



EMPLOYMENT TRIBUNALS

Claimant: Mr K Reid

Respondent: Burton Same Day Couriers Limited

Heard at: Nottingham **On:** Friday 16 August 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondent: No Appearance

JUDGMENT

The Employment Judge gave judgment as follows: -

1. The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay the Claimant the net sum of £330.45.
2. The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £330.45.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 19 February 2019. He said that he had been employed by the Respondents as a Van Driver between 1 October 2015 and 21 December 2018. He was not legally represented at the time and in paragraph 8 he simply ticked the box for other payments. In the details of his claim he said:

"I handed my notice in on 21.12.18 to the accountant (Keith). I told him I was happy to work my notice. As I went to leave he threatened my with the Police if I drive the van home and he wanted me to leave there and then demanding my keys and fuel cards. They have failed to pay my final week's pay claiming I owe money for fines that I no nothing about. I have never received a letter saying I have a fine I'm my name."

2. I am satisfied from the claim form that the Claimant was complaining of a failure to pay his notice pay, him having given the Respondent notice and also his week in hand.

3. The claim was accepted and on 15 April 2019 a letter was sent to the parties enclosing the claim form, together with an ET3 form and a notification of the hearing today.

4. The Respondents clearly received that letter because they completed the response form and returned it to the Tribunal on 13 May 2019 which was the last day for them to file their response.

5. The hearing was listed for 16 August 2019 at 2:00 pm. Nothing further was heard from the parties.

6. On 15 August I instructed my listing team to bring the case forward to 10:00 am. The telephone call was made to the Claimant and to the Respondent. My officer was not able to speak to Mr Varley but spoke to a member of staff at the Respondents and informed her that the case was now to be heard at 10:00 am, not 2:00 pm. The lady she spoke to said that she would inform Mr Varley. She did not query the hearing date or the hearing at all.

The Hearing Today

7. Mr Reid attended the hearing by 10:00 am as directed. The Respondent did not appear or contact the Tribunal in any way. I instructed one of my clerks to ring the Respondent and she spoke to him at 10:30 am. Mr Varley said to her that he had received the forms but not the hearing notice and he would send in an e-mail explaining his absence.

8. I was satisfied that this was an unsatisfactory explanation for the Respondent's non-attendance. They must have received the hearing notice because attached to the hearing notice was the ET1 which they had responded to on the ET3 form which was also enclosed with that letter. Mr Reid had taken the trouble to come from Newhall in Derbyshire where he lives and was anxious to proceed with the hearing.

9. The Tribunal later received an e-mail at 10:56. That letter says that the Respondents had received:

“Nothing in regards to the case at our correspondence of address of 4 Horninglow Street, Burton-on-Trent, Staffordshire DE14 1NG.

In normal circumstances we would have expected to have received papers notifying of the hearing date and directions.”

10. I am satisfied that they had received notification of the hearing and the directions in the letter that was sent to them on 15 April 2019 and that they simply chose not to attend the hearing today.

11. The letter requested an adjournment “until we are in receipt of the hearing notice”.

12. I was not prepared to grant any postponement of the hearing in the circumstances and decided to proceed in their absence.

Evidence

13. Although the respondents did not attend the hearing and did not therefore produce any evidence I considered what they said in their ET 3 and I put to the claimant what was said about him in the ET 3. I heard evidence from Kieran Reid who produced to me the following: -

13.1 A copy of a contract of employment in the name of his father who also works for the company and which he assures me is exactly the same as his own.

13.2 A copy of the company handbook.

13.3 A copy of a pre-action protocol letter from solicitors for the Respondent threatening to sue him for £1,337.40.

13.4 Copy of his payslips.

Facts

14. Mr Reid started working for Burton Same Day Couriers Limited on 1 October 2015. He worked for them as a van driver. The business is run by Keith Varley who is a Director and Secretary of the company.

15. Mr Reid was paid £320.00 per week for a 40-hour week but regularly worked overtime.

16. Mr Reid produced to me his payslip. The last payslip that he had was on 16 November 2018. That was week 33 of the tax year. That payslip informed me that to date he had been paid:

- Gross pay £13,812.20
- Tax £1,217.00
- National Insurance £992.94

17. Averaging these out over the 33 week period gives the following weekly sums: -

- Average gross pay £397.34
- Average tax £36.88
- Average National Insurance £30.09
- Average take home pay £330.45

18. Mr Reid explained to me that when he started work for the Respondent he worked a week in hand so he was always paid one week in arrears.

19. I could see from the contract of employment that he produced to me that there is no provision in the contract authorising any deductions from his wages. Similarly, the company handbook that he produced contained no such term.

20. I noted that in the pre-action protocol letter from the Respondent's solicitors Astle Paterson dated 18 April 2019 whereby they threatened to sue the Claimant in respect of sums they said were due from him that:

"It is also a term of your contract that where our client incurs any traffic offence notices or fines due to the company vehicle being driven illegally by you or parked illegally by you, the company are legally entitled to recover said fines from you."

21. There were no such terms in his contract.

22. I also note from Mr Reid's own evidence that whilst the Respondent's threatened to sue him on 18 April 2019 no such proceedings have ever been commenced.

23. With the letter was an attached schedule of alleged wage deductions and sums it was said were due from the Claimant.

24. Mr Reid told me and I accept that no deductions were ever made from his wages and he was not aware of any of the penalty notices prior to his dismissal. In respect of the body repair claims he says that he had an accident at the end of February 2018 in the van. He was driving in Wales in snow and a car had stopped in the middle of the road. He tried to stop and skidded into it. There was an invoice for £1,127.60 for damage to that vehicle registration number GD15 ZTK. Mr Reid received a final written warning from his employer in respect of that but nothing was said about recovering damages caused to the vehicle as far as he was aware and no deductions were made. This is the only accident that he had.

25. There is another invoice for a Mercedes Sprinter van registration YM67 PGU. Mr Reid has driven that vehicle but never had an accident in it. The person responsible for the accident in respect of that invoice was another employee Steven Marsden. Again, no deductions were ever made.

26. In respect of the four penalty notices in respect of his vehicle he does not dispute that he may have been driving the vehicle at the time but he had never known anything about them until he received the solicitor's letter four months after the termination of his employment.

27. Mr Reid says that he never agreed to any deductions.

28. He also says that he never had a cargo truck which the solicitor's letter says is also missing.

29. Mr Reid had obtained employment commencing in the new year and handed in one week's notice on 21 December 2018 to the company's accountant, Keith. He said that he was happy to work his notice. As he went to leave the office Keith threatened to call the Police if he left with the van. He had to hand in the keys and fuel cards.

30. He received no further payments which means that he has not been paid his notice pay or his last week's pay. He claims £330.45 wages and £330.45 notice pay.

The Law

Breach of contract in respect of notice

31. The Claimant gave one week's notice and is entitled to his one week's notice pay unless the Respondents were entitled to dismiss him without notice because he had committed a fundamental breach of his contract of employment entitling them to do so.

Unlawful deduction of wages

32. This claim is made under Section 13 Employment Rights Act 1996. That provides:

“(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.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised: -

(a) 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

(b) 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.

(3) 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 the 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.”

My Conclusions

Breach of contract in respect of notice pay

33. I am satisfied on the evidence I have heard that Mr Reid lawfully gave to his employer one week's notice of termination of his contract of employment. He was entitled to be paid his notice pay as the Respondents did not require him to work his notice having taken from him his van and keys and told him in no uncertain terms that he was not required to work.

From the information I have received the Claimant's average take home pay as described above was £330.45 per week and I am satisfied that the Claimant therefore is entitled to be paid that sum in respect of his claim of notice pay.

Unlawful deduction of wages

34. The Respondents in their ET3 provide much information which I am satisfied is untrue. They say the Claimant's normal take home pay was £258.20 per week when from the pay slips that I have seen it was clearly much more than this and in fact was the amount that I have calculated.

35. They also say that from the final week's pay they made a deduction of £320.00 in accordance with the deductions policy in the contract of employment in the company handbook. There is no deductions policy in the employment contract or in the company handbook.

36. I am not satisfied that they made any deductions from his pay prior to the date of his dismissal. I accept Mr Reid's evidence that he knew nothing about these matters until he received the pre-action protocol letter from the Respondent's solicitors on 18 April 2019 which was sent to him three days after the notice of claim was sent to the Respondents and no doubt in response to that.

37. Not only am I not satisfied that the Claimant owed the Respondents any money at the termination of his employment but in any event the Respondents were not entitled to make any such deduction because there was neither a provision in the Claimant's contract or any written agreement by him to make those deductions. I am satisfied therefore that there has been an unlawful deduction of his wages in the net sum of £330.45 and the Respondents are ordered to pay that sum to the Claimant.

Employment Judge Hutchinson

Date 30 September 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE