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EMPLOYMENT TRIBUNALS

Claimant: Mr L Reynolds
Respondent: Orona Limited
Heard at: East London Hearing Centre
On: 14 May 2018
Before: Employment Judge Brown

Representation

Claimant: Mr Ben Gregory (Friend)
Respondent: Mr Richard Santy (Solicitor)

JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent made unlawful deductions from the Claimant's wages.
2. The Respondent failed to pay the Claimant his notice in breach of contract.
3. The Respondent shall pay the Claimant £519.23 unpaid wages.
4. The Respondent shall pay the Claimant £2,119.57 notice pay plus £257.17 car allowance as remedy for breach of contractual requirement to pay notice.

REASONS

1 The Claimant brings complaints of unlawful deductions from wages and breach of contract against the Respondent his former employer. The relevant statutory provisions with regard to unlawful deductions from wages are set out in s13 *Employment Rights Act 1996*, which states as follows:

“(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.

.....

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker’s wages on the occasion.”

2 In his claim, the Claimant sought to recover unpaid wages covering 3 – 5 January 2018 and notice pay covering the period 12 January 2018 to 31 January 2018.

3 The facts were not significantly in dispute. The Claimant had been employed by the Respondent as a sales executive. His employment was subject to a contract, page 26 of the bundle. In the contract there were some relevant provisions. Paragraph 4, Place of Work, provided as follows:

“Your normal place of work will be London - Home Based. You may also be required to work at such locations as may reasonably be required, including travel both in the UK and abroad. The company will provide as much notice as is reasonably practicable in the event that you are required to work away from your base site. ...

Where a permanent change is required to your base place of work, this change will take place following consultation with you and will be confirmed in writing...” (page 26).

4 “Remuneration” was provided for at paragraph 5, page 27. That paragraph stated that the Claimant would be paid a salary of £45,000 gross per annum. It also provided that the company was entitled to deduct from pay certain monies which the Claimant might owe the company including loans, advances, training course fees, overpayment and holiday sick pay, payments required by law, or where the Claimant has requested in writing that the company should make a reduction, deductions for notice period that the Claimant failed to work, and other matters, page 27.

5 The Claimant had been off work, sick, in December 2017. On 3 January 2018 he

sent an email to the Respondent saying, "I would like to give notice to leave the employment of Orona." The Respondent took this to be a resignation without notice. Deborah Rees, the Respondent's HR Director, emailed the Claimant the same day, saying this, page 56. She said that she was writing to confirm receipt of the Claimant's resignation and confirmed that the company accepted it with immediate effect. She said:

"Your employment end date will be therefore recorded as today."

6 The Claimant told me - and I accepted - that he did not receive that email. He did later receive it on 5 January and, when he did so, he promptly emailed Ms Rees, saying that it was his intention to work his four week notice period. Ms Rees responded saying that, in that case, his last day would be 31 January 2018. She also said, however, that, during the Claimant's notice period, he would be required by the Respondent to work from the Respondent's offices in Sunbury/Verwood.

7 Ms Rees told me that the Claimant had access to sensitive client information and other commercial information belonging to the Respondent. The Respondent wished to protect that information during the notice period and therefore decided that it was reasonable to require the Claimant to attend its office, rather than work at home. It was agreed that the Claimant's sales patch for his work as sales executive was Central London. The Claimant told me that Central London was about 20 minutes travel from his home and that he had never, in fact, commuted for more than one hour to visit the offices of any client by while he was employed by the Respondent. It did not appear to be in dispute that the Claimant had only rarely - perhaps once a month - attended the Respondent's offices before he submitted his resignation.

8 The Claimant told me - and it did not appear to be in dispute - that the round trip to the Respondent's offices from the Claimant's home address took about 5 - 6 hours. The Claimant also told me that, during the notice period, the Respondent required him to attend the office at 9.00am. His manager told him that he was required to do this.

9 The Claimant did attend the Respondent's offices until 11 January, but then asserted that the Respondent could not require him, under his employment contract, to travel to the office each day during his notice period. He said clearly that he would do this. The Respondent dismissed him without notice on 12 January 2018, saying that it had done so for what the Respondent said was a failure to obey what it termed a reasonable management instruction.

10 The Respondent did not pay the Claimant for 3 - 5 January 2018. The Claimant told me that he did, in fact, work then. There was little proof one way or another on the subject, but the Claimant said that he was willing and able to work. I accepted that he was certainly willing to work for the rest of his notice period. He attended the Respondent's offices until 11 January and he was willing to work from home under the terms of his contract until 31 January 2018.

11 I consider that, on the facts of the case, there was no term in the contract which allowed *s13 ERA 1996* deductions to be made in this case where the Claimant said that he was working and the Respondent could not prove otherwise. It seemed to me that the Claimant did evince an attention to work during his notice period - he gave notice in his 3 January 2018 resignation letter, and used the words that he wanted to "give notice" to

leave the employment of Orona. He did not say that he was resigning with immediate effect. The Respondent was not entitled to make deductions from his wages and it should have paid him for the 3 and 5 January 2018.

12 With regard to the failure to pay notice pay on termination of the contract, on the facts, I decided that the Respondent attempted to impose a unilateral variation of contract on the Claimant. The contract of employment said that the Claimant's place normal place of work would be "London - Home based"; in other words, his normal place of work was home based. The Respondent attempted to effect a permanent change in the Claimant's place of work, so that he was required to work every day based in the Respondent's offices, rather than based at home, until the end of his employment. The contractual provisions said that, where a permanent change was required to the Claimant's place of work, the change would take place following consultation and would be confirmed in writing. It did not appear to me that the Respondent had followed the terms of the contract - there was no formal consultation with regard to the change of the contract. The Respondent never said that it was entering a period of consultation. In any event, I decided that it was not reasonable for the Respondent to require the Claimant to work at the Respondent's office for the whole of his notice period, where to do so required the Claimant to travel for 5 - 6 hours a day, in addition to his normal working hours. This would mean that he was working and travelling far beyond normal working hours. The Claimant's conduct therefore did not justify termination without notice. On the facts, I considered that the Claimant was willing to abide by the terms of the contract, but it was the Respondent which was not and sought to impose a unilateral variation.

13 I concluded that the Respondent breached the Claimant's contract when it failed to pay the full amount of the four weeks' contractual notice pay to which he was entitled.

14 The parties agreed that the Claimant's pay for 3 – 5 January 2018 would have been £519.23 and that his pay for the period 12 – 28 January 2018 would have been plus £257.17 car allowance.

15 The Respondent shall pay the Claimant £519.23 unpaid wages plus £2,119.57 notice pay plus £257.17 car allowance.

Employment Judge Brown

24 May 2018