



THE EMPLOYMENT TRIBUNALS

Claimant: Mr G Treharne

Respondent: Plant Services (Gateshead) Limited

Heard at: North Shields Hearing Centre **On:** Thursday 27th December 2018

Before: Employment Judge Johnson

Members:

Appearances:

Claimant: In Person

Respondent: Mrs C Rolston (Solicitor)

JUDGMENT

1. The claimant's complaint of unauthorised deduction from his wages is well-founded and succeeds. The respondent is ordered to pay to the claimant the sum of £2,482.00 being wages unlawfully deducted. This is a net amount and the respondents to be responsible for the payment of any income tax and national insurance contributions thereon.
2. The remainder of the claimant's claims of unauthorised deduction from his wages are postponed. By not later than 31st January 2019 the claimant shall inform the Employment Tribunal in writing (and copy the same to the respondent's representative) as to whether he wishes to have the remainder of his claims relisted for hearing.

REASONS

1. This matter came before me this morning for consideration of the claimant's complaints that he had suffered an unauthorised deduction from his wages. The claimant attended in person and was accompanied by his mother. The respondent was represented by Mrs Rolston and was accompanied by the respondent's managing director Mr Stephen Joseph Treharne, who is the claimant's father. Mr S J Treharne owns 60% of the shares in the respondent

company, whilst the claimant owns the other 40%. Both are directors of the respondent company. The claimant's mother was once a director of the company and was also at one time the company's secretary.

2. During the course of 2018 father and son have fallen out to the extent that the claimant was suspended on 3rd September 2018 and ultimately dismissed with effect from 27th November 2018. The respondent maintains that the claimant was dismissed for reasons related to his conduct.
3. The claimant's case is that he was at the beginning of 2018 being paid a salary of £40,000 per annum, but this was increased by £10,000 to £50,000 per annum in or about April 2018. The means by which salary was to be paid were changed, so that it included an element of salary and an element of dividends. A dividend of £11,875.00 was declared on 28th February 2018 and that was to be paid by five equal monthly instalments of £2,375.00 from April through to August 2018. No further dividends have been declared. As a result, the monthly sums paid to the claimant have been substantially reduced since his suspension, to the extent that he has been paid little more than the National Minimum Wage.
4. There was placed before me today a witness statement from Mr S J Treharne, together with a bundle of documents containing 47 pages, prepared by Mrs Rolston on behalf of the respondent. The claimant today complained that the bundle of documents was sent to him electronically on Friday 21st December and that the witness statement was only given to him this morning. Mrs Rolston confirmed that the documents had only been sent on 21st December and that the statement had only been delivered this morning. I pointed out to Mrs Rolston that the hearing of the claimant's complaints had been postponed at the respondent's request that she had been aware of the postponed date since 28th November. I informed Mrs Rolston that I considered it totally unacceptable that the statement and documents had only been sent to the claimant at the last possible moment.
5. I enquired of Mrs Rolston as to whether the respondent had provided the claimant with a written statement of his terms and conditions of employment in accordance with Section 1 of the Employment Rights Act 1996. Mrs Rolston confirmed that no such written statement of particulars of employment had ever been supplied to the claimant. Mr S J Treharne's explanation to me this morning was that he did not consider it necessary to provide a written statement of particulars, because the claimant is his son. Mr S J Treharne concedes that the claimant is and was at all material times both a worker and an employee of the respondent company and thus entitled to a written statement of particulars of employment. I enquired of Mr S J Treharne as to whether the respondent had provided the claimant with written notification of any amendment to his contract of employment to reflect any agreement reached in the course of 2018 as to the manner or means by which the claimant's wages would be paid. Mr S J Treharne informed me that the only documents were those in the bundle. The respondent seeks to rely upon the letter dated 28th February 2018 which appears at page 35 in the bundle, which the claimant insists is a "fabricated document". I explained to the claimant that this is a particularly serious allegation and one which he will have to prove should the matter proceed to a final hearing.

6. Both parties agreed that from the early part of 2018, the sum paid to the claimant on a monthly basis, amounted to £520.00 per week. Following his suspension, the claimant was paid far less than that. From the date of suspension to the date of his dismissal, the claimant should have received £6,240.00, whereas the sum actually paid to him was £3,758.00. The difference is £2,482.00.
7. I have insufficient evidence before me today to enable me to reach a meaningful, final judgment on the claimant's complaint. The respondent has failed to provide the claimant with the appropriate documentation to enable him to properly consider his position. The witness statement from Mr S J Treharne is wholly inadequate to enable me to deal with the issues in the case. I am nevertheless satisfied that there has been an unauthorised deduction from the claimant's wages in at least the sum of £2,482.00 as referred to above. I explained that to Mr S J Treharne, who today confirmed that he would agree to pay that sum to the claimant by not later than 4th January 2019. I order that sum to be paid and I order the balance of the claimant's complaints to be postponed to a date which remains to be fixed.
8. The claimant's employment with the respondent has come to an end. He can now pursue a complaint of breach of contract, which will enable him to include allegations relating to withdrawal of those benefits in kind which he now says form part of his contract of employment, particularly the withdrawal of the Mercedes motor car. The parties must collate and provide their evidence to support their respective positions on what sums were to be paid by the respondent to the claimant and what, if any, of those sums were to be regarded as "wages properly payable" in accordance with the relevant provisions in the Employment Rights 1996.
9. The claimant is also to present a complaint of unfair dismissal and from what was said to me today, it is highly likely that the unfair dismissal complaint, breach of contract complaint, unauthorised deduction from wages complaints and allegations relating to the failure to provide written statement terms and conditions of employment, can all be heard together. Even that may well depend upon whether there are other proceedings in another jurisdiction relating to the company itself.
10. The claimant must inform the Employment Tribunal by 31st January 2019 as to whether he wishes to have the postponed hearing reinstated so as to consider any balance of his claims of unauthorised deduction from wages. It is likely that by this date the claimant's allegations of unfair dismissal will have been presented to the Employment Tribunal so that all matters may be consolidated and dealt with together.

Case Number: 2503153/2018

EMPLOYMENT JUDGE Johnson

JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
3 January 2019

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