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EMPLOYMENT TRIBUNALS

Claimant: Mr T Agbenike
Respondent: Greenwrite Health Care
Heard at: East London Hearing Centre
On: 12 August 2019
Before: Regional Employment Judge Taylor

Representation

Claimant: In person
Respondent: Ms V B Mabau Basikini, Director

JUDGMENT having been sent to the parties on 23 August 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:

REASONS

1. This hearing was listed to determine the claimant's claim that the respondent had made unauthorised deductions from his wages by failing to pay him his salary for the period 19-30 April and 1 May 2019.
2. The claimant attended in person and the respondent company was represented by its Director, Ms V B Mabau Basikini.
3. The agreed background to the claim is that the claimant started working for the respondent as a Deputy Manager on 2 February 2019 and gave notice of his resignation on 19 April 2019. He had intended to work until 3 May 2019, but stopped working on 1 May instead. He received part-payment but had not received full payment for that final period of employment. The respondent agreed that the amount claimed by the claimant of £1244.00 (net) was due to him.
4. Ms Mabau Basikini explained that she operated a care agency and considered that the claimant had made a poor management decision which had then led directly to its principal client refusing to offer the company more work and to the closure of the business. The company had not carried out any work after 30 March 2019 and the

responsibility for the last of its clients was formally removed on 2 May 2019. The respondent agreed that the amount claimed by the claimant of £1244.00 (net) was due to him, but Ms Mabau Basikini explained that the company was unable to pay the amount because the respondent's client had not paid the invoices the company had submitted.

The applicable law

5. The claimant has a right not to suffer unauthorised deductions from his wages.

6. The relevant provisions concerning 'Protection of Wages' are at Part II of the Employment Rights Act 1996. The relevant parts of section 13 of the Employment Rights Act 1996 are:

(1) An employer shall not make a deduction from wages of a worker employed by him 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.

(2) In this section "*relevant provision*", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract 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.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4)

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7)

Conclusions

7. There was no disagreement in this case between the parties that the respondent had paid only part-payment of the claimant's final pay. Ms Ms Mabau Basikini referred to the respondent's view that the claimant had behaved in such a way that ultimately led to the effective closure of the business and to the fact that the company was unable, at the date of the hearing, to pay the amount due. However, neither matter has any bearing on the application of section 13 Employment Rights Act. The Tribunal was satisfied that the respondent had made an unauthorised deduction of the claimant's wages because the

total amount of wages paid by the respondent to the claimant was less than the total amount of the wages properly payable to the claimant on 1 May 2019. The amount of the deficiency was agreed at £1244.00 (net) and the Tribunal has treated that sum, for the purposes of this Part II, as a deduction made by the respondent from the claimant's wages on that occasion.

8. The judgment of the Tribunal is that the respondent made unauthorised deductions from the claimant's wages. The respondent is ordered to pay £1244.00(net) to the claimant.

Regional Employment Judge Taylor

2 January 2020