



EMPLOYMENT TRIBUNALS

Claimant

Mr N Dapkus

Respondents

(1) Mr Carlos Hopfer
(2) KMI Logistics Ltd

v

Heard at: Cambridge

On: 30 August 2018

Before: Employment Judge GP Sigsworth

Appearances

For the Claimant: Did not attend and was not represented

For the Respondents: Mr C Hopfer, Proprietor

JUDGMENT

1. The claimant has failed to make out his claim for unauthorised deductions from wages, and it is dismissed.

REASONS

1. The claimant did not attend the hearing. As he has not indicated that he would not be attending, attempts were made to contact him on the telephone number we had for him on the tribunal file. That number appears to be out of service. Therefore, pursuant to rule 47 of the Employment Tribunal's Rules and Procedure 2013, the hearing proceeded in his absence. The first respondent gave oral evidence on his own and on the second respondent's behalf, and provided some documents.
2. The claim form and another document sent to the tribunal by the claimant appeared to make a claim for £1,200 unpaid wages and expenses associated with his requirement to use his own vehicle for his career duties. However, the claim is not properly or fully itemised and broken down. The claimant has not provided any documentary evidence in support of it.

3. The respondent's case is, first, that the claimant was self-employed, and therefore cannot bring a claim for payment in the tribunal. However, further than that, they have provided evidence that the claimant agreed in writing (signed by him) to deductions from his contractual remuneration in certain instances. These instances included damage caused to the company van driven by him, private fuel costs, damage / loss to clients as a result of his negligence / default. The claimant caused damage to the van driven by him to the value of £150, he did not reimburse the company for fuel used for private mileage, and a mobile phone lent to a client, value £534, went missing because of the claimant's default / negligence – according to the respondent. Further, the company made the claimant two advance payments on his remuneration totalling £560 in July 2017. Thus, although they concede there is outstanding remuneration of £570 due, the deductions allowed by contract substantially outweigh this.
4. If and in so far as the claimant was an employee or worker of the respondents, then s.13(1)(b) of the Employment Rights Act 1996, provides the respondent with a defence to his claim. That section provides that an employer shall not make a deduction from wages of a worker employed by him unless the worker has previously signified in writing his agreement or consent for making the deduction. In this case, the respondent provided evidence that he had indeed given his signed consent to such deductions, as set out above.
5. I prefer the evidence of the respondents, supported as it is by the documents provided by them and by the first respondent's unchallenged oral evidence at this hearing. The claimant has not been here to challenge that evidence or make out his own case, and his case therefore fails.

Employment Judge Sigsworth

Date:31.08.18.....

Sent to the parties on: 12.09.18.....

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For the Tribunal Office