



# EMPLOYMENT TRIBUNALS

Claimant Respondent

Mr C Clark v Continental Leaves & Beans Limited

Heard at: Bury St Edmunds On: 18 February 2019

Before: Employment Judge Cassel

Appearances For the Claimant: In person

For the Respondent: Mr K Humphreys, Director

## RESERVED JUDGMENT

1. The claim of unpaid wages succeeds and the respondent is to pay to the claimant the sum of £560.
2. The claim of failure to pay holiday pay succeeds and the respondent is to pay to the claimant the sum of £208.
3. The total sum awarded to the claimant for the respondent to pay to him is £768. That is a gross payment and the respondent is to account to the claimant and to HMRC for any tax and national insurance payable on the sums.
4. The recoupment provisions do not apply.

## RESERVED REASONS

1. In his claim to the Employment Tribunal, the claimant, Mr Charles Clark, complains of non-payment of wages and a failure to pay holiday pay in relation to his employment with the respondent for which organisation he worked from 14 August 2017 until 29 September 2017.

2. In the response form which was submitted by the respondent, the dates of employment were accepted but the claims are resisted on the basis described at paragraph 5.3 in the following terms,  
  
“False filling in of time sheet. Didn’t arrive at a place of work in order to fulfil the definition of a working day in the employment contract”.
3. Mistakenly, the respondent believed that a contract claim had been made and indicated that there was an employer’s contract claim. The tribunal has no such jurisdiction to hear such a complaint under regulation 8 of The Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

#### The Relevant Law

4. The right not to suffer unauthorised deductions is provided for under section 13 of the Employment Rights Act 1996,  
  
13 Right not to suffer unauthorised deductions.
  - (1) An employer shall not make a deduction from wages of a worker employed by him unless—
    - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
    - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
  - (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
    - (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
    - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
  - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total

amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

- (4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.
- (5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
- (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
- (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

5. Under section 14 there are excepted deductions,

14 Excepted deductions.

- (1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—
  - (a) an overpayment of wages, or
  - (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker.
- (2) Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary

- proceedings if those proceedings were held by virtue of a statutory provision.
- (3) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.
  - (4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—
    - (a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or
    - (b) otherwise with the prior agreement or consent of the worker signified in writing, and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.
  - (5) Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.
  - (6) Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.
6. There is provision under regulation 14 and 16 of the Working Time Regulations as to compensation relating to the entitlement to leave and a payment in respect of periods of leave. In discussions with both parties, it was accepted that an entitlement to holiday pay arose, but the respondent

averred that in payments made to the claimant, such payment as required had already been made.

#### Evidence

7. Case management orders were made by the tribunal on 19 October 2018. Although, it was clear that some efforts had been made to exchange documents, no final bundle had been agreed and I was presented with two sets of documents; one from the respondent and one from the claimant. The documents were photocopied by our Clerk to ensure that both parties had the other's documents and there were spare copies for the tribunal and for the witness table.
8. A witness statement had been prepared by the claimant, but regrettably no witness statements had been prepared on behalf of the respondent.

#### Preliminary Matters

9. Mr Humphreys, who appeared for the respondent, renewed his application for a postponement which had been refused by Employment Judge Warren in Chambers and communicated to the parties on 15 February. Mr Humphreys stated that he felt at a complete disadvantage until money paid by the respondent company, wrongfully, through apparent enforcement action, was returned. He confirmed however, that he was a Director and the person responsible for contractual arrangements with the claimant. He was in tribunal today with appropriate documentation and was under no apparent disadvantage in giving evidence today, particularly bearing in mind the overriding objective provided for in the Rules of Procedure, particularly in regard to avoiding delay.
10. In refusing the application I indicated that I would take Mr Humphrey's evidence in chief orally, dispensing with the need for a written statement and allowing the claimant sufficient time to cross examine him. In so doing, no disadvantage would be experienced.
11. During the proceedings, Mr Humphreys made an application for an adjournment as he stated that he had not been able to obtain transcripts of alleged telephone discussions. Mr Clark resisted that application and pointed to note 8 of the preliminary hearing summary in which it was made clear to Mr Humphreys at the earlier hearing that he should prepare transcripts and serve them upon the claimant; this he had failed to do. Additionally he had made no arrangements for equipment to be provided to enable those recorded telephone calls to be heard. I refused the application as the respondent had had ample opportunity to attend to the

matter, bearing in mind the comments of Employment Judge Warren on 17 October and the time that had elapsed since that hearing for these matters to be attended to by the respondent.

12. On a number of occasions today, I reminded Mr Humphreys of a need to act in an appropriate and civilised manner during these proceedings notwithstanding, his sense of grievance at the manner in which matters had been dealt with hitherto. I adjourned the proceedings during the morning, in part, to enable tempers to cool and for Mr Humphreys to ask questions appropriately without resorting to shouting and endless rephrasing of the same questions.

#### Findings of Fact

13. I make the following findings of fact based on the balance of probabilities having considered those documents to which my attention was drawn.
  - 13.1 The claimant commenced his employment with the respondent on 14 August 2017 and entered into a contract of employment that was reduced to writing and exhibited at page 3 onwards of the respondent's bundle. At paragraph 1 of the contract the rate of pay was set at £80 per day. At paragraph 1.2 his working hours were from, 'Monday to Friday'. There was provision for holiday at paragraph 8.1 which essentially dealt only with the requirements for notice and booking period, but was expressed as consisting of '28 days paid inclusive of bank holidays in England'.
  - 13.2 Time sheets were submitted by the claimant against which payment was met by the respondent to the claimant. There was no dispute in relation to payments made or received on 29 August, 5 September, 12 September, 19 September, 25 September or 3 October.
  - 13.3 The dispute arose in relation to payments that were said to be owed in relation to a period ending on 29 September, which was the date on which his employment ended.
  - 13.4 The dispute between the parties can be characterised as follows. The claimant has stated that he did that work which he was required to do throughout the contract of employment and is entitled to pay. The respondent avers that it was during the notice period that Mr Humphreys noted that on seven occasions the claimant had remained at home undertaking, so he claimed, work following up leads for further work. Having heard from both witnesses, I preferred the account of the claimant in that he had performed all of those tasks for which he was employed, had followed lawful orders given to him and that no complaint as to his performance

under the contract had been made prior to the notice period. He had lawfully and properly been working from home as required and had undertaken all other orders given to him by Mr Humphreys.

- 13.5 There was no dispute that holiday pay had accrued and that an entitlement had arisen as to pay in the sum of £208. Mr Humphreys averred that he was entitled to withhold that money in view of losses that had been incurred by reason of the theft or disappearance of tools and other costs incurred by poor workmanship, although he accepted, there was no direct evidence to implicate the claimant in any theft and he had not reported matters to the police.

### Conclusions

14. As was explained to Mr Humphreys, there was no claim in contract and no entitlement of the respondent to bring a counter claim for breach of contract.
15. The claimant gave cogent evidence and was credible in his assertion that he had performed those tasks that he was required to do. He had made no secret of working from home on the days in dispute and had done so following the instructions given to him by Mr Humphreys.
16. There was no dispute that the relationship was of employer and employee and that there was an entitlement to the claimant to be paid for work undertaken on behalf of the employer. None of the exceptions under the Employment Rights Act 1996 applied and an obligation arose for the respondent to pay to the claimant for work properly undertaken. I find that there was an unlawful deduction from the claimant's pay in the sum of £560, which comprises seven days' pay at £80 per day. I also find that an entitlement to holiday pay arose on the termination of employment and that sum is for 20 hours and 50 minutes. Hourly pay is calculated at £10 and the sum owing in respect of holiday pay is therefore £208.
17. The sums payable by the respondent to the claimant are therefore £560 for unpaid wages and £208 for holiday pay. That is a grand total of £768. That is a gross sum from which deductions are to be made for tax and national insurance. The respondent is to account to the claimant and to the HMRC for those deductions.
18. The recoupment provisions do not apply.

8 March 2019

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Employment Judge Cassel

Date: 15 March 2019

Sent to the parties on: .....

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For the Tribunal Office