



EMPLOYMENT TRIBUNALS

Claimant:
Mr S Shea

v

Respondents:
Dorling Group International
Limited (R1)
Brian Gallagher (R2)

Heard at: Reading

On: 29 November 2018

Before: Employment Judge Hawsworth (sitting alone)

Appearances

For the Claimant: In person

For the Respondents: No attendance or representation

JUDGMENT

1. The Claimant's complaint of unauthorised deductions from wages against the First Respondent succeeds. The Claimant is awarded the sum of £1,722.50 which is made up of:-
 - 1.1 £1,120.50 in respect of 83 hours' unpaid wages;
 - 1.2 £324.00 in respect of underpayments for 24 hours worked on bank holidays;
 - 1.3 £278.00 in respect of underpayments for 139 hours worked on Saturdays.
2. The Claimant's complaint in respect of pay for untaken annual leave against the First Respondent succeeds. The Claimant is awarded the sum of £1,134.00 in respect of seven days' untaken annual leave.
3. The First Respondent was in breach of its duty to give the Claimant a written statement of initial employment particulars. The Claimant's award is increased by the sum of £1,916.00 (4 weeks' pay subject to the statutory cap on a week's pay).
4. The Tribunal does not have jurisdiction to hear the claims against the Second Respondent and they are dismissed.

REASONS

Preliminary matters

1. By an ET1 presented on 19 August 2017, the Claimant brought claims of unauthorised deduction from wages, unpaid annual leave (Working Time Regulations), failure to give a written statement of initial employment particulars and failure to provide itemised pay statements. The Claimant had notified ACAS for early conciliation. The details on the early conciliation certificate were for Dorling Group International Limited. No early conciliation certificate was issued for the Second Respondent.
2. There was some confusion as to the correct address for the First Respondent. The proceedings were served first on 7 September 2017 and were then re-served at a different address provided by the Claimant on 24 February 2018. The Respondents did not present a response to the claim. However, the Claimant gave evidence that the director of the First Respondent Mr James Dorling confirmed to him that he had received a copy of the claim from the Employment Tribunal and that the First Respondent had been in contact with ACAS during the early conciliation period.
3. At the hearing, there was no attendance or representation on behalf of either Respondent. The tribunal clerk telephoned the numbers provided for Mr James Dorling and Mr Brian Gallagher but there was no answer from either. A Companies House search on the day of the hearing disclosed that the Respondent company had been dissolved on 31 July 2018.
4. I considered rule 47 and decided in the circumstances to hear the Claimant's complaints in the absence of the Respondents.

Background

5. The Claimant was employed by the First Respondent as an HGV driver for the period 23 February 2017 to 26 May 2017. The First Respondent was an agency which supplied workers including drivers to end users. In the Claimant's case, the end user was UCH. The Second Respondent was not the Claimant's employer, but was the Claimant's main contact while he worked for the First Respondent.
6. The Claimant was not provided by the First Respondent with any written terms and conditions of employment or written particulars of employment. The Claimant asked the First Respondent for a contract of employment but he did not receive one. He did receive confirmation by text message of his hourly rate of pay (£13.50) and he also agreed with the First Respondent's Brian Gallagher that he would receive an hourly rate of £15.50 for Saturday working and £27.00 for bank holiday working. However, he was not at any stage provided with written particulars of employment.
7. The Claimant also did not receive itemised pay statements although he was eventually able to get hold of copies of these from the First Respondent's payroll company (Morelands).
8. The Claimant kept records of his hours worked including digital print outs of driving hours and checked these against pay received and against the pay statements. He was not paid for all the hours he worked for the First

Respondent. He contacted the First Respondent on numerous occasions to chase up his pay but was unsuccessful. There were 83 hours for which the Claimant worked for the First Respondent and in respect of which he did not receive any pay.

9. The Claimant worked on two bank holidays. He was paid for 12 hours work on each of these days at a rate of £13.50. The agreed bank holiday rate was £27.00.
10. The Claimant worked 139 hours on Saturdays. He was paid for this work at the rate of £13.50.
11. The Claimant did not have any paid holiday during the three month period for which he worked for the First Respondent. On the termination of his employment, he did not receive any pay for untaken annual leave.

The Law and Conclusions

12. The Second Respondent was not the Claimant's employer. The Claimant had not notified ACAS in respect of the Second Respondent. In the absence of the ACAS early conciliation certificate, the Employment Tribunal has no jurisdiction to hear the claims against the Second Respondent and in any event the Second Respondent was not the Claimant's employer and is not liable for wages, holiday pay or written statement of particulars of employment. The claim against the Second Respondent has been dismissed for these reasons.
13. The First Respondent made unauthorised deductions from the Claimant's wages in respect of unpaid hours worked at basic rate, bank holiday working and Saturday working. This was contrary to section 13 of the Employment Rights Act 1996.
14. The Claimant worked for 83 hours for the First Respondent for which he was not paid. He should have been paid for these hours at basic rate. This is an unauthorised deduction from wages which amounts to 83 x £13.50 i.e. £1,120.50 outstanding in respect of basic pay.
15. In respect of bank holiday working, the Claimant was underpaid for two days' bank holiday working in the sum of £162.00 per day i.e. a total of £324.00.
16. In respect of Saturday working, the Claimant was paid at the rate of £13.50 when a Saturday rate of £15.50 had been agreed. He was underpaid by £2.00 per hour for 139 hours, a total underpayment of £278.00.
17. The Claimant was entitled to statutory annual leave under Regulations 13 and 13A of the Working Time Regulations 1998, i.e. 28 days per year. During the three-month period for which he worked for the First Respondent, the Claimant was entitled to seven days' paid holiday. The Claimant did not take any paid holiday during his time working for the First Respondent and so he should have been paid for seven days' paid holiday

accrued but not taken on the termination of his employment. He did not receive any pay in lieu of untaken annual leave. Based on the Claimant's standard 12-hour day, his daily rate was £162.00 a day; seven days' pay in lieu of untaken annual leave is a total of £1,134.00.

18. The Claimant was not provided with a statement of initial employment particulars by the First Respondent as required by section 1 of the Employment Rights Act 1996. Section 38(3) of the Employment Act 2002 applies. I consider that it would be just and equitable to increase the award by four weeks' pay to reflect the First Respondent's failure to provide written particulars of employment; I have taken into account in particular the First Respondent's wholesale failure to provide any written terms and conditions despite the Claimant requesting them. The weekly pay for the purposes of the increase in the award is capped at the statutory maximum which was in force at the time of £479.00. The increase to the award under section 38 is therefore £479 x 4 i.e. £1,916.00.
19. In relation to the complaint about itemised pay statements, the Claimant was eventually able to obtain these from the First Respondent's payroll company. No compensation is payable for a breach of the failure to provide itemised pay statements in any event.
20. In summary, the Claimant's claims against the First Respondent succeed and the Claimant is awarded:
 - 20.1. £1,722.50 for unpaid/underpaid wages;
 - 20.2. £1,134.00 in respect of seven days' untaken annual leave;
 - 20.3. An increase of £1,916.00 pursuant to section 38 of the Employment Act 2002 because of the First Respondent's failure to provide the Claimant with written particulars of employment.

Employment Judge Hawksworth

Date: ...15 February 2019.....

Judgment and Reasons

Sent to the parties on:

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For the Tribunal Office

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