



EMPLOYMENT TRIBUNALS

Claimant
Mr A Algosh

v

Respondent
Care Property Management Ltd

Heard at: Central London Employment Tribunal

On: 11 March 2020

Before: Employment Judge Brown

Appearances

For the Claimant:

In person

For the Respondent:

Did not attend and was not represented

JUDGMENT

The judgment of the Tribunal is that:

1. The Respondent made unlawful deductions from the Claimant's wages.
2. The Respondent is ordered to pay the Claimant **£16,910 gross** on account of these unlawful deductions, comprised as follows:
 - 2.1 £13,528 gross unpaid wages;
 - 2.2 25% uplift on that sum pursuant to s207A TULR(C)A 1992 on account of the Respondent's unreasonable failure to follow the ACAS Code of Practice No 1 (2019) on Disciplinary and Grievance Procedures.

REASONS

The Facts

1. By a claim form presented on 11 November 2019 the Claimant brought complaints of unlawful deductions from wages against the Respondent, his employer.
2. On 15 November 2019 the Tribunal sent the Respondent, at its registered address, a Notice of a Claim and Notice of Hearing to take place on Wednesday 11 March

2020. The Respondent has not defended the claim. It did not attend the Hearing on 11 March 2020. It was listed as Active on the Companies House website on 11 March 2020.

3. The Claimant attended the Hearing and gave evidence. He produced a contract of employment, P60 forms and wage slips.

4. I found the following facts.

5. The Claimant entered into a contract of employment with S & K Limited on 20 December 2013, as a night receptionist in a hotel.

6. His employment transferred under TUPE Regs 2006 from S & K Limited to the Respondent in about 2016. The Claimant was never given a different contract. His employment has therefore been continuous since 2013 and has been governed by the contract dated 20 December 2013.

7. The 2013 contract contained the following terms:

7.1. Clause 6:

“Your normal working hours will comprise of 40 hours.”

7.2. Clause 13:

“The Company’s Disciplinary and Grievance Procedures and Conduct and Standards policy are set out in the Employee Handbook... These procedures do not form part of your contract of employment.

The Company reserves the right to discipline or dismiss you without following the Disciplinary procedure if you have less than a certain minimum period of continuous service as set out in the Employee handbook.

The Company reserves the right to suspend you on full pay and benefits pending any investigation or enquiry if the Company believes or suspects that you may have committed any misconduct and to impose such disciplinary sanctions(s) as it considers appropriate including demotion, transfer to a different post or reduction or freeze in salary.”

8. On 28 June 2019 the Claimant’s manager, Priam Kotian, told the Claimant that he wanted to have a chat before he would add the Claimant to the rota again. On 5 July 2019 Mr Kotian met with the Claimant and told him that he was suspended. He said that the Claimant was intending to give evidence against the Respondent at a forthcoming Employment Tribunal claim brought by a different employee. The Claimant said that this was not correct. Mr Kotian told the Claimant that he would send the Claimant an email confirming his suspension, but he never did. The Claimant attempted to contact Mr Kotian by email and text, to receive a written outcome and update on his situation. Mr Kotian never responded.

9. The Claimant was not told of his right to be accompanied at the meeting.

10. The Respondent has not offered the Claimant any work since July 2019. It has failed to pay the Claimant since then. The Respondent has not dismissed the Claimant.

11. On the facts, the Respondent has suspended the Claimant without pay since 5 July 2019.

12. The Claimant told me, and I accepted, that, before his suspension, he was expected to work, and did work, 40 hours per week in a normal week.

13. From the Claimant's payslips, his gross hourly pay in 2019 was £9.50 per hour.

14. The Claimant was paid an average of £1582.20 gross in the 3 months April – June 2019. The Claimant told me, and I accepted, that, with his consent, the Respondent sometimes made deductions from his wages when he stayed in a room at the hotel where he worked, if he had nowhere else to live. This explained why his monthly earnings April – June 2019 did not always equate to 40 hours' work.

Law

15. *s13 Employment Rights Act 1996* a worker has the right not to suffer unauthorized deductions from wages unless

15.1.the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

15.2.the worker has previously signified in writing his agreement or consent to the making of the deduction.

16. By *s27 ERA 1996* "wages" is defined. By *s27(1)*, "In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including: a) any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise. ...".

17. By *s23 ERA 1996* a worker may present a complaint to a Tribunal that his employer has made a deduction from his wages in contravention of *s13 ERA 1996*.

18. By *s207A TULR(C)A 1992* , in the case of proceedings relating to a claim by an employee under any of the jurisdictions in *Schedule A2* to that Act, if it appears to be tribunal that the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies and the employer has unreasonably failed to comply with the Code in relation to that matter, the Tribunal may, if it considers it just and equitable in all the circumstances of the case to do so, increase any award it makes to the employee by no more than 25%.

19. *Schedule A2 s207A TULR(C)A 1992* includes claims under *s23 ERA 1996* for unauthorised deductions from wages.

20. *ACAS Code of Practice 1 (2019) Disciplinary & Grievance Procedures* provides:

20.1.[7] If there is an investigatory meeting this should not by itself result in any disciplinary action.

20.2.[8] In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review..

20.3.[9] If it is decided that there is a disciplinary case to answer, the employee should be notified on this in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to answer the case at the disciplinary hearing. It would normally be appropriate to provide copies of any written evidence..

- 20.4.[13] Workers have the statutory right to be accompanied by a companion where the disciplinary meeting could result in: ..the taking of some other disciplinary action..
- 20.5.[18] After the meeting decide whether or not disciplinary or other action is justified and inform the employee accordingly..
- 20.6. "Provide employees with an opportunity to appeal."

Discussion and Decision

21. The Claimant was employed by the Respondent pursuant to the terms of the 20 December 2013 contract. He had more than 2 years' service and therefore had employment rights.

22. On all the facts, I concluded that the Claimant's manager suspended him at a meeting on 5 July 2019. He suspended the Claimant without pay – the Claimant has not been paid since. The Claimant has not been dismissed, however.

23. Under the Claimant's contract, the Respondent can suspend the Claimant with pay, not without pay. There is no provision of the contract allowing the Respondent to suspend without pay.

24. The contract stipulates that the Claimant's normal working hours are 40 hours per week.

25. The Claimant was therefore contractually entitled to be offered 40 hours work per week and to be paid for this work.

26. The Respondent made unlawful deductions from the Claimant's wages when it failed to pay him for 40 hours' work per week from 5 July 2019 – there was no contractual provision allowing it to do so and the Claimant had not signified his consent in writing to not being paid during a period of suspension.

27. The Respondent made a series of deductions. There was no break in the series of deductions.

28. The Respondent failed to pay the Claimant for 35.6 weeks from 5 July 2019 to the date of the Tribunal hearing. His gross pay per week was $40 \times \text{£}9.50 = \text{£}380$.

29. The Respondent made unlawful deductions in the following amount: $35.6 \text{ weeks} \times \text{£}380 \text{ per week} = \text{£}13,528$.

30. The Respondent also acted in breach of the ACAS Code of Practice. It suspended him, but did not keep the period of suspension short, nor did it review the suspension. It effectively imposed a disciplinary sanction during the suspension, following an investigatory meeting only, without inviting the Claimant to a disciplinary meeting where he had the right to be accompanied, without giving him a disciplinary outcome in writing and without affording him any right of appeal.

31. I considered that these breaches were very serious and clearly unreasonable. The Respondent deprived the Claimant of his livelihood without following any fair procedure.

32. It was just and equitable to apply a 25% uplift to the award for unlawful deductions from wages, pursuant to s207A TULR(C)A 1992.

33. The total amount that the Respondent shall pay to the Claimant is therefore 125% x £13,528 = £16,910.

Employment Judge **Brown**
11th March 2020

JUDGMENT SENT TO THE PARTIES ON

12/3/2020

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FOR THE TRIBUNAL OFFICE