



EMPLOYMENT TRIBUNALS

Claimant: Mr S Ahmed

Respondent: La Melanzana (UK) Ltd (response not presented)

Heard at: Ashford

On: 13th August 2018

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: In person

Respondent: Mr M Ibrahim, director

JUDGMENT

1. The correct name of the respondent is La Melanzana (UK) Ltd
2. The claimant has suffered unauthorised deductions from his wages in the sum of £375.26.
3. The claimant is further entitled to compensation in the sum of £349.08.
4. The total award payable by the respondent to the claimant is £725.06.

REASONS

The claim

1. By a claim form issued on 24th May 2018, the claimant has brought a claim of unauthorised deductions from wages against his ex-employer, Melanzana. The respondent was sent notice of the claim on 26th June 2018. This invited the respondent to submit a response by 24th July 2018 but it did not do so. However, Mr Ibrahim, a director of the respondent, which is in fact a limited company called La Melanzana (UK) Ltd attended the hearing today.
2. I explained to Mr Ibrahim that the respondent has not defended the claim by presenting a response and so under the Employment Tribunal Rules of Procedure, he was only entitled to participate in the hearing to the extent that I allowed. He indicated that perhaps his business partner had overlooked or misunderstood the need to submit a response.

The issue

3. The sole issue is whether the claimant has suffered an authorised deduction from his wages in the sum of £375.26. The claimant is further seeking financial loss as a result.

The evidence

4. The claimant provided me with a copy of a letter to the respondent dated 5th January 2018 and a handwritten document headed "Financial Costs". I heard oral evidence from the claimant and from the respondent through Mr Ibrahim.

Findings of Fact

5. The claimant was employed as a Kitchen Porter at a restaurant called Melanzana from 12th November 2017 until 3rd December 2017. However, from information available from Companies House, it is clear that the correct name of the respondent is La Melanzana (UK) Ltd and that Mr Moemen Ibrahim is a director of that company.
6. The claimant was paid £7.50 per hour and his letter to the respondent dated 5th January 2018 sets out the hours worked on a daily basis from the start to the end of his employment. The claimant worked a total of 135 hours and earned £1,012.50. He received payment of £332.24 by cheque and £305 in cash. He is owed the balance of £375.26. All of these matters were agreed.
7. The claimant did not receive any pay slips and or written particulars of employment. He was unclear whether the payments to him were net of deductions for income tax and national insurance or not.
8. The respondent's position is that the claimant left without giving notice of one week as required. As a result the respondent says it was put to expenses of £300 in obtaining a replacement member of staff. Mr Ibrahim showed me copies of e-mail correspondence on his iPad, between his business partner Mr Hanan (who is also a director of the company) and the ACAS Conciliation Officer involved in the Early Conciliation of this claim. This was dated 15th and 20th February 2018. The correspondence indicated that the respondent was prepared to offer the claimant £75 after deduction of the £300 and that the Conciliation Officer explained that the respondent was not entitled to do this and if it believed it had a claim this should be made to the courts.
9. Mr Ibrahim also relied on this e-mail correspondence as supported of the proposition that the respondent had made a further offer to the claimant but he had rejected it because he wanted it paid in cash. The claimant denied this. The correspondence did not support what Mr Ibrahim said. Moreover, the claimant had already requested payment to his bank account in the letter of 5th January 2018. I therefore accepted the claimant's evidence.
10. The claimant had to travel from his home in Glasgow yesterday to attend this hearing and took 8 hours off work in respect of the day of travel and today. He is returning to Glasgow after the hearing. He seeks financial compensation in respect of the loss of 8 hours pay at £8.25 per hour, the bus fare from Glasgow to London of £16.50, the cost on his Oystercard of £20 to travel across London,

the train fare from London to Ashford return of £40 and the train fare from London to Glasgow (there being no coach available to travel on) of £141. This comes to a total of £349.08. Whilst he did not provide documents in support, I accepted his evidence of these costs.

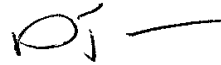
Relevant Law

11. Section 14 of the Employment Rights Act 1996:

*“An employer shall not make a deduction from wages of a worker employed by him unless—
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.”*

Conclusions

12. Both parties agree that the claimant was not paid the sum of £375.26. The respondent’s position is that the claimant left without giving a week’s notice and this entitled it to deduct expenses of £300 incurred to replace him. I explained to the respondent that this was not a valid reason to withhold wages properly payable. In any event, had the claimant given one week’s notice, the respondent would have had to pay him for that week. I said that was hard to see what expense beyond this the respondent would incur to replace a kitchen porter. But, I added, if the respondent believed it had a claim, it should have brought that claim in the County Court and not offset the amount of expenses against the claimant’s wages as payable.
13. I therefore find that the claimant has suffered unauthorised deductions from wages of £375.26.
14. Given that the respondent was clearly advised by ACAS prior to this claim that it had no legal basis to offset the money it claimed was owed by the claimant from his wages and the lack of response to the Employment Tribunal claim that the claimant had to consequently bring, the claimant had to attend the hearing today. In doing so he has suffered consequential finances losses as set out above.
15. Under section 24(2) of the Employment Rights Act 1996, where an Employment Tribunal has made an award in respect of an unauthorised deduction from wages, it may order the employer to pay to the worker such amount as it considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.
16. I find that the claimant is entitled to compensation in respect of his loss of earnings and travel costs to come to this hearing and to return home. If the respondent had heeded the advice of ACAS in February 2018, the claimant would not have been here today.
17. I therefore award the claimant addition compensation in the sum of £349.08.
18. The total award payable by the respondent is £725.06.



Employment Judge Tsamados
Date 14th August 2018

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