



Case No: 2203778/2019

EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr j Sempertegui Peredo

ISS Facility Services Limited

Heard at: London Central Employment Tribunal

On: 4 February 2020

Before: Employment Judge Palca

Appearances

For the Claimant: Mr F Magennis (Direct Access Barrister)

For the Respondent: Did not appear and was not represented

JUDGMENT

The judgment of the tribunal is that:

1. The Respondent has made unlawful deductions from the Claimant's wages totaling £683.90
2. The Respondent has failed give the Claimant a written statement of particulars of employment within two months after the beginning of employment, nor any written statement containing particulars of change which must have been necessary when the minimum wage increased to £8.21 per hour on 1 April 2019, in breach of sections 1 and 4 Employment Rights Act 1996. The tribunal considers it just and equitable to award the claimant 4 weeks' pay @ £107.75 , making £431.
3. The Respondent is therefore ordered to pay the Claimant £1,114.90 forthwith.

REASONS

Parties

1. The Claimant was employed by the Respondent as a cleaner, starting on 1 February 2019. The Respondent is a service provider which among other things is under contract to clean various Boots stores.

2. The Claimant brought proceedings against the Respondent for payment of unpaid wages, and for compensation for failure to have been provided with a written statement of particulars of employment, contrary to ss 23 and 1 of Employment Rights Act 1996. The Respondent partially admits the unlawful deductions from wages, and avers that the claimant was provided with a statement of particulars of employment.

Evidence

3. The Claimant and his union representative, Ms Claire Marcel, gave evidence before the tribunal, both under oath. The claimant's first language is Spanish and he is not proficient in English, and therefore Ms Marcel, having sworn to interpret truthfully, acted as interpreter. The judge has some knowledge of Spanish, and was satisfied that the translations were reasonably accurate. The Claimant produced an original and supplementary witness statement. Ms Marcel also produced a witness statement.
4. The Respondent did not attend, but provided the tribunal with a statement from Mr Y Krychenko, its Retail Support Manager for London, and various supporting documents. Since Mr Krychenko was not present at the tribunal, and his evidence could not therefore be tested in cross-examination, his statement was given appropriate weight, but where it disagreed with evidence given by the Claimant on oath, the Claimant's evidence was preferred. The tribunal has no reason to believe that the Claimant's evidence was anything other than truthful.

Facts

5. The Claimant began work for the Respondent on 1 February 2019. He was asked to sign a document, headed Statement of Particulars of Employment, which he did. However, he was never given a copy of the Statement, nor any copy of the Handbook referred to in that Statement. The Claimant gave direct evidence to this effect. The Respondent's statement alleges in effect that when he joined it, his information was sent to the Respondent's central payroll team for Retail High Street, which confirmed that he did receive all documentation at his induction – if not, he would not have received a payroll number (which, the tribunal notes, he only did in any event in May 2019). However, this evidence is not first hand, and is not inconsistent with the Claimant's evidence that he signed the document but was not given a copy.
6. The Claimant worked as a cleaner for various different hourly shifts at a variety of Boots stores in London. Taking the 12 week period 20 July – 11 October 2019, the Claimant worked for a total of 157.5 hours which, at the minimum wage of £8.21, gives rise to a total pay during the period of £1,293.07. This equates to £107.75 per week, when calculated in accordance with s 224 Employment Rights Act 1996, which is the appropriate method given that the Claimant had no normal hours.
7. The Respondent admits that the Claimant was underpaid. It avers that he should be paid an additional £522.21. It also states that the Claimant was not

allocated a payroll number until May 2019, and therefore was not paid for the first three months of his employment. This caused the Claimant considerable hardship.

8. The Claimant's supplementary witness statement, which he swore was correct, sets out that during the period from 1.2.2019 to 11.10.2019 the Claimant was due pay of £5,315.53 and had received £4,631.53. He had therefore been underpaid (taking into account the minimum wage hourly payment of £7.83 before 1 April 2019 and of £8.21 from 1 April 2019) a total sum of £4,631.63. He therefore claimed that he had been underpaid by £683.90. The tribunal accepted the Claimant's evidence, and concluded that £683.90 had been unlawfully deducted from the Claimant's wages.

Conclusion

9. S13 Employment Rights Act 1996 states that employers shall not make unlawful deductions from workers' wages. S23 of the Act gives workers the right to bring employment tribunal proceedings to recover any deductions. The tribunal judges that the Respondent has made unlawful deductions from the Claimant's wages in the sum of £683.90, and orders the Respondent to pay the Claimant this sum forthwith.
10. Ss1 and 4 Employment Rights Act 1996 provide that an employer shall give to the employee a written statement of particulars of employment setting out various details not later than two months after the beginning of employment, and shall provide a statement of material changes, which would include changes to the rate of pay, not later than one month after the change in question. The tribunal has found as a fact that the Claimant was given neither an initial statement of particulars of employment, nor any statement of changes. S38 Employment Act 2002 provides that where claimants succeed in proceedings against their employer, which include claims for unlawful deductions from wages, and the employer has not complied with sections 1 or 4 of the Employment Rights Act 1996, the tribunal must award the employee 2 weeks' pay, and may if it considers it just and equitable in all the circumstances increase the award to 4 weeks' pay. Pay is to be determined, in the current circumstances where the employee has no normal hours, in accordance with s 224 Employment Rights Act 1996. The Claimant was not handed any written statement to keep, nor any handbook containing the bulk of the relevant documents, the Claimant was not paid during the first three months of his employment, he was not give a statement of change of particulars, and the respondent acknowledges that it owes the Claimant a significant amount of money yet has not paid it to him. In all the circumstances, the tribunal considered it just and equitable to order that the respondent be awarded 4 weeks' pay for the Respondent's breaches, or £431.

11. The tribunal orders the Respondent to pay the Claimant £a total of £1,114.90 forthwith.

Employment Judge Palca

Date: 4th Feb 2020

JUDGMENT SENT TO THE PARTIES ON

05/02/20

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FOR THE TRIBUNAL OFFICE