



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Byaje

v

Magenta Security Services Limited

Heard at: Watford

On: 20 February 2020

Before: Employment Judge Andrew Clarke QC

Appearances:

For the Claimant: In person

For the Respondent: Mr Cole, Counsel

JUDGMENT

1. The claim in respect of unlawful deduction from wages is dismissed.
2. The claim alleging breach of section 8 of the Employment Rights Act 1996 (the obligation to provide itemised pay statements) is dismissed.

REASONS

1. The claimant was employed by the respondent for a period which included the month of July 2018. On 5 October 2018, the claimant began a claim alleging non-payment of notice monies, failure to provide a payslip for July 2018 and (possibly) unlawful deductions from wages.
2. The claimant was required to clarify and quantify his claim for unpaid wages (the unlawful deductions claim) by orders from Employment Judge Manley on 14 January 2019, from Employment Judge Lewis on 1 May 2019 and from Employment Judge Palmer, following a preliminary hearing, on 8 May 2019. In the latter case, the particulars were to be given by 5 June 2019. No such particulars have been provided.
3. Initially, the claimant said that he needed the allegedly missing payslip in order to provide the particulars. He was provided with a copy of that payslip at the hearing on 8 May and he was provided by it again, together with the e-mail to which it was said it had been attached, on 13 August 2019.
4. Asked once again to clarify his position, the claimant sent an e-mail to the

tribunal in October 2019, saying that he made no monetary claim, only one for provision of the payslip. He stated that he did not accept that he had received the e-mail, a copy of which had been sent to him in August 2019, when allegedly sent in August of 2018. He was warned by the tribunal of the possibility of a strike-out and his response was to say that he had not got the e-mail and the payslip attached to it prior to his pay day in August 2018 and he wished to have a determination by the tribunal on that point.

5. The notice pay claim was dismissed on withdrawal on 8 May 2019.
6. The claim (if there ever was one, the claim form is unclear on this point) for unlawful deductions from wages is dismissed. The claimant has not proceeded with it today, had previously disavowed making any monetary claim and, of course, has repeatedly failed to quantify it. There is no evidence upon which I could determine that there had been unlawful deduction by a failure to pay the appropriate wages.
7. That leaves the payslip claim. By section 8 of the Employment Rights Act 1996, a worker has a right to be “given” a “written itemised pay statement” at or before the pay is due. If no such payslip is provided, or if it is defective, an Employment Tribunal can (see section 11 of the 1996 Act) determine what should have been included, but can make no monetary award for the failure to supply it or supply an appropriately accurate payslip, as distinct from dealing with unlawful deductions, see section 11(4).
8. The claimant’s complaint is that he did not receive the payslip at the time he ought to have received it. In those circumstances, I must determine whether or not the payslip was “given” to him, when the respondent asserts that it was, before the pay date in August 2018.
9. I heard from the respondent’s Managing Director, Mr Petkar. From his evidence as cross-examined, I am satisfied that the respondent’s payroll was handled by its accountants. They operated an automated system. The figures for pay and so-forth were inputted and all calculations were then made by the software program, payslips generated and automatically attached to e-mails which were dispatched. That automated system also triggered the payment of the appropriate sum into the claimant’s bank account.
10. The claimant accepts that he was paid for the month in question. His e-mail address on the copy e-mail relating to the allegedly missing payslip is correct. He had received earlier e-mails (with payslips attached) sent to that address. No other employee complained of a lack of a pay slip that month and the respondent received a full set of hard-copy payslips from its accountant.
11. In the circumstances, I am satisfied that the payslip was sent to the claimant attached to an e-mail sent to his email address, which was dispatched (and reasonably expected to be received) in advance of the pay day.
12. Having heard from the claimant, I am satisfied that he did not see the e-mail and payslip prior to the relevant pay day. I am satisfied that this was through no fault of the respondent, but why that was is something upon which I lack sufficient evidence upon which to reach any conclusion.

13. Hence, I must determine whether an employee is “given” a payslip when it is sent electronically to an e-mail address which is his and to which the respondent reasonably assumed that an e-mail sent would be received and accessed by the claimant.
14. That involves me deciding whether the word “given” in section 8 carries with it an implication that the payslip must be received, in the sense of being seen by the claimant.
15. Sending the payslip electronically is sufficient to satisfy the requirement for “writing” in section 8. The Interpretation Act 1978, section 5, provides that:

“unless the contrary intention appears, the term “writing” in any Act includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form and expressions referring to writing are to be construed accordingly”.
16. Section 7 of the act deals with service by post. It provides that:

“where an Act authorises or requires any document to be served by post, (whether the expression ‘served’ or the expression ‘give’ or ‘send’ ... is used) then, unless the contrary intention appears, the service is deemed to be affected by proper addressing, pre-paying and posting a letter containing the document and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”
17. By analogy, if something is “given” by e-mail, then the sending should be sufficient. That would seem to me to accord with common sense. Most payroll systems, especially for larger employers, operate in an automated or semi-automated way, whereby payslips are automatically generated and dispatched, either by post or by e-mail. It would seem wrong if the employer would be in breach of its section 8 obligations where, for example, the employee had changed his e-mail address and not told the employer, or his pc or mobile phone was broken or lost so that he did not receive the e-mail. That ought to be treated in the same way as where a letter was lost in the post, or misdelivered.
18. In the circumstances, I am satisfied that the appropriately itemised pay statement was “given” to the claimant at a time such that section 8 was complied with, even though he did not receive it in the sense of ‘seeing it’.
19. In the circumstances, that remaining element of the claimant’s case is dismissed.
20. After the judgment and reasons had been given orally, the claimant asked for the reasons to be “corrected” because I had not dealt with a particular point. I explained to him that I considered the point irrelevant, as I had explained to him during the course of his cross-examination of Mr Petkar. However, I deal with it below.
21. In the ET3 the respondent asserted that it had sent the e-mail attaching the payslip and that the payslip had been “re-sent” upon the claimant complaining that the did not have it. Mr Petkar could not say when that document was re-sent. He explained (and I accept) that the electronic payroll records are all retained on a database held by the accountants, but that the respondent holds

physical copies of payslips and that it was a copy of that physical record retained by the respondent itself which was sent to the claimant on request. I did not consider either the sending of the copy (which was well after the pay day in question), or the inability of Mr Petkar to say exactly when it had been sent and precisely by whom within the respondent's organisation to be relevant.

Employment Judge Andrew Clarke QC

Date: ...3 March 20.....

Judgment sent to the parties on

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For the Tribunal office