



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE ELLIOTT (sitting alone)

BETWEEN:

Mr G Staindl **Claimant**

AND

MCS Cleaning Services Ltd **Respondent**

ON: 20 January 2020
Appearances:
For the Claimant: In person
For the Respondent: No appearance

JUDGMENT

The Judgment of the Tribunal is that the respondent shall pay to the claimant:

1. Holiday pay in the sum of £169.35.
2. Unpaid wages in the sum of £203.58.

The total amount awarded to the claimant is **£372.93**.

REASONS

1. This decision was given orally on 20 January 2020. Written reasons are given because the respondent was not in attendance.
2. By a claim form presented on 22 August 2019 the claimant Mr Gabor Staindl claims unlawful deductions from wages, holiday pay and a failure to provide pay slips for February and March 2019.
3. The issues for the tribunal were whether the respondent failed to pay holiday pay, wages or failed to provide itemised pay statements.
4. The respondent did not attend the hearing and after the relevant checks had been made, I decided to proceed in the respondent's absence under

Rule 47. I took account of an email from the respondent to the tribunal dated 18 December 2019 stating their position that they considered they had overpaid the claimant by £45.15 and I considered the representations made in that email.

Witnesses and documents

5. The tribunal heard from the claimant whose evidence was unchallenged. There were some documents from the claimant with an email dated 12 December 2019. There were documents from the respondent attached to an email to the tribunal of 18 December 2019 including pay statements for March and May 2019.

Findings of fact

6. The claimant worked for the respondent cleaning company from 25 February 2019 to 31 March 2019, just over a month.
7. The respondent understood the claim to be for two unpaid dates in February 2019 which they say were paid in May 2019. They also said that payslips had been sent to the claimant to a new email address which had not been provided to them.
8. They accepted in the ET3 that the claimant was owed 2.33 days holiday pay in the sum of £114.94.
9. In an email to the tribunal dated 12 December 2019, in answer to questions put by the tribunal, the claimant said that his payslips showed incorrect calculations, not that he had not received his payslips. He confirmed that he had the payslips but did not agree the calculations. I make no award in respect of failure to provide payslips. They were provided and an award is made in respect of sums not paid.
10. In a letter to the tribunal dated 16 December 2019, sent by email on 18 December 2019, Mylena Ferreira, an Office Manager of the respondent said that holiday pay of £143.46 was paid to the claimant on 19 December 2019. The claimant said he had not seen anything in his bank account to this effect. His figure for the holiday pay was £169.75 based on 21 hours and 41 minutes holiday (using HMRC calculator) at £7.83 per hour.
11. The respondent said that they had checked the claimant's hours and checked this with him. They submitted a copy of a message exchange with the claimant which showed a date of 11 April 2019. It was not clear what this demonstrated. The respondent believed that they had overpaid him by £45.15 and said as a goodwill gesture they would pay him a further £50 making a total overpayment of £95.15. The email asked the tribunal in relation to their statement as to the figures, to "*Please confirm and we can then settle his last payment*". The email had been seen by the claimant who did not agree it. The tribunal does not decide these matters without hearing from both parties as the case is not decided on the papers

alone.

12. In terms of unpaid wages, the claimant's evidence was that he was owed £203.58 being 15 hours for work done on 27 and 28 February 2019 at £7.83 an hour being £117.45 and 11 other missing hours based on his clocking card at £7.83 being £86.13. The total is £203.58.
13. There was a claim for pension contributions. The respondent's position was that pension contributions are only made once an employee has been working for the respondent for a period of 92 days, which was not the case for the claimant. The claimant at no time signed or saw any pension documentation so I accepted on a balance of probabilities the respondent's explanation.

Relevant law

14. Section 13(1) of the ERA provides an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
15. The right to an itemised pay statement is set out in section 8 of the ERA.
16. Under Regulations 13 and 13A of the Working Time Regulations 1998 (as amended) a worker is entitled to a maximum of 28 days annual leave per annum and this may only be replaced by a payment in lieu on termination.

Conclusions

17. For the reasons given above the claimant is awarded holiday pay of £169.35 and unpaid wages of £203.58 making a total of **£372.93**.

Employment Judge Elliott
Date: 20 January 2020

Judgment sent to the parties and entered in the Register on: 21 Jan. 20.
_____ for the Tribunals