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EMPLOYMENT TRIBUNALS

Claimant: Miss J Howlett
Respondent: Unicus Agency Limited
Heard at: East London Hearing Centre
On: 24th July 2019
Before: Employment Judge McLaren

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT

The judgment of the Employment Tribunal is: -

- (1) The complaint to the employment tribunal that the employer has made a deduction from wages in contravention of section 13 is well-founded and I make a declaration to that effect.
- (2) I order the respondent to pay the claimant £1595.76 being the amount of the deduction made in contravention of section 13.
- (3) I further order the respondent to pay the claimant £405 as compensation for financial loss sustained by her as a result of the respondent's failure to pay her wages.
- (4) The claim for breach of contract is dismissed as that loss of pay for the notice period falls within the sum claimed for deduction from wages.

REASONS

Background

1. The claimant was employed from 11 March 2019 until 2 April in that year, a period of some three weeks. At the date she left the claimant had not been paid her salary and this remains outstanding today.
2. The claimant also told me that she was aware the respondent had recently given up its registered office and was now operating using a different trading name from the directors' home addresses. She was also aware that another colleague of hers who had stayed on longer than she had, had been unpaid for a few months. She was concerned that the company might place herself in liquidation to avoid paying its debts.
3. The respondent did not attend. Efforts were made to contact them, but it is clear from the defence filed that they did not intend to come to court. I decided to proceed in their absence as I was satisfied, they were aware of the hearing and their non-attendance was an active choice.

The issues

4. The claimant brings claims for breach of contract and for unlawful deduction from wages. It is not disputed that the claimant was an employee. It was also not disputed by either party that she was entitled to wages for the entire period of her employment and that none of the relevant statutory exceptions applied in this case.
5. The claimant's employment was ended by the respondent, it appears because they lost a significant client. Under the terms of her contract of employment she was still within the probationary period and was therefore entitled to one week's notice. This one week's notice is included in the period for which her wages were unpaid. There is therefore no separate claim for breach of contract.

Relevant law

6. The statutory prohibitions on deductions from wages are contained in Part II of the Employment Rights Act 1996 (ERA). The general prohibition on deductions is set out in S.13(1) ERA, which states that: 'An employer shall not make a deduction from wages of a worker employed by him. The legislation contains various exceptions.
7. Section 23 of the employment rights act provides a route of complaint to an employment tribunal and section 24 under the heading. Determination of complaints provides as follows:
 - (1) *Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*
 - (a) *in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,*

- (b) *in the case of a complaint under section 23(1)(b), to repay to the worker the amount of any payment received in contravention of section 15,*
 - (c) *in the case of a complaint under section 23(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and*
 - (d) *in the case of a complaint under section 23(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.*
- (2) *Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*

Findings of Fact

8. The claimant had worked with the respondent prior to joining them as an employee. They were a client of hers at her previous employer and they headhunted her from Mariana.

9. The claimant gave evidence and stated that the respondent are fully aware of the circumstances of her previous employment as she did not accept the comments made in their defence that she had failed to turn up for work with her previous employer and told them she was off sick.

10. From the documentation I was provided with at the hearing I can see that the claimant was made an offer of employment on 20 February 2019 to take the position of digital marketing manager. There are two letters of the same date, the first offers an annual salary of £35,000, the second one of £38,000. The claimant explained that the original offer was not acceptable to her so that she asked little bit more money and they agreed and therefore she was hired on an annual salary of £38,000 per month.

11. It was also agreed that she started work on 11 March and I was provided with an email exchange from James Coughlan the head of tech and operations of 28 February 2019 confirming the start date as well as a welcome to Unicus first day letter with the same date in it.

12. It seems clear that the respondent lost some significant business fairly shortly after the claimant joined them. In the ET3 the respondent blames the claimant for this loss. The claimant strenuously denies this. Part of the documents that she provided confirmed that she was told on her first day of work that one of these major clients will be pulling the plug. As she pointed out in her email of 10 April to James Coughlan when she merely complied with his request for additional information, her contribution made no difference whatsoever to that client's decision.

13. The company pay date was 29 March. 2 April the claimant contacted the respondent to let them know she had not been paid and to ask what was going on. In that email she let them know that her mortgage had bounced that she has been charged £10 a day interest by NatWest and that her online banking had been blocked as was her phone for 72 hours.

14. There was no response to this email and the claimant therefore followed it up with a further email 3 April 2019 asking the respondent to tell her the date it was to be paid and why it had been delayed for a week with no explanation or communication. This met with a response from James Coughlan the next day. That email apologised and stated that there were two reasons for the delay. Firstly there is a short-term cash flow issue in the business and secondly the payroll system generated a payslip with incorrect amounts. The letter concluded that the respondent would be working on this matter today and would ensure the correct salary would be paid by close of business the following day. There is a second email of the same date from the same individual which states that the non-payment was because a mixup with accountants due to contract dates. Both these emails reference the mortgage company and one states that the respondent provide a letter to the mortgage company.

15. On 8 April at 9:30 the claimant had still not been paid and raised this with the respondent who responded that afternoon to say that the reason they had not paid her was that they were in dispute with two companies which means that they had cash flow problems which caused the delay in paying the claimant's wages. They asked for information from her to help with this. The claimant provided that information on 10 April and heard nothing further.

16. In her evidence the claimant confirmed that she had calculated she was owed £1595.76 in unpaid salary. The non-payment of her wages had caused her other financial problems. She had been late on her mortgage payments and she provided me with two letters from virgin money debt management one of 2 April 2019, 2 May 2019. These letters informed her that because she had not paid her mortgage charge of £15 will be added to cover the costs involved. The claimant was also aware that she was likely to be fined for late payment of her service charge but did not have any evidence of this amount. She said that she had already had to pay penalties to her utilities providers but did not have those details.

17. She was able to provide details of the penalties in council tax arrears that she was charged because she had not been paid. I was provided with documentation which shows that she was charged £280 penalty, £65 summons costs and £30 charge for a liability order.

Conclusion

18. The respondent did not dispute that it owed the claimant the sum she has claimed for unpaid wages.

19. I am satisfied that the mortgage penalty and council tax penalties that the claimant incurred are financial loss sustained by the claimant attributable to the matter complained of. In addition to making a declaration that her complaint under section 23

of the Employment Rights Act is well-founded, and ordering the payment of unpaid wages, I also make an order that the respondent compensates the claimant for this financial loss. This is in the sum of £405.

Employment Judge McLaren

30 July 2019