



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N Bhandal

**Respondent:** Threading Guru Limited

**Heard at:** Bristol

**On:** 10 May 2019

**Before:** Employment Judge C H O'Rourke

**Representation**

Claimant: In person

Respondent: Mrs N Sokhi - manager

## REASONS

**(Having been requested subject to Rule 62(3) of the Employment Tribunal's Rules of Procedure 2013)**

### Background and Issues

1. The Claimant was employed by the Respondent, following a transfer subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) on 1 August 2018, from V9 Beauty Ltd, for a continuous service period of approximately three and a half years. At or about 5 November 2018, she ceased work. It is disputed as to the nature of that cessation, either by dismissal by the Respondent or resignation by the Claimant, but that in any event is irrelevant to this matter, as the Claimant's claim is purely in respect of unlawful deductions from wages (to include sick pay) to that point and also for arrears of holiday pay.
2. The Respondent had not entered a Response to the Claim and accordingly, subject to Rule 21(3), they were only entitled to participate in this Hearing to the extent permitted by me. The Respondent had given no indication that they intended to attend the Hearing and they not being present at the listed time of 10.00 a.m., it proceeded in their absence. After a short period of discussion, a short adjournment was ordered, to permit the Claimant to set out the calculation of her loss (something she had not done to date) and during that adjournment the Respondent's representative arrived at the Tribunal. When the Hearing re-commenced, I agreed that the Respondent could participate, to the extent of challenging

the figures advanced by the Claimant for her losses and the issues were reiterated, for Mrs Sokhi's benefit. Mrs Sokhi contended that the Respondent had in fact filed a response to the Claim and referred to the text included in their copy of the ET3, at Box 6, as to their resistance to the Claim. However, such Response had been filed out of time, without an application for an extension of time for its acceptance and therefore had been rejected, of which the Respondent was aware. In any event, the ET3 filed with the Tribunal did not contain the text referred to in Box 6, for which the Respondent could not account.

### The Law

3. Section 13 of the Employment Rights Act 1996 states that:

- (1) An employer shall not make a deduction from wages of a worker employed by him unless:*
- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract,*
  - or*
  - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.'*

### The Facts

4. I heard evidence from the Claimant, who had also provided a statement.
5. The Claimant provided a contract of employment from V9 Beauty Limited that set out her salary to be £11 per hour, along with a monthly car parking allowance of £100. She worked 25 hours per week. In the absence, therefore, of any agreement by her to the contrary, those terms and conditions transferred across to her employment with the Respondent, subject to Regulation 4 of the TUPE Regulations.
6. The Respondent, however, clearly did not wish to pay her at that rate and the Claimant's evidence was that, in August, she was instead paid at £9 per hour. She disputed this rate of pay with the Respondent and they increased it in September to £10 per hour, but, at the same time, failing to pay her the parking allowance. The Claimant continued to dispute these deductions and there was no documentary evidence of her written advance agreement to them.
7. The Claimant went on sick leave on 18 October, remaining on sick leave until the termination of her employment, with effect 5 November (during which time she was not entitled to the parking allowance, as she was not at work). She was not paid Statutory Sick Pay for that period.
8. She states that at the point of termination of employment, she had accrued seven days' untaken holiday, for which she is entitled to payment. Normally, in such circumstances, the Tribunal would expect a respondent employer to be able to produce records to show an employee's holiday entitlement and whether or not it had been taken. Beyond providing a pay slip for the Claimant pre-dating the Transfer, showing her as having taken some holiday at that point, the Respondent was unable to provide such

documentation and accordingly, therefore, in the absence of such evidence, I find, on the balance of probabilities that the Claimant is owed seven days' pay in lieu of holiday entitlement.

9. None of the deductions in wages were denied by the Respondent, who seemingly failed to understand that contrary to s.13(1) (as set out above), they were not entitled to unilaterally make such deductions and would only have been entitled to do so if they had obtained the Claimant's prior written agreement to them (s.13(1)(b)), which they had not. Accordingly, therefore, such deductions were unlawful.

Calculation of Loss

10. 1 to 31 August – 4.4 weeks at 25 hours per week – 110 hours at £2 deduction per hour - £220.
11. 1 September to 18 October – 6.5 weeks at 25 hours per week – 162.5 hours at £1 deduction per hour - £162.50.
12. All of September to 18 October – 1.5 months' deduction of parking allowance - £150.
13. 18 October to 5 November – 2.5 weeks at £94.25 SSP per week - £235.63.

Total Deductions from Wages - £768.13

14. Holiday Pay – At 25 hours per week, an average day's working hours are 5. Seven days, at 5 hours per day is 35 hours, at £11 per hour - £385.

Conclusion.

15. Accordingly, therefore, the Respondent made unlawful deductions from the Claimant's pay and failed to provide pay in lieu of accrued holiday and is ordered to pay the Claimant the total sum of £1153.13.

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Employment Judge O'Rourke

Date: 28 May 2019