



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Effahabu Mohammed

v

Rupaal Care & Training Ltd

Heard at: Watford

On: 21 September 2018

Before: Employment Judge Bedeau

Appearances

For the Claimant: In Person

For the Respondent: Mr R Horton, Solicitor

JUDGMENT

1. It is not disputed that there had been an unauthorised deduction from the claimant's wages and the respondent is ordered to pay him the sum of £216 gross.
2. The respondent is further ordered to pay the claimant under s.24(2) Employment Rights Act 1996, the sum of £90.

REASONS

1. By a claim from presented to the Tribunal on 19 September 2017, the claimant made the single claim unauthorised deduction from wages contrary to s.13 Employment Rights Act 1996. He asserted that he had been working for the respondent for a total of 24 hours from 30 May to 2 June 2017, at the rate of £9 per hour and claimed that he was owed £216 gross. The respondent, however, offered him only £100 in settlement of his wages, which he refused to accept.
2. In the response presented to the Tribunal on 31 October 2017, the respondent averred that on 15 September 2017, an offer was made to the claimant of £130 but no response was received from him. A further offer of £200 was made on 24 October 2017 but this was rejected by the claimant who stated that he was owed more than £400.
3. In the response, in answer to the question "Do you defend the claim?", the respondent ticked the "yes" box. It follows from this that the unauthorised deduction from the wages claim was to be contested.

4. On 3 October 2017, the parties were sent by the Tribunal a Notice of Hearing listing the case for a one-hour final hearing on Tuesday 9 January 2018 at 12 pm. However, in a letter sent by the Tribunal to the parties on the 8 January 2018, to the parties, the Regional Employment Judge decided to postpone the hearing to be relisted on a mutually convenient date. The parties were required to provide a list of their unavailable dates by 16 January 2018.
5. In a further notice sent to the parties on 25 February 2018, the case was relisted for today's date with the same time estimate.
6. I did not hear evidence as Mr Horton, solicitor on behalf of the respondent, informed me that the respondent had given him a cheque in the sum of £216 to be handed to the claimant in satisfaction of his claim. He referred me to a 'Without Prejudice' letter sent to the claimant on 12 September 2018 putting the claimant on notice that if he continued to pursue his claim for £216 unpaid wages, an application would be made to the tribunal for the respondent's costs to be paid by him and the provisions of rule 76 were cited. The grounds of the application being that the claimant would have acted vexatiously, abusively, disruptively and otherwise unreasonably in continuing to bring his claim because the respondent had transferred the sum of £216 into the claimant's bank account via a BACS transfer on 21 August 2018 but the claimant had returned the money to the respondent's business current account. The letter asserted that in doing so, he had behaved entirely unreasonably. The letter further stated that costs would be £182.49, comprising of £96.50 off peak return fare to Watford Employment Tribunal plus the sum of £85.99 overnight stay in a hotel, should the case proceed to a hearing. The claimant was advised to obtain independent legal advice regarding the merits of his claim and to accept the offer of £216 in full and final settlement within 7 days. Should he fail to do so the letter would be referred to as part of the respondent's costs application. The claimant did not respond to the letter.
7. The claimant prepared a short bundle of documents in which he referred to a letter sent by Haringey Law Centre to the respondent's legal representatives dated 19 September 2018. It is headed 'Without Prejudice'. The Law Centre rejected the full and final settlement offer of £216 stating that the claimant was prepared to accept an immediate payment of £1,853.08 to settle the case. The letter attached a Schedule of Loss setting out how that sum was made up. The offer was to expire at 4pm Thursday 20 September 2018.
8. In the Schedule of Loss the claimant claimed £216 unpaid wages; £82.08 which is 2% monthly interest on £216; £864, for the time spent in pursuing his case which is 8 days x 12 hours x £9 an hour; £20 travel to respondent's premises to follow-up his case; £150 for stress and loss of sleep; £55 travel expense to the Tribunal on two occasions and to Haringey Law Centre; £216 loss of two days' wages at the Tribunal, that being £9 an hour x 12 hours each day; in addition, £250 for the Law Centre caseworker's fee of 1.5 hours. A total of £1,853.08.

9. There were no supporting documents to substantiate the various heads of claim in the Schedule of Loss.

Submissions

10. Mr Horton submitted that the claimant had acted unreasonably in refusing to accept the sum of £216 in his bank account as the sum was the basis of his claim as set out in the claim form. The claimant made no reference, prior to the 21 August 2018, to costs having been incurred, only that he had wanted payment in excess of £216.
11. The claimant asserted that he incurred losses as set out in his schedule. He told me that he travelled from work by taxi from Enfield to the Tribunal on the 9 January 2018 as he did not get the Tribunal's letter postponing that hearing until a day or two later.

The law

12. The costs provisions are in rules 74 to 84, schedule 1, Employment Tribunals (Constitution and Rules of Procedure) regulations 2013, as amended. "Costs" includes any fees, charges, disbursements or expenses including witness expenses incurred by or on behalf of the receiving party, rule 74(1).
13. The power to make a costs order is contained in rule 76. Rule 76(1) provides,

"A tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –

 - (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted ; or
 - (b) any claim or response had no reasonable prospect of success."
14. In deciding whether to make a costs order the Tribunal may have regard to the paying party's ability to pay, rule 84.
15. I have also taken into account the cases of E.T Marler v Robertson [19974] ICR 72, a judgment of the National Industrial Relations Court, and Oni v Unison UKEAT/0370/14/LA.
16. In Marler, it was held by Sir Hugh Griffiths under the old "frivolous or vexatious" costs requirements that

"If the employee knows that there is no substance in his claim and that it is bound to fail, or if the claim is on the face of it so manifestly misconceived that it can have no prospect of success, it may be deemed frivolous and an abuse of the procedure of the tribunal to pursue it. If an employee brings a hopeless claim not with any expectation of recovering compensation but

out of spite to harass his employers or for some other improper motive, he acts vexatiously, and likewise abuses the procedure. In such cases the tribunal may and doubtless usually will award costs against the employee.”, page 76 D-F.

17. In the Oni case, Simler J, President, re-stated the principles, namely that the tribunal has a wide discretion in deciding whether to award costs. It is a two-stage process. The first being, to determine whether the paying party comes within one or more of the parameters set out in rule 76. The second, is if satisfied that one or more of the requirements have been met, whether to make the award of costs. However, costs had to be proportionate and not punitive and reasons must be given.
18. Section 13 Employment Rights Act 1996, prohibits unauthorised deductions from a worker's wages except in limited circumstances. Section 24(1), refers to a Tribunal, in considering a wages claim referred to it under section 23, if well-founded, may make a declaration to that effect. Section 24(2) provides:

“Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal 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.”
19. I rejected the respondent's application for costs as I did not consider that the claimant had acted either unreasonably, vexatiously, abusively, or otherwise disruptively in pursuing his claim through to a Tribunal hearing. The respondent's representatives knew that the claimant was not satisfied with £216 and did not consider either his costs or expenses incurred in bringing the claim.
20. He sent correspondence to the Tribunal on the 16 January 2018, 12 February 2018, and 13 February 2018. He attended the aborted hearing on 9 January 2018. In so doing, he suffered financially.
21. I do take the view that he should have explained to the respondent's representatives at the time the money was put into his account why he was rejecting the sum offered and should have set out the other matters he wished the respondent to compensate him for. I, therefore, limited his losses up to 21 August 2018 when the cheque was paid into his account but rejected.
22. As a direct result of pursuing his unauthorised deductions from wages claim to a hearing I was prepared to accept that the claimant had incurred some financial losses up to the 21 August 2018. Neither party wanted a further hearing for the claimant to produce supporting documentation to determine precisely what he was claiming under section 24(2) as that would involve additional costs. I considered what would be appropriate to award. I took into account the sum of £20 travel to respondent's premises and a similar sum in respect of attending the postponed hearing on the 9

January 2018 and £50 to cover his time up to the 21 August 2018, in pursuing his claim. This comes to a total of £90 under s.24(2) ERA 1996.

23. I, therefore, order that the respondent should pay the claimant the sum of £90 under s.24(2). The total sum to be paid to the claimant is £306.

Employment Judge Bedeau

Date:03.10.18.....

Sent to the parties on: ...16.10.18.....

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For the Tribunal Office