



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss P Paluska

v Propertyshark Ltd t/a Re-max Ambassador

Heard at: Watford

On: 25 September 2019

Before: Employment Judge Loy

Appearances

For the Claimant: In person

For the Respondent: No appearance

JUDGMENT

The respondent shall pay to the claimant the total sum of £758.42.

REASONS

Introduction

1. The claimant requested reasons for my decision.
2. The claimant was employed by the respondent as a Sales Negotiator. The claimant received an annual salary of £16,000 and was entitled to 20% of commission on sales. The nature of the respondent's business is property management and property sales.
3. The claimant was employed for a relatively short duration, in the region of four months. Her employment ended on 9 November 2018. The response form was entered by Miss Margarita Strelcenia, the Managing Director of the respondent company.

The issues

4. The claimant contends that she has outstanding accrued unpaid holiday pay upon the termination of her employment.

5. The claimant contends that the sum of £50 was deducted from her wages when there was no lawful authorisation entitling the respondent to make a deduction from her wages.
6. The claimant contends that the sum of £188.55 in respect of unpaid wages was outstanding upon the termination of her employment.
7. The claimant seeks compensation in respect of each of the claims referred to above.

The hearing

8. The claimant attended in person to represent herself. The respondent failed to attend the hearing. The hearing was listed for 10am on 25 September 2019. At 10.15am the hearing commenced. Enquiries made the previous day of the respondent to establish whether they intended to attend the hearing revealed that the telephone number provided by the respondent was not functioning. Further enquiries on the morning of the hearing were therefore not possible.
9. The tribunal heard oral evidence from the claimant. No other witnesses were called. The tribunal read a witness statement attached to the response form provided by the respondent. Since the respondent did not attend the hearing to be cross-examined by the claimant less weight was attached to that evidence.
10. This was a case of few papers. The only papers before the tribunal, other than the pleadings, were the applicant's contract of employment (C1) signed and dated 28 September 2018 by Miss Paluska and Mrs Strelcenia, for the respondent; copies of the claimant's bank statements during the period of her employment by the respondent (C2); and assorted screenshots of text messages between the parties (C3). Miss Paluska was asked questions by the tribunal Judge in order to establish the relevant facts.
11. Based on this evidence, and in so far as relevant to the issues it must determine, the tribunal makes the findings of facts set out below.

Findings of fact

12. It is material to note that the contract of employment:
 - 12.1 does not include a provision entitling the employer to make a deduction from the employee's wages;
 - 12.2 provides at clause 18 for the holiday leave year to be the calendar year.
13. It is also material to note that the claimant's bank transactions, as evidenced by the documents at C2, show consistently the sum of £1,000 and £188.55 being made by Giro payment from Propertyshark Ltd to the claimant in each month of her employment except July. In July the single payment of £1,0000 is transferred to her bank account and the additional sum of

£188.55 is not. It is common ground from the pleadings that at all material times the claimant's salary was a constant at £16,000 per annum.

14. The tribunal makes the following additional findings of fact based on the claimant's oral evidence.
 - 14.1 The claimant was employed from 17 June 2018 to 19 November 2018. These dates are accepted in the response form and the start date is to be preferred to the start date of 18 June 2018 identified at clause 4 of the contract of employment.
 - 14.2 The claimant took no leave during her employment.
 - 14.3 The claimant was underpaid £188.55 in respect of her July salary instalment.
15. At clause 18 of the contract of employment the claimant is said to be entitled to 21 days paid annual leave per annum. However, the claimant worked fulltime and by virtue of Regulation 13A (3) of The Working Time Regulations 1998 her annual leave entitlement is 28 days.
16. The claimant in her claim form and also in her evidence refers to a deduction from her wage in the sum of £50 at Box 8.2 of the claim form and again in her evidence she explains that her commission of 20% property sale ought to have been in the sum of £300 but she only received £250. The difference representing a deduction in respect of a VAT charge imposed on her by the respondent. As had already been noted, there is no provision in the claimant's contract of employment authorising the respondent to make deductions in these or indeed any.

Determination of entitlement

Unpaid accrued holiday pay

17. The tribunal finds that the claimant was entitled to 9.3 days accrued but untaken holiday at her termination date. The tribunal finds that the claimant took no annual leave during her employment. The tribunal finds that her entitlement is to 9.3 days at £55.90 per day = £519.87. An award is made to the claimant in that sum.

Unlawful deduction from wages

18. Contractual provision entitling the employer to make a deduction from wages (and in the absence of any evidence of any other form of lawful authority) the claimant is awarded the sum of £50 representing the difference in commission of £300 and £250 the latter of which was received by the claimant in respect of sales commission.

Breach of contract

19. The tribunal finds that the claimant was underpaid in the sum of £188.55 in respect of her July salary instalment and the claimant is awarded that sum by the tribunal.

Conclusion

20. The claimant is entitled to the sum of £519.87 for unpaid accrued holiday pay upon termination of her employment pursuant to Regulation 14 Working Time Regulations 1998.

21. The respondent made an unlawful deduction in the sum of £50 from the claimant's wages contrary to s.13 Employment Rights Act 1996.

22. The claimant is entitled to the sum of £188.55 in respect of wages outstanding upon termination of her employment.

Employment Judge Loy
19/11/19

Date:
22 November 2019

Sent to the parties on:

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For the Tribunal Office