



EMPLOYMENT TRIBUNALS

Claimant: Jeremy Jackson

Respondent: Lee Christian

Heard at: Southampton

On: 21 December 2018

Before: Employment Judge Jones QC

Representation:

Claimant: In person

Respondent: In person

JUDGMENT

1. The Claimant's claim for unlawful deduction succeeds.
2. The Respondent shall pay to the Claimant the sum of £61.80.

REASONS

Claims and Issues

1. The Claimant brings a claim alleging that his former employer, the Respondent, made an unlawful deduction from his final pay.
2. Since the commencement of proceedings, the scope of the dispute has narrowed substantially. At the outset of the hearing, there were three specific matters still in issue:

- (1) A deduction made in relation to an overpayment of wages on 4 January 2018, a day on which the Claimant was absent due to sickness;
- (2) A deduction made in relation to an overpayment wages on 12 March 2018, a day on which the claimant took emergency leave to the after his child who was sick; and
- (3) A dispute between the parties as to whether the Claimant had been obliged to take a day of holiday on 3 January 2018 on which date the business was closed for a staff party.

Findings of fact

3. The Claimant formerly worked for the Respondent at a venue in Worthing called the Cow Shed.
4. On 10 March 2018 the Claimant was suspended from work pending a disciplinary investigation. On 12 March 2018 the Claimant handed in his notice of termination.
5. The Claimant's employment terminated on 19 March 2018. He claims that he was entitled to receive 19 days of pay in respect of salary earned prior to termination and a further six days pay in lieu of untaken paid leave. By the date of the hearing, the Respondent had accepted that it had initially underpaid him and had made a further payment. In total, he had received 22 of the 25 days of pay to which he considered he was entitled.
6. Turning to the three days in issue, the first is 4 January 2018. The Claimant accepted that he was absent sick on that day. He also accepted that his contract of employment makes it clear that employees are not entitled to be paid in respect of the first three days of any period of sickness absence. He further accepted that he had nevertheless been paid for that day and that, therefore, he had been overpaid.
7. Similarly, the Claimant accepted that he had been absent on 12 March 2018 (on that occasion for the purpose of looking after his child who was ill); that he was not entitled to be paid for that day; but that he had been. Again, it was not in issue that he had been overpaid.
8. Finally, the Claimant accepted that the business had been closed on 3 January 2018. Again, he had been paid for that day. His position was that he had not been told that he was to take that day as a day of paid annual leave. The Respondent's position was that a notice had been placed on a staff noticeboard making it clear that staff had to take the day as a day of annual holiday. I was shown a copy of a notice which did, indeed, make that point. The Claimant said that he had not seen the notice. He went further; he said there had been no such notice, indeed there was no such noticeboard. Faced with this difference in evidence and given the very small sum at stake, the Respondent took the sensible decision not to contest this element of the claim. It follows that I need not determine the factual dispute.

The Law

9. The making of unlawful deductions from wages is prohibited by the **Employment Rights Act 1996, s. 13**. However, **s. 13** does not apply to deductions made in order to reimburse the employer for any overpayment of wages (see **s. 14**).

Decision

10. The deductions made in respect of the absences on 4 January 2018 and 12 March 2018 were made in respect of overpayments of wages. In the circumstances, the claim for unlawful deduction must fail insofar as it relates to those specific sums.
11. Given that the Respondent has decided not to contest the claim in respect of the deduction made in relation to 3 January 2018, that claim succeeds. The parties were agreed that the relevant daily rate pay was £61.80. I therefore award the Claimant that sum.

Employment Judge Jones QC

21 December 2018