



EMPLOYMENT TRIBUNALS

Claimant:
Mr M Brahmi

v

Respondent:
IBMG Retail Limited
t/a iBrokemyGadget.com

Heard at: Reading

On: 26 February 2019

Before: Employment Judge George (sitting alone)

Appearances

For the Claimant: No attendance and no representation

For the Respondent: Mr P Cunningham (HR consultant)

JUDGMENT

1. The name of the respondent is changed to IBMG Retail Limited t/a iBrokemyGadget.com.
2. The Respondent shall pay to the Claimant the sum of £54.76 in respect of unauthorised deduction from wages.

REASONS

1. The Claimant was employed by the Respondent as a technician from 1 February 2018. Following a period of conciliation that took place between 20 March 2018 and 10 April 2018, he presented a claim on 11 April in which he claimed that he had not been paid all of the sums that were owing to him at the point of his resignation. In that claim form, he says that he had worked for the Respondent for 16 days and that he had only been paid £100.00.
2. The Respondent entered a response on 31 March 2018 in which they accepted that they had employed the Claimant and that he had resigned. However they defended the claim on the basis that he had only carried out three days' work for them before becoming sick and being uncontactable and finally resigning on 16 February. On their account he had not attended for work after 5 February 2018. The Respondent explained in the response that his contractual salary was £20,000.00 per annum with a three-month

probation period and that there was a signed copy of the contract. They also attached details of the calculation of the money that they said was due to him.

3. The Claimant, as set out in the decision on his application for postponement, has not further engaged with this process. Nor has he put forward any evidence in the case. However, the Respondent drew attention to an email in its bundle of documents apparently sent on 28 February 2018 (see page 41) by the Claimant in which he asked them why they were not paying his nine days' work. Mr Cunningham then argued that on 1 March (page 47) the Claimant had set out additional days that he said he had worked for them between 1 February and 12 February. This is different again to the ET1 claim form. The Respondent therefore says that the documentary evidence that they were provided with by the Claimant, with which they disagree in any event, did not set out a consistent case on the amount said to be owing.
4. I heard evidence from Mr S Khan who produced a witness statement dated 26 February 2019 which he adopted in evidence and the Claimant did not attend.
5. The issues that I needed to decide were:
 - (1) Who was the appropriate Respondent?
 - (2) For how many days did the Claimant work and had the Respondent paid him everything that he was entitled to be paid as at the date of resignation?
6. I have seen the Certificate of Registration for the company at pages 18-19. I am conscious that the Claimant has not seen this documentation. However, not only does it confirm a limited company name but it shows Mr Khan to be the officer and produces the correspondence address as I Broke My Gadget. It was something that I had in any event been going to raise because ibrokemygadget.com is the name of a website rather than the legal person. I am satisfied on information provided to me by Mr Khan that the appropriate respondent who was the employer in this case was in fact IBMG Retail Limited and the name shall be changed to "IBMG Retail Limited t/a ibrokemygadget.com".
7. I do not regard that as being sufficiently different to the prospective respondent on the ACAS early conciliation certificate because ibrokemygadget.com is essentially a trading name of the Respondent limited company. If I am wrong about that I am quite satisfied that that is an irregularity which should be waived.
8. I accept the evidence of Mr Khan who supplemented his witness statement by explaining to me that the daily rate used by the Respondent to calculate the sum which they say was owing had been calculated pro rata from the £20,000.00 gross per annum in the contract. He produced a letter (at page 49 of the bundle) dated 6 March 2018 which sets out that the

Claimant had worked on 1, 2 and 5 February 2018. That is backed up by the timesheet that is in the bundle at page 35. I therefore accept that those are the dates on which the Claimant worked and on no others. I find that £230.76 was the amount that was owing for those days. The Claimant himself accepts that he was paid £100.00 and therefore I find that that payment was made.

9. Mr Khan then says that the Respondent was entitled to deduct £76.00 in respect of broken parts. The contract of employment that starts at page 28 of the bundle includes at page 30 in clause 10 the provision that the claimant by signing the contract (and I accept Mr Khan's evidence that the name that appears on page 34 is an indication that the document was signed by the Claimant) authorises the Respondent to deduct from salary sums that include

"Losses sustained from cash or just due to mishandling and/or damage caused to the customer gadget and/or any additional parts. This includes company parts, in stock, for the purpose of repairs."

10. The respondent company is in the business of repairing mobile devices for customers and they have decided to make provision for deductions from wages if the technicians damage or cause loss by the way in which they are carrying out the repairs. That is relied on by the respondent as being a written authorisation under section 14 of the Employment Rights Act 1996 (hereafter the ERA). Section 13 establishes the right not to suffer unauthorised deduction from wages and that is the section under which the Claimant brings his claim. Section 14(4) says that:

"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 this 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."

11. It is argued by the Respondent that this is a provision which entitles them to deduct damages which they have had to incur to repair customers' phone or devices that have been damaged as a result of the actions of the technician. Accepting as I do in the absence of any challenge to Mr Khan's evidence that the written document at page 28 represents the terms of the contract and that the name written on page 34 indicates that the Claimant had signified in writing his consent to that deduction being made, I have concluded on the basis of the evidence before me that the deduction of £76 was made in accordance with a provision which complies with section 14(4)(b) of the ERA.

12. However, even notwithstanding that, there is a balance due to the claimant of £54.76 and Mr Khan accepts that that is owing. I therefore find that the claim of unauthorised deduction from wages is well founded and the Respondent should pay to the Claimant the sum of £54.76.

Employment Judge George

Date: ...25 March 2019

Judgment and Reasons
Sent to the parties on:

.....
For the Tribunal Office

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