



EMPLOYMENT TRIBUNALS

Claimant: Ms E Murray

Respondent: Safehands

Heard at: Llandudno **On:** 5th June 2018

Before: Employment Judge R F Powell

Representation:

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claim for an unlawful deduction from wages contrary to sections 13 & 23 of the Employment Rights Act 1996 is well founded and the respondent is ordered to pay to the claimant the net sum of £1005.45.
2. The claim for breach of contract by the failure to pay one week's notice pay is well founded and the respondent is ordered to pay to the claimant damages in the gross sum of £266.44.
3. The claim for an unlawful deduction from wages in respect of accrued holiday pay is well founded and the respondent is ordered to pay to the claimant the gross sum of £461.49.

REASONS

Introduction

1. This claim was heard on the 5th June 2019. Unfortunately documents which the claimant had provided to the Cardiff office had not been able to reach the Llandudno County Court Centre and accordingly, I heard Ms Murry's submissions but inevitably had to adjourn to consider the absent documents.
2. By a claim form presented on the 1st February 2019 Ms Murry made claims for unfair dismissal, unlawful deductions from wages and breach of contract.

3. Ms Murray pleaded that she was employed as a care assistant by the respondent on the 16th July 2018 and dismissed by the respondent on the 26th November 2018. As Ms Murray did not have sufficient continuity of service for the tribunal to have jurisdiction to determine her claim of unfair dismissal that matter was not before me.
4. Ms Murray claims that the respondent unlawfully deducted the sum of £1005.45 pounds from her income, failed to pay her notice and failed to pay accrued holiday pay for the four months and ten days of her employment.
5. The respondent has failed to present a Response to the claim and, by a decision dated the 17th March 2019, its participation in these proceedings was limited to the degree I permitted. The respondent did not reply to that notice nor has it attended this hearing.

The claim for an unlawful deduction of £1005.45 from the claimant's wage.

6. The pleaded case was brief; "Took 1005 pounds out of my wages with no warning Wi-fi on work phone was blocked."
7. It is evident from the respondent's record of the claimant's wages paid for the month of November 2018 that it made a deduction from the claimant's wages in the sum of £1005.45 annotated thus; "Excess mobile charges LLA".
8. The respondent wrote to the claimant attaching an extract of information which was attributed to the mobile phone it provided the claimant for work purposes. The extract covers the period from 20th October to the 9th November 2018 and shows that all but 12p of the total sum arose from data use rather than telephone calls.
9. The cost of the data is typified by the sum incurred on the 17th November 2018; £116.79 being charged for 0.49 of a gigabyte of data.
10. Ms Murray does not deny the usage, in short Ms Murray asserted that she had used the phone for work related purposes and had legitimately used her work phone for "tethering" because her access to Wi-fi was blocked by the respondent's settings.
11. The claimant has provided to the tribunal with copies of her written terms and conditions of employment and a copy of the respondent's Business Mobile Phone Use Policy.
12. The policy expects staff to:

"Paragraph 10.... connect to WI-FI at your home premises so that any business updates that may be sent will be updated to the handset out of working hours as well as during, [sic] this is to ensure up to date settings and software releases are always available to you".
13. The said policy, at paragraph 11, expressly bars employees from using the phone for access to any internet sites, social networking, radio or games programs. It expressly states that "any costs incurred through misuse will be chargeable".

14. The claimant's terms and conditions contain an express provision for the respondent to recover overpayments or sums due to the employer. The claimant had signed both of these documents before the date of the deduction.
15. The sole issue for me to determine is whether the sum deducted, in accordance with the prior signified consent of the claimant, was one which the employer was authorised to deduct.
16. I have not heard from the respondent and so I have considered the claimant's case which was simple. She did not have access to home Wi-fi in the relevant period but she was required to download rota's, to use the company's gmail account and allow the company access to its mobile phone for software updates etc. On her case, she was complying with her duty under paragraph 10 of the company policy in circumstances where she could not do so because the company mobile phone could not access her home Wi-fi at the material time. Further, she was not in breach of paragraph 11 because the data was used wholly for company's purposes and benefit.
17. On the evidence before me, I accept the claimant's case. The data for which the company incurred the cost of £1005.45 was wholly for the company's benefit and done in accordance with the company's expectation. It was not incurred for any of the prohibited uses set out in paragraph 11 of the policy.
18. In these circumstances I have concluded that the deduction was not one which the claimant had authorised for the purposes of section 13 of the Employment Rights Act 1996 and thereby the claim is well founded.

Notice Pay

19. The claimant had been employed for four months and ten days at the date of her dismissal. In the absence of any contractual documentation I have considered the effect of section 86(1) & (2) of the Employment rights Act 1996.
20. The wage slip dated the 30th November 2018 does not indicate that the respondent had paid the claimant for any period of notice and the claimant asserts before me that she received no notice pay. I have concluded that the claimant was entitled to one week's notice pay.
21. I do not have a complete record of the claimant's pay for the twelve weeks prior to the termination of her employment but I do have the total sum which the claimant had earned by the last date of her employment and I have divided that sum by the 19 weeks of her employment which gives a gross sum of £266.44 per week.

Holiday Pay

22. The claimant avers that she has not received any holiday pay during her four months and ten days of employment. The pay slips do not record any amount of pay in respect of holiday. The respondent has not presented a response to these proceedings and accordingly I accept the claimant's case.

23. Ms Murray's contractual entitlement is set out in her terms and conditions. She was entitled to a total of twenty-eight days holiday per year. Her holiday year commenced on the 1st April each year. Ms Murray's period of employment equated to a contractual entitlement of 8.66 days of accrued holiday pay.
24. Ms Murry seeks an award of £1,200.00 which, based on her gross hourly wage of £8.83, would equate to an award of 136 hours of holiday pay; a little over three and a half weeks.
25. I have already made my finding of a week's pay and I therefore award the gross sum which is equivalent to 8.66 days pay; £461.49.

Employment Judge Powell
Dated: 13th November 2019

ORDER SENT TO THE PARTIES ON

.....17 November 2019.....

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS