



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Chris Staton

v

J G Environmental Limited

Heard at: Watford

On: 19 November 2019

Before: Employment Judge Allott

Appearances

For the Claimant: In person

For the Respondent: Mr Callum Gale, Ops Director

JUDGMENT

1. The respondent has made unauthorised deductions of the claimant's wages and is ordered to pay him the gross sum of £488.00 (subject to tax and National Insurance).

REASONS

1. Mr Gale, on behalf of the respondent has informed me that the correct name of the respondent is JG Environmental Limited and accordingly I amend the claim to reflect that.
2. Mr Staton presents claims for unauthorised deductions of wages based on four basic grounds. I shall with each one in turn.
3. The first allegation relates to the deduction of £18.00 from a wage slip. The respondent operated a system whereby stock would be sent out via TNT to various depots where it would be picked up by the employee. If the stock was not picked up, then, after one weeks' grace, the stock would be returned to the respondent. The claimant told me, and I have no reason to doubt him, that on this particular occasion he did not receive an e-mail from the respondent informing that he had to pick up the stock but he was nevertheless subsequently charged the return fee. In circumstances where the claimant was not informed that he needed to pick up stock, then, in my judgment, the respondent cannot have been entitled to deduct the return fee of £18.00. Accordingly, I find that that was an unauthorised deduction from his wages.

4. The second head of claim relates to the sum of £130.00, deducted in relation to a parking ticket. On 11 August 2018, the claimant was sent to do work in Belsize Park, London. He told me that he had been informed in advance that there was free parking. On arrival at site, this turned out not to be the case. The claimant told me that he rang his manager, Roy, who told him to park on the side of the road and that the customer would have to pay any parking penalty charge. The claimant did receive a parking ticket which he told me he scanned to Roy on the Sunday following his receipt of it. Unfortunately, Mr Gale was unable to tell me what Roy's take on this evidence was as it had not been raised with him. I have no reason to doubt the claimant's evidence. I found him to be an honest witness and consequently in my judgment the respondent was not entitled to deduct the sum of £130.00 from his wages, in circumstances where the claimant had been told to park with the possibility of incurring a penalty charge and that that charge would be borne by the customer. Accordingly, in my judgment, that represents an unauthorised deduction from his wages.

5. The claimant showed me a breakdown of bonuses that he had earned in the course of September 2018. These amounted to £340.00. Mr Gale has shown me a document which indicates that bonuses are paid two months in arrears and the bonus agreement contains the following clause:

“Commission will only be paid if the employee is an active employee on the company payroll”.

6. I have considered whether that clause deprives the claimant of the right to be paid commission that he had earned prior to the cessation of his employment on 15 October 2018. In the case of Brand v Compro Computer Services Limited, 2005, IRLR196, CA referred to at paragraph 1.59 of the IDS Employment Law Handbook on Wages, the following is set out:

“In the absence of clear words making it plain that any accrued entitlement to commission was dependent on the employee also being in employment at the date on which the commission would be payable, it was not possible to accept that the parties had entered into a one-sided bargain that would have enabled the employer to avoid paying the employee commission that he had in fact earned merely by dismissing him before the date on which the commission fell to be paid”.

7. In my judgment, the contractual clause sought to be relied upon by the respondent in this case is ambiguous and does not make plain that the claimant would not be entitled to commission earned once his employment had ceased. Accordingly, in my judgment the respondent made unauthorised deductions from the claimant's wages by not paying him commission earned of £340.00.

8. The last head of claim relates to holiday entitlement. However, the claimant has accepted that his holiday entitlement as of 15 October 2018 would have been 22.09 days and he had in fact actually taken 22½ days. Accordingly, there is no accrued holiday entitlement outstanding at the date of his dismissal.

9. Consequently, there will be judgment for the claimant in the sum of £488.00 gross (subject to tax and National Insurance).

Employment Judge Alliot

Date: 21 November 2019

Sent to the parties on: 5 December 2019

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For the Tribunal Office