



EMPLOYMENT TRIBUNALS

Claimant: Mr Daniel Perry

Respondent: Excel Parking Services Limited

HELD AT: Sheffield

ON: 20 August 2019

BEFORE: Employment Judge Little

REPRESENTATION:

Claimant: No attendance or appearance

Respondent: Mr N Attwood (technical director)

JUDGMENT

My Judgment is that the complaint of unauthorised deduction from wages fails and so this claim is dismissed.

REASONS

1. The claimant has failed to attend today's hearing. Notice of this hearing was sent to the claimant on 29 May 2019 both by post and to the most recently advised email address for the claimant. The claimant had given no indication that he would not attend the hearing of his own claim.
2. Having waited until 10.15 in order to cover the possibility that the claimant might be running late I proceeded to hear the claim. I have considered what is set out in the claimant's ET1 and details of claim although of course the only issue I am now dealing with is whether there was an unauthorised deduction from wages.

3. I have read a statement from Karen Gillott the respondent's senior operations manager who has attended today and confirmed the truth of her statement. The respondent has also prepared a bundle for today's hearing.
4. The claimant contends that in the latter part of his brief employment he was entitled to be paid pro rata at £25,000 gross per annum rather than what he was actually paid which was pro rata at £23,000 gross per annum.
5. The claimant can only suffer an unauthorised deduction from his wages if he had a contractual entitlement to the higher rate of pay. As I understand the claimant's case he contends that he successfully completed the probationary period and having satisfied that condition his starting salary should have been increased.
6. The respondent's case is that the claimant did not successfully complete the initial 16 week probationary period which began when his employment began in June 2018. They say that the reason for that was that the claimant, who had been employed as facilities manager, had not been properly supervising two of the team who he managed and was unaware that they had been leaving site early but claiming pay for periods when they were not working. The respondent says that it was in those circumstances that the claimant was informed in October 2018 that the probationary period was being extended for a further 12 weeks so that it would run until 24 December 2018.
7. The initial offer letter of 21 May 2018 which explains the starting and increased salary once the probationary period has been completed is at page 25 in the bundle. The letter notifying the claimant that the probationary period was being extended is at page 47 in the bundle.
8. The respondent's case is that following the notification of the extension the claimant became disaffected and, in Mrs Gillott's words went about "slagging off" the respondent. She describes that as unruly behaviour particularly for a line manager in a position of considerable responsibility. It was in those circumstances that the claimant's employment was terminated on 5 November 2018. It is therefore the respondent's case that the claimant never successfully completed the probationary period and so was never entitled to be paid anything other than pro rata £23,000 per annum.
9. Earlier within these proceedings the claimant indicated that he was seeking compensation in the region of £5,000 if his claim succeeded. However Employment Judge Lancaster caused a letter to be written to the claimant on 26 April 2019 pointing out that if the claimant's case succeeded that would result in him being entitled to an extra £166.66 gross per calendar month for the period 1 October 2018 to 12 November 2018, the latter being the effective date of termination after notice in lieu.
10. On the evidence before me the respondent was not in breach of contract in extending the probationary period. The probationary period was described in the offer letter as being 16 weeks or until confirmed as successfully completed. Accordingly the respondent had the contractual right to extend the period. There is no suggestion that the concerns which led to the extension were false or a sham.

The respondent's case is that the increased payments to the claimant would have been relatively modest and would not have justified the respondent going to the trouble of inventing reasons to extend the probationary period. As there was no breach of contract it follows that nor was there an unauthorised deduction from wages and accordingly the claim fails.

Employment Judge Little
Date 22nd August 2019

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