



EMPLOYMENT TRIBUNALS

Claimant: Mr Amandeep Singh
Respondent: Mr Yaser Iqbal t/a Smokin' Rooster

Heard at: Southampton **On:** 13 April 2018

Before: Employment Judge O'Rourke

Representation
Claimant: In person
Respondent: In person

RESERVED JUDGMENT

1. The correct title of the Respondent is, as above, Mr Yaser Iqbal, trading as Smokin' Rooster.
2. The Respondent is ordered to pay the Claimant the sum of £1861.20, calculated as follows:
 - 2.1 The Respondent made unlawful deductions from the Claimant's wages for August 2017, in the sum of £451.20;
 - 2.2 Contrary to s.1 of the Employment Rights Act 1996 ('ERA'), the Respondent did not provide the Claimant with terms and conditions of employment compliant with that section and is, therefore, subject to s.38 Employment Act 2002 (EA), ordered to pay the Claimant the sum of four weeks' wages, in the amount of £1410.00.
3. The Claimant's claim of unlawful deduction of wages for May 2017 is dismissed for want of jurisdiction.

REASONS

Background and Issues

1. The Claimant worked for the Respondent in one of his takeaway restaurants (hereafter referred to as the 'Store').

2. Following a short period of employment, it terminated sometime in late August 2017, following which the Claimant states that he was not paid his salary for that period, which constituted an unlawful deduction from his salary, contrary to s.13 ERA. He also asserts that he was not provided with terms and conditions of employment, compliant with s.1 ERA and neither did he receive pay slips or a P45.
3. While he had brought a claim of unfair dismissal, the Claimant accepted that the Tribunal did not have jurisdiction to hear such a claim, as he did not have two years' service. That claim has already been dismissed by judgment of Employment Judge Harper dated 16 February 2018. He also brought a claim for unlawful deduction from wages for a previous period of employment in May 2017, but for reasons set out below, that claim is out of time and therefore dismissed.
4. Mr Iqbal denied that he was the employer, it being instead Smokin Rooster Limited, of which he and his brother, Mr Nasar Iqbal, are directors. He also disputed the amounts claimed by the Claimant, asserting that the hours of work claimed were incorrect and that in any event, under the terms of a contract of employment he had provided to the Claimant, he was entitled to make deductions from the Claimant's wages, in respect of an advance of pay made to him and also because of alleged thefts of cash takings by the Claimant.
5. The Respondent had also sought to bring a counterclaim against the Claimant, in respect of the above-mentioned pay advance and thefts. However, the Claimant not having himself brought a claim for breach of contract (his claims being limited to unlawful deductions from wages (s.13 ERA) and failure to provide terms and conditions of employment (s.1 ERA), the Tribunal does not have jurisdiction to consider such a counterclaim (article 4(d) ET's Extension of Jurisdiction (E&W) Order 1994).

Preliminary Issues

6. Time Limit. The Respondent asserted that both claims for unlawful deductions from wages were out of time. In respect of the earlier claim, for deductions in May 2017, the Claimant accepted that his employment had, at that point, terminated on or around 18 May and that he did not recommence employment with the Respondent until 13 July 2017, a gap of almost two months. His continuity of employment was broken therefore and any arrears of wages for May cannot be regarded as a 'series' of deductions, which could therefore be linked to the August deductions. The time limit for the May deduction therefore runs from 31 May (when payment would have been due), to 31 August, whereas the Claimant did not commence Early Conciliation (EC) with ACAS until 29 November. He said that he had returned to the Respondent's employment in July on the promise that he would be paid for May, but this was clearly naïve of him and there was no evidence before me that it was not reasonably practicable for him to have brought that claim within time and crucially that he had not done so '*within such further period as was reasonable*' (s.23(4) ERA), particularly as he was aware, at the end of August that he was now owed wages for two separate employments, but still

did not bring his claim until some three months later. I dismissed that claim therefore, for want of jurisdiction.

7. The later claim is, however, within time. The date of payment of the wages from which the deduction in August was made was agreed to be 31 August (last working day of the month) and therefore the initial three-month time period would expire on 30 November. However, the Claimant's EC certificate [19] confirms that he notified ACAS of the claim on 29 November. The Certificate was issued on 20 December and accordingly, as, normally, the time limit would have expired during that period of time, he was permitted one additional month from that latter date, in which to file his claim, i.e. to 20 January 2018, doing so on 18 January.
8. Nature of this Hearing. Sometime into this Hearing, when challenged as to the absence of relevant documentary evidence on his part, such as pay slips, or a P45, Mr Iqbal asserted that he had thought that this was a preliminary hearing and that therefore he was not required to bring such documentation, or to call witnesses, which he could have done, had he realised the true nature of this hearing. He also asserted that on arrival at the Tribunal, he had spoken to the Tribunal clerk, who had confirmed to him that this was indeed a preliminary hearing. He applied, therefore, for this Hearing to be adjourned, in order that he could provide the necessary evidence. I refused that application, for the following reasons:
 - 8.1 The Notice of Hearing letter dated 25 January 2018 sent to both Parties made it quite clear what the nature of the hearing was, stating, as it did that *'one hour has been allocated to hear the evidence and decide the claim (my emphasis) ... It is your responsibility to ensure that any relevant witnesses attend the hearing and that you bring sufficient copies of any relevant documents.'*
 - 8.2 It seemed to me irrelevant what the Tribunal clerk may or may not have said to him, as at that point, he was in the Tribunal, awaiting the commencement of the Hearing, shortly afterwards and any preparation he could have done in that time was minimal. In any event, on having checked with the Clerk, following the hearing, she confirmed that Mr Iqbal had asked her whether or not he needed documents for this hearing and that she answered that she didn't know. She has been only very recently appointed and therefore has little experience of Tribunal hearings and therefore answered entirely honestly. She denied that he had used the term 'preliminary hearing' and stated that as she doesn't even understand what that term means, she would certainly remember if it had been used.
 - 8.3 Mr Iqbal has personal experience of such hearings, having previously attended at this Tribunal, on 12 January 2017, in a remarkably similar case, also involving an ex-employee claiming arrears of wages (Southampton ET Case Number 1401200/2016) and therefore can be reasonably expected to know what the nature of such hearings as this are and what evidence may be expected of him.

- 8.4 For reasons which I will set out below, I consider Mr Iqbal an unreliable witness and I don't therefore believe his assertions in this respect.
- 8.5 It would be entirely at odds with the 'Overriding Objective' (Rule 2 ET's Rules of Procedure Regs 2013), in a case involving the potential recovery of relatively small arrears of pay, to delay further.

The Law

9 The relevant law is as set out above.

The Facts

10 I heard evidence from the Claimant, who had also provided a witness statement and from the Respondent. While he had not provided a statement, I referred him to the particulars of his response, to stand as his evidence.

11 Mr Iqbal's Credibility. I did not consider Mr Iqbal to be a reliable witness, finding that on occasion he was untruthful in his evidence and therefore, where there is conflict between his and the Claimant's evidence, I prefer Mr Singh's. Mr Singh gave consistent and honest evidence, freely admitting, for example, when he may have made a mistake, or forgotten something. The reasons for my conclusion in respect of Mr Iqbal are as follows:

11.1 He provided two letters [A and B] relating to a purported disciplinary procedure that he stated that he had sent to the Claimant. These are dated 21 and 25 August and effectively accuse the Claimant of stealing cash from the Store's till. The first letter invites the Claimant to a disciplinary hearing on 25 August and the second letter dismisses him for gross misconduct. However, the Claimant denied receiving any such letters and as pointed out by him, it was clear from text messages he provided [2-12] that, at the same time, he continued to work for the Respondent. A text from him dated 25 August [7], to 'Yas' (Mr Iqbal) includes a long list of food and other items for use in the Store, in response to Mr Iqbal telling the Claimant to '*send me what you need*'. It is inconceivable that if what Mr Iqbal now asserts about the Claimant's honesty (having subsequently reported him to the Police, but who are not prosecuting the Claimant [13]) is true that he would nonetheless has permitted him, apparently unsupervised, to continue to work in the Store. When asked why that might be, Mr Iqbal stated that the disciplinary meeting dismissing the Claimant will have taken place after these texts were sent (5.40 p.m.), but he was unsure precisely when. There are also text messages from the Claimant to Mr Iqbal's brother for late that evening and early the next morning and the evening of the 26th [9&10], indicating that the Claimant was still clearly working there. While Mr Iqbal complained that he had not, prior to this hearing, been provided with copies of these texts (or the Claimant's statement), I had, on discovering this fact at the outset of this hearing, ordered a short adjournment, stating to him that he should take as long as he needed to peruse these documents, before recommencing. He confirmed to me on return that he was ready to proceed. In any event, the content of the texts are self-evidently from

the Claimant to the Respondent and his brother and almost entirely related to the business of the Store. Mr Iqbal stated that had he seen the texts to his brother, he would have called him to give evidence as to their contents, but, as stated, the contents are self-evident and it is difficult to see what any evidence from his brother may have added to them. The only conclusion can be, therefore that the disciplinary letters are a fabrication, created purely in an attempt to bolster the Respondent's case.

11.2 When challenged as to conflicts in his evidence, instead of attempting to explain such discrepancies, he launched into vitriolic attacks on Mr Singh's honesty, making unsupported allegations as to him 'manipulating' him and his brother, stealing from them to fund a gambling habit and also stealing from another employer.

11.3 The previous Tribunal judgment, of Employment Judge Bridges, had involved a claim by another ex-employee, also a foreign student (the Claimant is an Indian national). That Tribunal found that she had not been provided with any pay slips or contract of employment and had had unlawful deductions from her wages, to include holiday and notice pay. There was a similar dispute as to the Respondent's correct identity (Mr Iqbal being found to be the employer). He also asserted that she was an unpaid 'volunteer'. The Judge made the following findings in respect of his credibility:

'17. I preferred the claimant's evidence on whether the emails and texts were genuine. I found Mr Yaser Iqbal's evidence not credible at best and untruthful at worst.

...

39. I rejected Mr Yaser Iqbal's evidence in relation to this issue (his allegation that the Claimant had fabricated time sheets) and I found that his evidence was untruthful.'

12 Identity of Employer. The Claimant considered Mr Iqbal (and perhaps also his brother) as his employer, having never been informed otherwise, or been provided with any documentation to the contrary. The Respondent stated that in fact the correct employer is Smokin' Rooster Ltd and referred in this respect to a contract of employment he had provided to the Claimant on 3 August 2017, a poor photocopy of which was before the Tribunal. I find that in fact, contrary to that assertion, Mr Iqbal was the Claimant's employer at the relevant time, for the following reasons:

12.1 I find that the contract provided is a fabrication, produced purely for the purposes of this litigation and do so for the following reasons:

12.1.1 The Claimant said that he had never been provided with any such document, either in his previous or this employment and said that his signature on the final page was scanned from letters he had sent the Respondent attempting to resolve this dispute and 'pasted' into this document. While I note Mr Iqbal's assertions to the contrary, bearing in mind my findings

above as to his credibility, I prefer the evidence of the Claimant on this point.

12.1.2 While the document records the Claimant's start date as 3 August, there are text messages from him to both the Respondent and his brother in July, indicating that he was already working in the Store at that point [2-5].

12.1.3 The Respondent could not provide the original copy of this document, showing the Claimant's original signature.

12.1.3 It is deeply implausible that an employer would go to the trouble of producing such a document, but not also be able to provide other routine employment documentation, such as pay slips and a P45.

12.2 The Respondent could provide no (valid) documentation, such as pay slips or a P45, indicating that Smokin' Rooster Ltd was in fact the employer. In the absence of such documentation and it being clear that the Claimant received his instructions from Mr Iqbal, he is therefore the employer.

13 Claimant's Hours of Work and Wages Due. The Claimant stated that he worked from 13 July to 29 August, managing the Poole Store, opening daily at 4pm and closing at 2 a.m. As at 29 August he had not been paid for 50 hours worked, from Monday 21 August, to Saturday 26 August, plus 14 further hours for work on Monday and Tuesday 28 and 29 August – a total of 64 hours. While he stated that his hourly rate of pay was £6.00, this is clearly unlawful, as subject to the National Minimum Wage (NMW) rate then in force (from April 2017), for his age group (21-24), he should have been in receipt of £7.05 per hour. The Respondent disputed the number of hours claimed and the rate of pay, stating that the Claimant only worked 20 hours a week (due to being a foreign student and not permitted to do more) and was paid the NMW. I prefer the Claimant's evidence on this issue, for the following reasons:

13.1 My findings as to the Respondent's credibility.

13.2 The Respondent provided no evidence to support his assertion as to the limit on the hours that the Claimant could work and I note, generally, that such restrictions for foreign students apply in term-time, whereas this was outside such a period.

13.3 The lack of any documentary evidence provided by the Respondent as to time sheets, pay slips, or other such documents.

14 I find therefore that the correct amount of pay due to the Claimant for the above hours, at the appropriate NMW rate, is £7.05 x 64 = £451.20.

15 Lawful Deductions. While the Respondent did not accept the hours of work claimed by the Claimant, he asserted that nonetheless he was entitled to withhold such payment that might be due to the Claimant, due to an alleged salary advance he had made to the Claimant of £750 and also in respect of

the sum of £400 that he alleged the Claimant had stolen from the Store's till. He relied on clause 23 in the contract of employment in this respect, as to lawful deductions. However, as I have already found that document to be a fabrication, therefore, obviously, the Respondent cannot seek to rely on it in respect of such deductions. In any event, the Claimant denies receiving the wages advance, or carrying out the alleged thefts and the Respondent has, bearing in mind his lack of credibility, provided no corroborative evidence of such matters, such as a record of payment to the Claimant, or Police charges, or a criminal conviction against the Claimant for the alleged thefts.

- 16 Failure to Provide Terms and Conditions of Employment. Clearly, the Respondent failed to provide terms and conditions of employment compliant with s.1 ERA, in either the previous or most recent period of employment. Applying s.38 EA, as to whether the award to the Claimant should be of two, or four weeks' pay, I consider, taking into account the Respondent's utter failure to comply with any of the documentary requirements of employment legislation and his fabrication of the contract document he now provides that four weeks is appropriate, calculated at 50 hours per week @ £7.05 per hour (£352.50 a week x 4) – total £1410.

Conclusion

- 17 The Respondent made unlawful deductions from the Claimant's wages, in the sum of £451.20
- 18 The Respondent failed to provide s.1-compliant terms and conditions of employment and is therefore ordered, subject to s.38 EA, to pay the Claimant the sum of £1410.

Employment Judge O'Rourke

Dated 16 April 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE