



EMPLOYMENT TRIBUNALS

Claimant

Mr J Allen

Respondent

Insight Employment

v

Heard at: Cambridge

On: 18 November 2019

Before: Employment Judge Tynan

Appearances

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT

1. The Tribunal declares that the Claimant's complaint that the Respondent made a deduction from his wages in contravention of Section 13 of the Employment Rights Act 1996 is well founded.
2. The Tribunal Orders the Respondent to pay to the Claimant the sum of **£75.74** in respect of the unlawful deduction from his wages.
3. Pursuant to Rule 75 of the Employment Tribunals Rules of Procedure 2013, the Tribunal Orders the Respondent to pay to the Claimant the sum of **£13.70** in respect of the Claimant's expenses incurred in connection with his attendance as a witness at the Tribunal.

REASONS

1. By a claim form received by the Employment Tribunals on 13 September 2018, the Claimant brings a claim against the Respondent for outstanding holiday pay.

2. The Respondent is an employment agency. The Claimant accepted an assignment through the Respondent commencing on 4 June 2018 and ending on 27 July 2018. He worked Monday to Friday each week and was paid for 40 hours per week at the rate of £8.01 per hour. On 7 September 2018, the Claimant was paid 25 hours by the Respondent in lieu of accrued holiday. The Claimant complains that he was underpaid in respect of his accrued but untaken holiday.
3. The Respondent filed a response in form ET3 stating its intention to defend the claim. Its grounds of response are,

“Mr Allen has never worked for Insight Employment”.

Otherwise it has made no further comment on the claim. It did not attend the Tribunal and was not represented.

4. I am satisfied that notice of the hearing was sent to the Respondent to the address given in form ET3. In the absence of any contact from the Respondent to say that it had been delayed, or had any other good reason for not attending Tribunal, I find that it was aware of the hearing but simply chose not to attend.
5. I heard evidence from Mr Allen who was able to produce a pay slip which had been issued to him by the Respondent, and which evidenced a payment in lieu of holiday to him on 7 September 2018. I accept Mr Allen's evidence that he signed a contract with the Respondent, but that the Respondent did not provide him with a copy of the signed contract for his own records. I also accept his evidence that the Respondent was responsible for paying his wages; that is further evidenced by the pay slip he produced at Tribunal which showed year to date earnings from the Respondent of £2,395.77.
6. The Claimant's evidence, which I accept, is that he did not take any holiday during his assignment through the Respondent. He was entitled to 28 days' statutory holiday each year; pro-rata he accrued 4.307 days' holiday during his eight week assignment. He was paid in lieu of 25 hours' holiday. That equates to 3.125 days, on the basis of an 8 hour working day. Accordingly, he is owed 1.182 days' holiday, or 9.456 hours on the basis of an 8 hour day. He was paid £8.01 per hour, meaning that he is owed holiday pay of £75.74.
7. I shall make a declaration that the Claimant suffered an unlawful deduction from wages and will the Respondent to pay him the sum of £75.74 as compensation in that regard.
8. On the Claimant's application, I also made an Order under Rule 76(1) of the Employment Tribunals Rules of Procedure 2013, on the basis that the Respondent had acted unreasonably in its conduct of the proceedings, namely by filing a perfunctory response and then not turning up to Tribunal without offering any explanation for its non-attendance. I conclude that the

Respondent filed a response as a device to avoid or delay making payment to the Claimant. In my further judgment, its response had no reasonable prospect of success. The issue is not whether the Claimant was employed by the Respondent, he can bring claims against the Respondent as a worker, which I am satisfied he was. He worked under the terms of a contract pursuant to which he agreed to personally provide his services.

9. The Claimant produced evidence that he had incurred travel expenses of £13.70 to attend Tribunal. Accordingly, I shall make an Order that the Respondent pay those expenses incurred by the Claimant in connection with his attendance as a witness at the Tribunal.

Employment Judge Tynan

Date: 21 November 2019

Sent to the parties on:

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For the Tribunal Office