



EMPLOYMENT TRIBUNALS

Claimant: Miss A Hyde
Respondent: Equilibrium Health and Sports Limited
Heard at: Nottingham
On: Monday, 26 March 2018
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: In Person
Respondent: Not attend

JUDGMENT

1. The claim of unlawful deduction from wages succeeds, and the Respondents are ordered to pay to the Claimant the sum of £3,088.22.
2. The Claimant's claim for costs, pursuant to Rule 76 of The First Schedule to the Employment Tribunals (Constitution and Rules Procedure) Regulations 2013, also succeeds, and the Respondent is ordered to pay to the Claimant the sum of £1,209.60.
3. In total therefore the Respondent is ordered to pay to the Claimant the sum of £4,297.82.

REASONS

1. Miss Hyde represented herself and gave evidence on her own behalf. The Respondents were neither present, nor represented. The Tribunal Clerk attempted to contact the Respondents on the two telephone numbers given on their response form, but there was no response to either call. In the circumstances, and having regard to the overriding objective, the Tribunal decided to proceed.
2. Miss Hyde brings a single claim of unlawful deduction from wages in respect of a balance, she says is owed, of statutory maternity pay. Statutory maternity pay is defined as wages pursuant to Section 27.1 (c) of the Employment Rights Act 1996. I am however mindful of the Employment Appeal Tribunal decision in **Taylor Gordon & Co Ltd v Timmons [2004] IRLR** page 180, in which the Court concluded that, the

only circumstances in which an Employment Tribunal does have jurisdiction to entertain a claim of unlawful deduction is a case where the employer was admitting entitlement to statutory sick pay (the same applies to maternity pay), but withholding all or part of it. That, having read the response form appears to be the case here.

3. I also accept Miss Hyde's evidence that her former employer never disputed her entitlement to statutory maternity pay, and that is consistent with the response form filed by the Respondents. So far as I can understand it, it appears to be a counter claim in respect of overpayment of wages. However, the Respondents have not filled in that part of the response form at paragraph 7, which deals with employers' contract claim. In any event, given that Miss Hyde's claim is unlawful deduction from wages, this Tribunal would not have jurisdiction to hear it.
4. As to the amount of the unlawful deduction from wages, Miss Hyde sets out in her witness statement at paragraph 14, her calculation. I have checked the arithmetic and I am satisfied that the amount owing is £3,088.22, and that therefore means that the Respondent needs to pay that sum because of an unlawful deduction from wages.
5. That ends the Judgement concerning the claim, however Miss Hyde advances a claim for payment for her costs on the basis of unreasonable behaviour of the Respondent. The relevant Law is set out in paragraph 74, 75 and 76, of the First Schedule of the Employment Tribunals (Constitution and Rules Procedure) Regulations 2013.
6. I am satisfied that given the response form, the Respondent's behaviour up to and including the filing of that response form, could not be described as unreasonable. Thereafter, in my view, it clearly was because they advanced no defence to the claim of a failure to pay statutory maternity pay.
7. The Schedule of Costs submitted by Miss Hyde, and drafted for her by her solicitors, unfortunately is not in a chronological form, so it is difficult for me to ascertain those costs which were incurred before the filing of the response, and those which were incurred afterwards. However, it seems to me that everything on the 2nd page of the Schedule, clearly came after the response form. By my calculation that adds up to £1,008.00 of fees, and applying VAT thereto, the gross sum is £1,209.60. I therefore award that sum because of the unreasonable behaviour of the Respondents.

Employment Judge Blackwell
Date 23 April 2018

JUDGMENT SENT TO THE PARTIES ON
24 April 2018

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FOR THE TRIBUNAL OFFICE