



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Campbell

AND

Yolion Limited

Heard at: London Central

On: 8 March 2019

Before: Employment Judge Norris

Representation

For the Claimant: In person

For the Respondent: Did not appear & was not represented

JUDGMENT

- (1) No response having been received to the Claimant's claim, judgment is entered in his favour.
- (2) The Respondent is ordered to pay the total net sum of £7,239.20 to the Claimant.

REASONS

Background

- 1 The Claimant submitted a claim form on 21 November 2018, claiming notice pay and unpaid wages for his work for the Respondent, at which he worked as the Head of Commercial Partnerships.
- 2 The claim form was sent to the Respondent at its registered address. The Respondent did not submit a response.
- 3 I am satisfied that the Respondent was properly served with the claim and was given the opportunity to defend it. I accept the Claimant's evidence that he and others had tried without success to engage the Respondent in a discussion about unpaid wages, prior to his dismissal. I further accept that he had brought the Respondent's attention to his claim.

4 The Hearing

- 4.1 In the absence of the Respondent or any representation on its behalf, I entered default judgment in the Claimant's case.
- 4.2 I heard evidence from the Claimant on oath. He explained to me that he started working for the Respondent towards the end of August 2018. It was agreed that he would be paid for August and September in his pay at the end of September. He was indeed paid, although not on the last working day as he should have been. He received no money thereafter.
- 4.3 The Respondent's four officers are all residents of Israel. The Claimant's unchallenged evidence was that they were financing the Respondent via a bank account in the UK, but that their funding ceased so that there were a number of concerns about the Respondent's ability to pay its rent and/or meet its wage bill. Promises were made that the money would be forthcoming, but it never arrived in the UK account. The Respondent's CEO also tried to secure funding to continue trading, and the Claimant indicated to the Respondent's officers that he would bring Tribunal proceedings if he was not paid his wages. He and the CEO did not receive a response. The Claimant was given a month's notice in accordance with his contract on 25 October 2018. He was not paid for October, nor for the balance of his notice pay from 1 to 25 November.

5 The Issues/law

- 5.1 Section 13 Employment Rights Act (ERA) 1996 states that an employer must not make a deduction from wages of a worker employed by him, save in particular circumstances. A deduction arises when an employer pays less than the amount properly payable by him to the worker.
- 5.2 Where a Tribunal makes a finding of an unlawful deduction and orders it to be paid under section 23(1)(a) ERA, it may also (under section 24(1)(a) and section 24(2)) make such further award of financial compensation as is attributable to the matter complained of, in relation to losses sustained by the Claimant.

Findings of fact and conclusions

- 6.1 When the Claimant was paid for August and September, he received £3,612.00 net for 24 working days. This equates to £150.50 per day.
- 6.2 There were 23 working days in October. This is the equivalent of £3,461.50 net. There were 25 working days in November. This is the equivalent of £3,762.50 net.
- 6.3 The Claimant was able to borrow money and did not incur interest, overdraft charges or other penalties as a result of the Respondent's failure to pay his wages. However, he had incurred £15.20 train fare in coming to the Tribunal. I explained I could not make an award for injury to feelings as he had claimed, because this case does not involve a complaint of

discrimination, but I did award him the train fare by way of compensation under section 24 ERA.

- 6.4 The total sum payable to the Fourth Claimant by the Respondent is therefore £7,239.20, to be paid without deduction.
- 6.5 I was considering making an employer penalty under section 12A Employment Tribunals Act 1996. I was extremely concerned that this employee and possibly others have been working for the Respondent without being paid what they are rightfully owed, without explanation or any attempt to engage in a timely manner with the Claimant. This appears to be a significant breach of the most fundamental right – to be paid for work carried out – and is an aggravating feature of the complaint of unlawful deductions. It is not a genuine oversight or anything that can be readily explained. It is quite wrong that people who carry out work under a contract of employment should have to resort to Tribunal claims (or even Early Conciliation) in order to receive their wages for that work. However, I am also obliged to consider the Respondent's ability to pay before imposing any such penalty. It did not appear to me to be in the interests of justice to make a penalty, given the financial state apparently being experienced by the Respondent. Accordingly, I make no penalty.

Employment Judge Norris

Dated: 8 March 2019

Judgment and Reasons sent to the parties on:

18 March 2019

For the Tribunal Office