



EMPLOYMENT TRIBUNALS

Claimant: Miss D Peters

Respondent: John Black Solicitors

HELD AT: Manchester

ON: 16 September 2019

BEFORE: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In Person

Respondent: Mr J Black (Solicitor)

JUDGMENT having been sent to the parties on 25 September 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

WRITTEN REASONS

Introduction

1. The claimant brought a claim for unlawful deduction from wages by way of a claim form dated 6 May 2019. The claimant worked as a paralegal for the respondent from 29 October 2018 until 22 March 2019. The respondent deducted 2.5 days annual leave from the claimant's final salary and failed to pay the claimant accrued annual leave of 1.5 days.
2. A response was submitted by the respondent on 4 June 2019 denying the claim on the basis that the claimant had received all monies owed to her.

Issues

3. The following issues were to be determined:
 - (a) Whether the respondent lawfully deducted a sum equivalent to 2.5 days annual leave from the claimant's final salary.

(b) Whether the claimant was entitled to holiday pay for 1.5 days accrued annual leave on termination of employment.

Evidence

4. The claimant gave evidence and Mr John Black, Director of John Black Solicitors and Mr Sam Black, Business Manager at John Black Solicitors also gave evidence. The respondent also submitted a statement of Mrs Joanne Black, a Director of John Black Solicitors but Mrs Black did not attend at the final hearing. There was a 49 page bundle containing the claimant's documents and the respondent's documents sequentially.

Relevant Legal Provisions

5. The unlawful deduction from wages claim was brought under Part II of the Employment Rights Act 1996. Section 13 confers the right not to suffer unauthorised deductions 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.”

6. A relevant provision in the worker's contract is defined by section 13(2) as:

“(a) one or more written contractual terms 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.”

7. By virtue of section 14, section 13 does not apply if the deduction is for the overpayment of wages.

8. Section 27 defines wages which includes:

“any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.”

9. Regulation 14 of the Working Time Regulations 1998 states:

“(1) This regulation applies where –

(a) a worker’s employment is terminated during the course of the leave year, and

(b) on the date on which the termination takes effect (“the termination date”) the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

(a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to a worker under regulation 16 in respect of a period of leave determined according to the formula –

$$(A \times B) - C$$

Where

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, or by undertaking additional work or otherwise.”

Findings of Fact

10. Paragraph 6.3 of the contract of employment provides for the claw back payments envisaged by regulation 14(4) of the Working Time Regulations 1998. A contract of employment is a relevant agreement for the purposes of these regulations.
11. The claimant was paid an annual salary of £17,000. The daily rate paid to the claimant equates to £65.38
12. The claimant resigned verbally over the phone and then by letter dated 21 March of 2019. Originally the claimant agreed with Joanne Black that she would leave on the 22 March 2019 and be paid up until 6 April 2019. However, on checking her contract, the claimant discovered that paragraph 8.2 required that she give one month's notice. The claimant subsequently emailed Joanne Black and contended that if she was to leave on 22 March 2019 she would still be entitled to one month's notice. In evidence the respondent accepted that the claimant was entitled to one month's notice.
13. Overnight Mr and Mrs Black agreed that if the claimant turned up to work on 22 March 2019 she would be asked to leave the office to protect the clients.
14. On 22 March 2019 Mr Black spoke with the claimant and asked her to leave the office. The claimant left and had a text communication with Mr Black about a security fob but also repeated the advice she had received from ACAS that she was entitled to one month's salary plus any outstanding holiday pay.
15. On 6 April 2019 the claimant was paid one month's salary but 2.5 days of annual leave was deducted for leave that had been booked by the claimant during the month of April. The respondent contended that the claimant was on

garden leave and her last day of employment was 21 April 2019 and 2.5 days of that leave was in excess of the proportion of the leave year that had expired by this termination date.

Discussion and Conclusions

16. It is the claimant's case that the last day of her employment was 22 March 2019 and the respondent was not entitled to deduct the pre-booked annual leave and she is actually owed 1.5 days of annual leave.
17. It is the respondent's case that the last day of employment was 21 April 2019 because the claimant was on garden leave and they were entitled to deduct the annual leave and the claimant is not owed any accrued annual leave.
18. It is my finding is that on 21 March the claimant and Joanne Black agreed that 22 March 2019 would be her last day in the office and whilst it was originally agreed to pay the claimant up to 6 April 2019, the claimant asserted her right to one month's notice pay.
19. I find that Mr Black asked the claimant to leave that day and promised to pay her one month's notice. I don't accept the phrase garden leave was used, albeit that this might well have been what was in Mr Black's mind at the time.
20. The claimant received her salary on 6 April 2019 in lieu of her notice period. If the claimant had been on garden leave she would have received her salary for the period 6 April 2019 to 21 April 2019 on 6 May 2019 as she has always been paid in arrears.
21. I find the date of termination of the claimant's employment was 22 March 2019 and therefore the respondent was not entitled to deduct 2.5 days annual leave and £163.46 should be reimbursed to the claimant. The claimant is also owed 1.5 days' accrued holiday pay which equates to £98.07. The total amount payable to the claimant is **£261.53**.
22. The claimant applied for a Preparation Time Order. Rule 76 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that I can make such orders if a party has acted vexatiously, abusively, disruptively, or otherwise unreasonably in either bringing proceedings or the way in which such proceedings have been conducted. The claimant asserts that the respondent has acted unreasonably during the conduct of these proceedings.
23. On 15 May 2019 the Tribunal made an order that the respondent provide a response by 12 June 2019. The response was submitted on 4 June 2019. On 13 July 2019, the Employment Tribunal hearing that had originally been listed for 1 hour on 19 August 2019 was postponed to today because it was too short. Case Management Orders were given that by 29 July 2019 the claimant submit a Schedule of Loss, on 12 August 2019 the parties exchange documents, on 27 August 2019 there be an agreed file of documents and on 9 September 2019 statements be exchanged.

24. On 1 September 2019 the respondent explained that a solicitor within the company had retired and they were short staffed and had been unable to exchange documents or agree a bundle but this would be done by 9 September 2019. On 10 September 2019 the claimant complained that the documents served by the respondent were incomplete and a bundle had not been agreed.

25. Whilst there was non-compliance with the Tribunal orders by the respondent, I don't accept that this was unreasonable conduct. The respondent was able to give a reasonable explanation as to why it was late in the provision of documents. Witness statements were exchanged on the correct date and both parties were able to prepare for the hearing.

Employment Judge Ainscough

Date: 17 December 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

23 December 2019

FOR THE TRIBUNAL OFFICE