



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Cesar Mendes

v Remora Cleaning Ltd

Heard at: London Central Employment Tribunal On: 10 April 2019

Before: Employment Judge Davidson

Representation

For the Claimant: did not attend

For the Respondent: Mr E Jonkler, Director

JUDGMENT

The judgment of the tribunal is that the respondent is ordered to pay the sum of £322.00 to the claimant as arrears of wages.

REASONS

Preliminary points

1. The claimant did not attend the hearing. The tribunal clerk telephoned him and he said that the Notice of Hearing must have gone to his representatives, who had not informed him of the hearing. He was not able to attend in the morning but would be able to attend in the afternoon. The tribunal did not have capacity to hear the matter in the afternoon so I decided to proceed in the claimant's absence as his case was clearly set out in his claim form.
2. The respondent attended the tribunal despite not having lodged an ET3. The respondent's representative explained that the Notice of Claim and Notice of Hearing had been sent to the respondent's address without postage paid and he only became aware of this on 23 March 2019 when he collected the item from the Post Office on payment of the unpaid postage fee. I decided to allow the respondent to participate in the hearing and to make representations.

3. Although the claimant has stated in the ET1 that his surname is Cesar, on the basis of all the other documents before me, I find that the correct name is Mr Julio Jose Cesar Mendes and I amend the name of the claimant accordingly.

Facts

4. The respondent operates a contract cleaning company employing approximately 55 people. It is a term of the standard form contract (signed by the claimant) in clause 6.2 that *'In the case of an unauthorised absence by an employee, the Company reserves the right to make a deduction from salary, totalling the cost of additional costs incurred by the company as a result of this deduction'*.
5. The provision regarding notice was that the claimant was obliged to give a week's notice of termination. The contract in clause 19.4 states that *'If any employee refused to work their notice, the company reserves the right to make a deduction from salary, totalling the cost of a replacement during this notice period, or until a suitable replacement is found, whichever is soonest'*.
6. The claimant worked from 28 August to 7 September 2018, for which he was due to be paid £340. On 8 September he failed to attend work, despite being rostered to do so,. On 9 September he told the respondent that he was not working for them anymore.
7. The respondent failed to pay him the amount he was due for the period up to 7 September on the basis that the contract entitled them to deduct his pay for not working out his notice.

Decision

8. I find that clause 6.2 has been worded incorrectly and the final word should read 'absence' for the clause to make sense. However, I accepted that the claimant was aware of the meaning of the clause and the implications if he failed to attend work. I therefore find that the respondent was entitled to make a deduction from the claimant's pay to reflect the additional costs incurred by the respondent as a result of his unauthorised absence on 8 September. The respondent has confirmed that the loss suffered as a result of the claimant's failure to attend was £18, being the additional hourly rate payable to the employees who carried out the claimant's rostered hours.
9. I find that clause 19.4 relates to deductions from 'final salary'. I find that the claimant's pay for the days worked until 7 September is not properly categorised as 'final salary'.

10. In any event, I find that the respondent did not pay any of the claimant's wages and made no reference to additional costs incurred in finding a replacement and, as such, it was not a deduction allowed by the contract.
11. The respondent's apparent view that an employee will be deducted a week's wages if a week's notice is not given is not reflected in the contract and would, in my view, amount to a penalty clause as it bears no relation to the loss suffered by the breach.
12. I therefore do not make any deduction from pay in relation to the failure to give notice.
13. The claimant is entitled to his earned wages of £340 less £18 for his no-show day, making a total of £322.

Employment Judge Davidson

Dated: 10 April 2019

Sent to the parties on:

11 April 2019

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For the Tribunal Office