



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Jones

Respondent: Proactive Cards Limited

Heard at: Sheffield

On:

4 April 2019

Before: Employment Judge Little

REPRESENTATION:

Claimant: Mr P Jones, Husband

Respondent: Mr J Kayley, Managing Director

JUDGMENT

My judgment is that:

1. The complaint of unauthorised deduction from wages is dismissed on withdrawal.
2. The complaint in respect of holiday pay succeeds.
3. The respondent is to pay to the claimant forthwith the sum of £289 in respect of accrued but untaken holiday.

REASONS

1. In a claim form presented on 2 October 2018 the claimant brought complaints of unauthorised deduction from wages and in respect of holiday pay. At that time she believed that there had been an underpayment from her last wage of approximately £100 and she estimated that she was owed approximately £300 in respect of holiday pay.

2. There had been various difficulties in getting this case to a hearing. The respondent alleged that it did not receive the claim until the time for putting in a response had passed. Subsequently by the Order of Employment Judge Keevash dated 18 February 2019 the respondent was given an extension of time and the draft response which it had presented on 6 December 2018 was to stand as its defence to these proceedings. There had also been an aborted hearing on 7 December 2018 when it appeared that neither party had been given notice of the hearing. Today's

hearing was not entirely straightforward because the respondent had believed the hearing to be in Leeds and so the hearing did not actually get underway until approximately 2.45pm.

Evidence

3. I have heard evidence from the claimant, her husband, Philip Jones, and from Mr Kayley, the respondent's Managing Director.

Documents

4. The claimant provided me with a copy of her contract of employment, and the respondent had brought along copies of three payslips in respect of the claimant's relatively brief employment.

The Claimant's Case

5. At the beginning of today's hearing the claimant explained that she had now realised that there had *not* been a shortfall in her last wage and so no longer wished to pursue the unauthorised deduction from wages complaint. I have therefore treated that as being withdrawn and dismissed it on that basis.

6. The claimant's husband explained that having used the calculation tool for holiday pay on the YouGov website the claimant believed that she was entitled to a payment in lieu of holiday pay in the amount of £391.28.

The Respondent's Case

7. Mr Kayley accepted that in principle the claimant was entitled to a payment in lieu of holiday pay. He showed me a draft payslip dated 4 September 2018 which showed a calculation for holiday pay of £289. It is common ground that that payment has not been made to the claimant.

8. Mr Kayley also showed me a copy of an email he had written to the claimant on 5 November 2017. In that he referred to the claimant being aware of "the losses caused (by the claimant) far outweigh your holiday entitlement". Nevertheless, the email goes on to state that if the claimant was prepared to accept the amount stated on what is referred to as her "final payslip" in full and final settlement, then that would be paid.

9. The claimant has explained to me that her reason for not responding to that proposal was that she believed that the respondent was making unjustified threats to claim monies from her for allegedly defective or faulty printing work. In particular, she was concerned about the timing of a text or email very shortly before commencement of a family holiday of which the respondent was aware. In any event the claimant believed that she was entitled to more than was being offered.

No right to counterclaim or set-off

10. I have explained to the respondent that because Mrs Jones is not bringing a complaint of breach of contract before the Tribunal, the Tribunal does not have jurisdiction to entertain an employer's contract claim (counterclaim) or set-off; not that the respondent had actually formally sought to do that.

My Conclusions

11. In the circumstances the only issue I need to deal with is holiday pay. On the face of it that would have required me to assess what holiday entitlement the claimant had accrued during her three months' employment, what holidays she had actually taken during that period and then to determine whether there was a balance of accrued but untaken holiday in the claimant's favour. During the course of the claimant's evidence it became clear that she had, during the course of her employment, benefitted from two Bank Holidays for which she had received payment. The claimant's contract of employment permits Bank Holidays to be included within the calculation of the statutory minimum. The claimant readily accepted that she had not taken those two days into account when putting the facts into the online calculator. It appeared that she was now prepared to accept the respondent's calculation.

12. However, during the course of Mr Kayley's evidence he tried to do some calculations of his own on his mobile phone and believed that his wages clerk had got the figure wrong on the draft payslip with the result that the claimant was entitled to less. It was then pointed out by Mr Jones that Mr Kayley's calculation was based upon the wrong hours of work. Even so, Mr Kayley still thought the calculation on the draft payslip was too much.

13. The claimant must of course give credit for the two Bank Holidays she was paid for. Mr Kayley today in effect sought to disagree with his own calculation, or more particularly the calculation of his wages clerk. With respect, I consider that his wages clerk is more likely to have arrived at the right figure than Mr Kayley would have done by means of a rough and ready calculation during the course of giving evidence today.

14. In those circumstances I considered that justice would be done and the claimant would receive her proper holiday entitlement by my entering judgment in her favour for £289.

Employment Judge Little

Date 18th April 2019

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