



EMPLOYMENT TRIBUNALS

Claimant: Mr G Carswell
Respondent: Professional Canine and Security Ltd
Heard at: Ashford
On: 21 September 2018
Before: Employment Judge Pritchard

Representation
Claimant: In person
Respondent: No appearance

JUDGMENT

- 1 The Respondent made unlawful deductions from the Claimant's wages and the Respondent is ordered to pay the Claimant the sum of £3,203.50 net.
- 2 The First Respondent failed to pay the Claimant for accrued but untaken holiday upon the termination of his employment and the Respondent is ordered to pay the Claimant the sum of £1,523.06 gross.
- 3 The Claimant's claim for breach of contract (notice pay) is dismissed upon withdrawal.

REASONS

- 1 By way of an ET1 presented on 7 May 2018, the Claimant made claims for unpaid wages, holiday pay, and notice pay. The Respondent resisted the claims and provided the Tribunal with a number of documents.
- 2 The Respondent did not attend the hearing. Telephone enquiries were made by the clerk to the Tribunal and the Respondent stated that they were unaware that anyone would be attending the hearing on the Respondent's behalf. The Tribunal proceeded with the hearing under Rule 47 of the Employment Tribunal Rules of Procedure 2013.
- 3 The Claimant commenced employment with the Respondent on 4 September 2017. He resigned in writing on 9 March 2018.

- 4 The Claimant's case was that he was willing to work his notice but that he was prevented from doing so because he had been required to return the Respondent's property including his laptop, mobile telephone and keys to the premises. Upon discussion with the Claimant about the circumstances surrounding the termination of his employment, his willingness to work his notice period, and what the Respondent had to say in its ET3 response and the documents the Respondent had provided, the Claimant decided to withdraw his claim for notice pay.
- 5 The Respondent had provided the Tribunal with a document setting out the payments which had been made to the Claimant and the payments which had been withheld. The document shows that the Claimant's wages referable to employment in February 2018 (£2,277.92 net) were "Withheld for Notice Period" and his wages referable to the remaining period of his employment (£925.58) were "Withheld due to Legal Action". A copy of this document was provided to the Claimant at the hearing and he agreed with that the withheld sums remain unpaid.
- 6 In respect of the first deduction, the Tribunal assumes that the Respondent seeks to rely on a clause in the Claimant's contract of employment that provides for deductions to be made for "Costs incurred as a result of you not working your notice period". However, the Respondent has not made an Employer's Contract Claim and, in any event, has shown no costs incurred as a result of the Claimant not working his notice period. In respect of the second deduction, the Respondent has shown no legal basis for it.
- 7 It is clear that the Respondent has made unlawful deductions from the Claimant's wages and judgment is entered accordingly.
- 8 With regard to holiday, the Claimant is contractually entitled to 28 days holiday inclusive of bank holidays. The leave year is not set out in the Claimant's contract of employment so the default position under Regulation 13(3)(b)(ii) of the Working Time Regulations 1998 is that the leave year begins on the date on which employment begins. The Claimant was employed for six months and his entitlement during the period was therefore 14 days. The Claimant took one day's holiday shortly after commencing employment with the Respondent and he took two bank holidays during the period of his employment. Upon the termination of his employment on 9 March 2018, therefore, he had 11 days untaken leave. The Respondent failed to compensate him for this untaken leave under Regulation 14 of the Working Time Regulations 1998. The Claimant is therefore entitled to 11 days holiday pay calculated as follows:

$\text{£}36,000 \text{ per annum} / 260 \text{ (working days in a year)} = \text{daily rate of } \text{£}138.46$

$11 \times \text{£}138.46 = \text{£}1,523.06$

- 9 Judgment will be entered accordingly.

Employment Judge Pritchard

Date: 21 September 2018

