



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr I Koczulap**

**v**

**AMJ Victory Property Limited**

**Heard at:** Watford

**On:** 7 February 2019

**Before:** Employment Judge Andrew Clarke QC

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** No attendance

## **JUDGMENT**

1. The respondent must pay to the claimant £620 in respect of unpaid wages.
2. The respondent must pay to the claimant £400 being a sum unlawfully deducted from his wages and/or a sum outstanding on the termination of his employment.
3. The respondent must pay to the claimant £79.69 in respect of monies expended by him on materials which sum was to be reimbursed to him and which reimbursement was outstanding on the termination of his employment.

## **REASONS**

1. This case and that of Mr R Szram were directed to be heard together as they raised common issues of fact. These reasons set out my findings in respect of both cases.
2. The correct name of the respondent in both cases is AMJ Victory Property Limited. Mr Szram was employed by the company from 1 June 2017 and Mr Koczulap from 19 September 2017. Each terminated his employment on 13 October 2017. Mr Szram gave a months' notice and Mr Koczulap gave a weeks' notice of termination. Notice was given, in each case, orally to Ms Podrozna, who was the person whom each claimant dealt with on behalf of the respondent. Each claimant gave notice because of what they perceived to be poor health and safety practices and because their requests for

payments due to them and for the provision of promised contracts of employment and payslips were not met. Mr Szram received one payslip during his employment, Mr Koczulap never received a payslip at all.

3. The respondent did not respond to the claim on behalf of Mr Szram. At a final hearing (converted into a preliminary hearing) on 18 July 2018 in the case of Mr Szram, Ms Podrozna attended on behalf of the respondent. She sought to explain the failure to provide the appropriate response (in time or at all) by reference to problems with post. She informed the Tribunal that all claims were contested. In those circumstances, the case was adjourned to be heard today. It was noted that the respondent remained debarred from defending the claim, but the respondent was given permission to apply in writing to lift that bar. Such written application was ordered to be accompanied by an explanation for the delay in responding and by a draft completed form ET3. No such application was received and, hence, the respondent remained debarred. The respondent did not attend today, although on notice of the date of hearing by reason of Ms Podrozna's attendance at the hearing in July and by reason of the written case management summary and orders having been sent to the address confirmed at that hearing as being the appropriate address for the respondent.
4. So far as Mr Koczulap's case is concerned, notice was given on 25 August 2018, that because no response had been presented to the claim a judgment might now be issued. The notification stated, "you are entitled to receive notice of any hearing, but you may only participate in any hearing to the extent permitted by the Employment Judge who hears the case." On the same date a notification was sent in both cases to the effect that the cases would be heard together today. The respondent has not attended.
5. Each claimant was told by Ms Podrozna that they were to be an employee and that they would receive £320 a week and that the respondent would make appropriate deductions of tax and national insurance. They have no idea whether any such deductions were made and, if made, whether tax and national insurance sums were appropriately remitted to HMRC.
6. From time to time agreement was reached for one or other of the claimants to do extra hours for which they would receive additional payment.
7. In each case, when the claimant was about to receive his first weekly wage, the respondent announced the making of a deduction which was described as a "deposits" in each case. It was said that this was made in case the respondent had to expend sums because of poor and incomplete work. This had not been agreed in advance. In the case of Mr Szram a sum of £400 was deducted immediately from his wages. In the case of Mr Koczulap the deductions took place over the first two weeks of employment, but the total sum deducted was £400. I am satisfied that it was implicit in that arrangement that the claimant would be repaid that money on leaving the respondent's employment. I am also satisfied that these were, in any event, instances of unlawful deductions from wages under Part II of the

Employment Rights Act 1996: there was no written agreement in respect of them.

8. From time to time the claimants were provided with monies for the purchase of materials to be used at the properties where they were working. On other occasions, they were asked to use their own monies to get materials on the basis that they would be reimbursed when Ms Podrozna next visited the site on which the relevant claimant was working. She habitually visited each of various sites some 2 or 3 times a week. I am satisfied that it was implicit in this arrangement that the claimants would be repaid any outstanding sums at the termination of their respective employments. At that time Mr Szram was owed £110 and Mr Koczulap £79.69. Each had sought payment on several occasions when Ms Podrozna visited their site, but she had failed to pay them. These are sums falling within the scope of the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994, as would be the deposits referred to above in the event of their not amounting to unlawful deductions from wages.
9. I am satisfied that as at the termination of his employment Mr Szram was owed the following sums:
  - 9.1 £750 in respect of unpaid wages.
  - 9.2 £400 in respect of the "deposit".
  - 9.3 £110 being an amount expended on materials and not reimbursed to him.
10. I am satisfied that as at the termination of his employment Mr Koczulap was owed the following sums:
  - 10.1 £620 in respect of unpaid wages.
  - 10.2 £400 in respect of the "deposit".
  - 10.3 £79.69 in respect of sums expended on materials and not reimbursed.
11. Given the respondent's non-participation in these proceedings and the fact that it is unclear whether the respondent ever made any appropriate payments to HMRC, I will order that the sums payable in respect of unpaid wages and the "deposits" be paid to the respective claimant in full such that it will be for that claimant to make appropriate payments (if any are due) to HMRC.
12. So far as the failures to provide terms and conditions and itemised payslips are concerned the claimants seek no more than that I record this was not done. Understandably, given the remove in time, they do not seek that I determine what were their relevant terms and conditions of employment and/or what should have appeared on their payslips.

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Employment Judge Andrew Clarke QC

Date: 11 March 2019

Sent to the parties on: 10 April 2019

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For the Tribunal Office