



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 1601718/2018

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Held in Glasgow on 30 April 2019

Employment Judge: R Sorrell

10 **Mr M McNulty**

**Claimant
In Person**

Solo Service Group Ltd

**Respondent
Represented by:
Mr Paul Drakeley -
Operations Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Tribunal is that the claim for unauthorised deductions from wages is well founded and upheld and the respondent is ordered to pay to the claimant the sum of £1200 (Twelve Hundred Pounds).

REASONS

Introduction

- 25 1. The claimant lodged a claim for unpaid wages on 24 November 2018.
2. As both parties were unrepresented, the procedure for the Hearing was explained to parties.
3. Parties lodged separate productions.
4. The claimant gave evidence. The respondent did not call any witnesses.

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Findings in fact

5. The following facts are found to be admitted or proven:-
E.T. Z4 (WR)

- (i) The claimant's date of birth is 4 August 1975.
- (ii) The claimant was employed by the respondent as a Mobile Supervisor from 29 September 2017 until 31 October 2018 on a casual basis with no fixed contractual hours. He was paid an hourly gross rate of £7.83. He was also paid for his travelling time at the same rate of pay.
- (iii) The respondent is an independent cleaning service provider. It has sites all over the UK and employs over 3,000 people. The claimant's role was to travel to various respondent sites across the UK to ensure that they were being properly cleaned as well as providing cover for other staff.
- (iv) The claimant completed and submitted his mobile timesheets on a four weekly cycle to his manager, Mr William Gray. For work carried out at the Dunelm retail sites, Mr Gray recorded the claimant's hours of work on separate variation sheets and submitted these himself.
- (v) During the month of October 2018, the claimant worked across the UK sites in order to clear the respondent cleaning products before the TUPE transfer of the respondent company to 'Servest' took effect.
- (vi) On 26 October 2018, the claimant contacted the respondent Regional Director of Scotland, Mr Martin Mulvey because he had not been paid his wages for the hours he had worked in October. Mr Mulvey gave the claimant different reasons for the non- payment of his wages. He firstly questioned the claimant's timesheets submitted for October which the claimant explained to him. He then sent the claimant his timesheets for September 2018. When the claimant called Mr Mulvey to query that, Mr Mulvey said the respondent was looking into the number of hours he had worked at the Dunelm Aberdeen site and the amount he had been paid for it.
- (vii) On 29 October 2018, the claimant emailed the respondent helpdesk as follows:-

5 *'Hi I would like some clarification as to when I will be getting paid by wages? I was due my wages on 26 October 2018. This is now 29 October 2018. I have took legal advice on this although I would prefer not to go down that route I will be left no option if my wages are not paid today. Regards Mark' (R29)*

- (viii) On 8 November 2018, the respondent replied to the claimant's email as follows:-

'Dear Mark

10 *Further to your recent query regarding outstanding wages, in order for us to investigate this further, I write to request that you provide us with a breakdown of your hours worked between the dates 1 July 2018 and your final day of work with Solo Service Group (inclusive). Once we have received this information, we will be able to investigate this further and rectify any under/overpayment of wages. I look forward to*
15 *hearing from you.*

Yours sincerely

On behalf of Solo Service Group

Carly Kennedy HR Officer' (R30)

- 20 (ix) The claimant could not provide the respondent with a breakdown of the hours requested because he did not keep a personal record of the hours he worked for the respondent. In response to the respondent's email, the claimant called the Human Resources Department on a number of occasions and left messages for Mr Mulvey to call him back which he did not respond to.

- 25 (x) On 5 December 2018, the respondent wrote to the claimant as follows:

'Dear Mark

Re: Wages

Further to your recent query regarding outstanding wages, we have carried out a thorough investigation and write to confirm the following:

As you are aware, the hours you worked to carry out the Dunelm Aberdeen refit and the hours that you have been receiving payment for work carried out during Dunelm Aberdeen Refit have been investigated following a complaint from our client that the hours worked did not match the hours being claimed.

Having cross referenced the information we received from your contract manager, yourself, our client and the attendance registers for the dates 16 July 2018 to 30 September 2018 (inclusive), we believe that you have been overpaid by 191.5 hours.

The breakdown of the hours we believe you worked at Dunelm Aberdeen, as per the enclosed document, total to 32.5 hours, however you have already received payment for 224 hours:

Payment received 3 September 2018 – amount paid 119.5 hours at £7.83

Payment received 28 September 2018 – amount paid 104.5 hours at £7.83

Total hours paid – 224 hours

Therefore, there are no further payments due to you for the work carried out at Dunelm Aberdeen and that this brings our investigations to a close.

Should you disagree with our findings, please confirm in writing the days that you worked at the store which have not been included on the attached breakdown, so that we can re-check the attendance register for signing in/out entries made by you.

Yours sincerely, on behalf of Solo Service Group

Carly Kennedy

HR Officer' (R31-33)

- (xi) The respondent has not sought to recover the alleged overpayment made by the respondent to the claimant for his work at the Dunelm site in Aberdeen. (Paragraph 17, R23)
- 5 (xii) The respondent has lodged a selection of the claimant's timesheets which are undated. (R63-66)
- (xiii) The respondent has lodged copies of the employees' attendance register for the period 18 July 2017 to 7 October 2018. (R40-62) The claimant registered his attendance at work on 1 October 2018. (R61)
- 10 (xiv) The claimant has lodged wage slips for the period 24 November 2017 to 28 September 2018 that show a monthly gross salary ranging between £634.23 and £2152.50 (C2-14)
- (xv) The claimant is due £1200 from the respondent for the hours he worked in October 2018.

15 **Submissions**

Respondent's submissions

6. The claimant has been asked to provide documentation on a number of occasions to show that he worked for the respondent in October 2018. The respondent has not shied away from doing that, or from paying any money
- 20 out if the claimant can demonstrate that he has worked the hours he claims in October 2018. It is the respondent's belief that he did not work in October 2018, but if he can produce the timesheets to show the contrary, we would look at it again.

Claimant's submissions

- 25 7. The claimant submitted that he has said all he has to say. If his work had ended on 29 September 2018 as claimed by the respondent, when he contacted Mr Mulvey on 26 October 2018, this is the first thing Mr Mulvey should have said.

Relevant law

Unauthorised deductions from wages

8. The law relating to unauthorised deductions from wages is contained in Section 13 of the Employment Rights Act 1996 (the 'ERA').

5 This states: "An employer shall not make a deduction from wages of a worker employed by him unless:-

(i) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract [Section 13(1)(a)]; or

10 (ii) The worker has previously signified in writing his agreement or consent to the making of the deduction [Section 13(1)(b)]."

Section 13 (2) states: "In this section "relevant provision," in relation to a worker's contract, means a provision of the contract comprised –

15 (i) In one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question or, [Section 13(2)(a)]

20 (ii) In one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion [Section 13(2)(b)].

25 Section 13 (3) states that: "Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

Issues to be determined by the Tribunal

9. The Tribunal identified the following issues required to be determined:-

- (i) Is the deduction from the claimant's wages by the employer required or authorised to be made in accordance with a relevant provision of the claimant's contract?
- 5 (ii) If so, is this provision contained in one or more written contractual terms of which the respondent has given the claimant a copy before making the deduction?
- (iii) If not, has the claimant previously signified in writing his agreement to the deduction?
- (iv) If not, has the respondent made unauthorised deductions from the
10 claimant's wages?
- (v) If so, how much is the claimant to be awarded?

Conclusion

- 10. I accepted the claimant's material evidence as true that he had not been paid by the respondent for the hours he had worked in October 2018 and that he
15 was due £1200 from the respondent for that work.
- 11. In reaching this view I have taken account of the following:-
- 12. I found the claimant to be an honest and credible witness who gave his evidence in a straightforward manner and was consistent in his account of events.
- 20 13. In contrast, having assessed the documentary evidence lodged by the respondent in support of their position that the claimant was not due any wages for work undertaken in October 2018, I found that it was evasive, inconsistent and contradictory. This is because I found the claimant's evidence credible that during his telephone conversation with Mr Mulvey on
25 26 October 2018, he gave him three different reasons as to why he had not been paid for work undertaken in October 2018 and that not one of these reasons was due to his employment ending in September 2018.

14. Furthermore, the claimant was clear in his email of 29 October 2018 to the respondent that he was asking about the payment of his wages for work undertaken in October 2018, yet in the respondent correspondence to the claimant dated 8 November 2018 and 5 December 2018, there is no
5 acknowledgment of that or indeed any statement from the respondent that the claimant was not due any wages for work undertaken in October 2018 as his employment had ended in September 2018.

15. Instead, the respondent placed the onus upon the claimant to provide a breakdown of his hours, which I considered the respondent would already
10 possess a record of, and stated that the claimant was overpaid for the hours he worked at the Dunelm site in Aberdeen between July and September 2018, which the respondent has not sought to recover and has no intention of doing so.

16. Moreover, I found that it was clear from the employee attendance register
15 lodged at R61 that the claimant worked for the respondent on 1 October 2018 which was corroborative evidence in support of the claimant's evidence that he did work for the respondent in October 2018.

17. For all of these reasons the claim is well founded and upheld.

Compensation

20 18. On the basis that I do not have sufficient information to award compensation as a net amount, the award of £1200 represents a gross figure.

Employment Judge: R Sorrell
Date of Judgment: 15 May 2019
Entered in register : 16 May 2019
25 **and copied to parties**