's employment he received a communication from Payroll Village dated the 30th March 2015 (at page 30), upon receipt the Claimant emailed Stephen Lambert at Carrington Blake Recruitment Limited stating that:-

"Hi Stephen, I've just received the following email and wondered if this was in any way connected with your company?"

I've still not received a phone call from the Payroll Department.

*Regards
Damon (Glover)."*

11. On the 8th April 2015 the Claimant received a further email from Payroll Village which read:-

"Hi Damon, I tried to get through on the phone but could not get through please could you give me a good time to call. I sent you our form from our Eco Sign Website which I can see you viewed on the 30th, we need that back by Friday in order to pay you this week. Please could you take a look and send it us back the form as soon as possible, kind regards Jack Wheeler, Payroll Village."

12. On the same day the Claimant emailed Stephen Lambert at Carrington Blake Recruitment Limited:-

"Hi Stephen, I've just had this email reference to the one from Payroll Village through which looks like spam. Is it from the same company as the email received last week and based on the fact that you didn't reply when I forwarded it to you I assume it's got nothing to do with you and treat it as such?"

Please can you just confirm for me this is spam.

*Thanks
Damon (Glover)."*

13. That prompted a response from Stephen Lambert on the 8th April which read:-

“Hi Damon, apologies that is our payroll company I referred them your details once you mentioned that you would be claiming expenses to work. Please give them a call to run through payment when you get the opportunity.

Kind regards

Stephen Lambert, Recruitment Consultant, Carrington Blake Recruitment.”

14. In fact the Claimant was told around the 9th April by Stephen Lambert that he had to register with Payroll Village for payment even though the Claimant had said he wasn't going to claim any expenses.
15. On the 10th April the Claimant received his first pay slip (page 40A) which referred to a deduction of £23 for an administrative fee and deduction for rolled up holiday pay of £23.54. Showing a standard hourly rate of £12.34, but the Claimant actually not receiving that amount without the above deductions. The Claimant queried this with the Second Respondent (page 50) by email of 10th April which read:-

“To Payroll Village

Hi there many thanks for my first pay slip.

I note however that there is an administrative fee of £23 deducted from my gross salary.

Please could you explain what this is, how it is calculated and whether this will be deducted every week?

Please confirm if there's any way of avoiding this deduction.

I do not believe that this was specified in any way when I was offered the contract at £12.34 per hour and I would not agree to this as I do not see how I benefit from it.

*Regards
Damon Glover”*

16. On the 14th April (page 51) Jack Wheeler from Payroll Village replied as follows:-

“Hi Damon,

In terms of holiday it has been paid out to you if you add the three figures on the payment side of your pay slip. £195, £23.54 and

£128.66 it is £347.20. Then if you look at the right of the pay slip your gross pay for tax is £347.20. That is what you've been taxed on. So the holiday has been included in your pay.

The Administrative Fee is a weekly fee for our services. It's unfortunate that you do not have more expenses, as this would help to reduce the amount of tax and national insurance that you pay. I do see on your form that you cycle to work, could you please tell me the average number of miles that you cycle to work? This is paid out as a work expense at 20p per mile. So depending on the number of miles if they are significant then they will be beneficial to you to claim this as an expense.

*Kind regards
Jack Wheeler, Payroll Village."*

17. The Claimant replied on the 15th April disagreeing with his understanding of the contract (pages 54 to 56):-

"Hi Jack (to Payroll),

Many thanks for your response but there are still mistakes.

My pay rate was agreed at £12.34 per hour and I work 30 hours in the first week which totals £370.20. I was asked in the contract how I wanted my holiday paid, and I asked for it to be added to my pay. I was therefore expecting the £23.50 to be added to the £370.20 making £393.70.

My pay rate was agreed before I decided to opt for rolled up holiday pay which is calculated at according to the contract £12.07 hours worked National Minimum Wage = £23.54. This means that it shouldn't be deducted from my pay rather added on to the rate agreed.

It seems that on my pay slip my rate of pay is being calculated twice using two different methods.

The first method which I agree with is at the bottom of the pay slip that is simply my rate of pay, hours worked this which equals £370.20 which then has the arbitrary amount deducted from it equal to £347.20.

The second way is at the top of the contract which has two arbitrary figures and the rolled up holiday pay which equals the amount calculated at the bottom. This method seems to be calculated retrospectively after the amount I should have been paid has been calculated. I do agree with the amount of rolled up holiday pay, but this needs to be added on to my total pay.

As for your administration fee of £23 per week, please could you tell me what services you are providing for this money and where in the

contract it is stated that you will take this charge. My understanding is that Employment Agencies work for the employer and are paid by the employer not by the employee.

As for claiming expenses I don't see how this helps me unless you are going to pay me extra to refund these expenses. Since you are deducting tax and national insurance I'm employed by you and I'm not self employed, hence I do not need to complete my own tax return where I could deduct my expenses from payable tax. In any case HMRC will only allow expenses that are wholly exclusively and necessary incurred in running my business and food does not satisfy this condition. Travelling expenses are normally only allowable if they are to and from my normal place of work. I note from the contract that this is defined as my home but I doubt that HMRC would agree as I only have one contract and one employer at this time. The amounts are so small it is not worth the risk of upsetting HMRC for perhaps £5 per week.

I look forward to your earliest response to the above. As you can see there are a number of points of confusion which I have not encountered in my previous employment.

Please look into the rolled up holiday pay closely and rectify the mistake, I appreciate it is complicated but please spend some time looking into it and if you still do not understand where this mistake is please contact me on my temporary contract number at work.

Many thanks

Damon"

18. Jack Wheeler responded on 16th April (page 57 - 58) showing the different calculations for two options and that the LDT rate would give the Claimant a higher net of pay, but was still lower than the amount agreed prior to the commencement of the Claimant's employment.
19. Despite numerous efforts to try and resolve the matter, the deductions continued throughout the Claimant's employment and after being told that he could either set up his own agency or switch agency the Claimant believed he had no choice but to terminate his contract.
20. It was only after the Claimant contacted ACAS, and after his employment ended around December 2016 the Claimant finally received a number of documents from the Respondents (Section 5, page 47 of the main bundle) a document with the heading 'Damon Glover Starter Pack' containing an agreement that the Respondents claimed the Claimant should have received before the commencement of his employment, and confirming that it had not been sent to the Claimant before his employment commenced as the Respondent's had on occasions previously maintained. That was confirmed in an email of the 19th December 2016 by Mr Adjei. In that email

he sets out the Respondents' position in relation to the two methods of which the Claimant could be paid and which were clearly not explained to the Claimant prior to his accepting the offer of employment, and no documents were signed by the Claimant authorising the deduction of Administration Fees and rolled up holiday pay from what the Claimant believed was his contractual entitlement that was offered to him at the outset of £12.34 per hour.

21. The Claimant continued throughout his employment to suffer deductions as referred to above which total £3,229.93.

The Law

22. Section 13 of the Employment Rights Act 1996 states:-

“(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

Conclusions

23. It is quite clear Mr Lambert (Respondents) at the outset of the Claimant's employment failed to explain the methods of payment by the Respondents to the Claimant. That must be the case otherwise the Claimant's email (19th March) accepting the hourly rate of £12.34 and copied to Mr Lambert would have been immediately challenged, and put the Claimant in the picture as to the two rates of pay available by the Respondents and methodology. It simply failed to do so. The Respondents finally admit on 19th December 2016 by email from Mr Adjei that in effect the Claimant should have been sent a starter pack (for all employees) which explained the Respondents position in relation to the two methods of payment to

employees. Within that pack the Claimant should have signed his acceptances to (a) method of payment; and (b) to the deductions being made. Clearly as this was never explained to the Claimant (methods of payment) and the starter pack was never sent to the Claimant, requiring his signed agreement to methods of payment and deductions to be made, the Claimant was entitled to believe his hourly rate was £12.34 as indicated in the letter offering employment less statutory deductions, Income Tax, and National Insurance. Therefore any other deductions would be unlawful and therefore the Claimant's claim of unlawful deductions of wages must succeed.

Employment Judge Postle, Bury St Edmunds.
20 November 2017

Date:

Sent to the parties on:

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For the Tribunal Office