



EMPLOYMENT TRIBUNALS

Claimant: Respondent:
Mr Matthew Wallis v NRT Carpentry Contractors
Limite

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Heard at: Reading On: 28 February 2020

Before: Employment Judge Hawksworth (sitting alone)

Appearances For the Claimant: In person
For the Respondent: Ms Mohemmed (solicitor)

RESERVED JUDGMENT ON REMEDY

1. Mr Wallis is awarded the following:
 - 1.1. £134.53 for unauthorised deductions from wages for work done in January and February 2019; and
 - 1.2. £269.54 for the balance of holiday pay for untaken holiday on termination of employment.
2. The total sum awarded is £404.07.
3. This sum is the gross sum. If the respondent pays the tax and national insurance due to HMRC, payment of the net amount will meet the judgment debt.
4. Mr Wallis has been paid pay in lieu of notice and has no further entitlement to notice pay.

REASONS

The claim, parties and hearing

1. Mr Wallis started his claim on 20 May 2019 after contacting Acas for early conciliation on 17 May 2019 and receiving the Acas certificate on 17 May 2019. He claimed deductions from his pay, notice pay and holiday pay.
2. The name of the employer given by Mr Wallis on his claim form was NRT Carpentry Contractors. On the Acas Early Conciliation Certificate he gave the name NRT Carpentry Contractors Limited. This was the name given on Mr Wallis's P45. The respondent's name is amended to NRT Carpentry Contractors Limited. I make this amendment on my own initiative under rule 12(2A) of the Employment Tribunal Rules of Procedure, as I consider there to have been a minor error on the claim form in relation to the employer's name, and I consider that it would not be in the interests of justice to reject the claim because of it.
3. NRT Carpentry Contractors Limited (NRT) did not put in a response to the claim in time. On 7 November 2019 I made a judgment without a hearing that the claim was successful. (This was a judgment under rule 21 of the Employment Tribunal Rules of Procedure 2013.) NRT did not ask for this judgment to be reconsidered.
4. A hearing was arranged to decide how much money is owed to Mr Wallis. This took place on 28 February 2020. Mr Wallis attended the hearing.
5. Ms Moheemmed also attended the hearing as NRT's representative. She observed the hearing while I asked Mr Wallis some questions about his claim. Ms Moheemmed asked for permission to take part. Permission was required because NRT had not put in a response to the claim in time. She said that NRT had tried to submit a response, but made an error with the online system. She said NRT had decided not to ask for the judgment made on 7 November 2019 to be reconsidered. Instead, it decided to ask to be allowed to take part in the hearing on 28 February 2020. Ms Moheemmed said that NRT decided to do this to reduce the number of disputed points and so save time for the parties and the tribunal.
6. Mr Wallis said that he had managed to submit his claim within the three month period without any access to a computer, and NRT had not responded to his claim for over 11 months.
7. I considered what Mr Wallis and Ms Mohammed had said. I decided that NRT should be allowed to take part in the hearing. I decided that this was the fairest way to go ahead, because otherwise there was a risk that the amounts ordered to be paid to Mr Wallis could be wrong. Ms Moheemmed was allowed to ask Mr Wallis some questions about the amounts owed. She was also allowed to make some closing comments about the amounts owed. I said that her questions and comments should not be too long.

8. At the hearing, I was given a pack of documents by Ms Mohemmed. It included Mr Wallis's pay slips and time sheets. Mr Wallis was given a copy as well. The pages numbers in this judgment are references to that pack of documents.
9. Mr Wallis answered questions from me and Ms Mohemmed about the amounts of money he says are owed to him. The parties then made closing comments. Ms Mohemmed made her closing comments first so that Mr Wallis could reply to any of Ms Mohemmed's points he disagreed with.

Points for me to decide

10. I have to decide how much NRT owes Mr Wallis in:
 - 10.1. pay (deduction from wages);
 - 10.2. notice pay; and
 - 10.3. holiday pay.

The law

Pay (deductions from wages)

11. Section 13 of the Employment Rights Act 1996 says that an employer must not make a deduction from the wages of a worker employed by him. There are some circumstances in which a deduction can be made, this includes where deductions are required by law, authorised in the worker's written contract, or made with the written consent of the worker. Section 13 says:

"Right not to suffer unauthorised deductions.

- (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."

Notice pay

12. The Employment Tribunals Extension of Jurisdiction Order 1994 allows employees to bring some claims for breach of contract in the employment tribunal. This includes claims for notice pay.

Holiday pay

13. The Working Time Regulations 1998 give workers a minimum entitlement to paid holiday. The minimum entitlement is to 20 days (4 weeks) paid holiday each year, plus an additional 8 days per year which can include bank holidays (regulations 13 and 13A).
14. A worker who leaves employment mid-way through a leave year is entitled to be paid for untaken holiday (regulation 14). The way in which this is calculated can be set out in a specific agreement which the employer has made with its workers. If there is no specific agreement, a fall-back position is included (regulation 14(3)(b)). The fall-back position is for the worker to be entitled to the proportion of their full leave entitlement equivalent to the proportion of the leave year they have worked.

Facts and conclusions

15. I have to decide what happened (the facts). I reach my decision about what happened by considering the evidence I have heard and the documents I have been shown, and deciding what I think is most likely to have happened. I then consider the law (summarised above), and then reach conclusions as to what Mr Wallis is owed.
16. I have set out below my decisions about the facts and my conclusions in relation to each of the points I have to decide, that is pay, notice pay and holiday pay.

Pay

17. The facts relevant to the pay owed are:
 - 17.1. Mr Wallis started working for NRT on 13 August 2018. His daily rate of pay was £81.68 (before tax and national insurance). His normal working day was 8.5 hours.
 - 17.2. Mr Wallis complains of deductions from his pay for work he did in January 2019 and February 2019. He was working at a site away from NRT's head office at that time.
 - 17.3. NRT's time sheets show that for a four day period in January 2019 Mr Wallis was not working because he was getting a new CSCS card (which was required to work on site). He was not paid for those days.
 - 17.4. NRT's time sheets said that Mr Wallis was not at work because of sickness on 30 January 2019. He was not paid for this day. Mr Wallis did not dispute this.

- 17.5. NRT made deductions from Mr Wallis's pay in respect of lateness on 28 and 29 January 2019 and 7 February 2019 (a total of two hours). NRT said that he was late on these dates. Mr Wallis disputes this.
 - 17.6. In February, deductions were made from Mr Wallis's pay in respect of 14, 15, 22 and 25 February 2019. Mr Wallis accepts that he worked half days on 14 February 2018 and on 25 February 2018. He said he worked full days on 15 February 2019 and on 22 February 2019. He was paid for 5 hours in total for these two days.
 - 17.7. Mr Wallis said that NRT's time sheets were not always accurate. Mr Wallis said that he was not late on 28, 29 January or 7, 15 and 22 February 2019. He was sure that he worked a full day on these dates.
 - 17.8. I have decided on the basis of the evidence I have heard, I accept Mr Wallis's evidence about these dates. When giving his evidence, Mr Wallis was frank and agreed that there were some other dates which he was unsure about, but he was sure about these dates. I did not hear any evidence from NRT about Mr Wallis's attendance on these dates or about the accuracy of the records, and I accept that discrepancies in the records may have arisen from the fact that Mr Wallis was working at a site away from NRT's head office. Also, an email at page 32 of the bundle referring to notes on Mr Wallis's payslips shows that there had been errors in NRT's records in the past (page 32).
18. My conclusions as to what pay Mr Wallis is owed are:
- 18.1. In January 2019, Mr Wallis was not entitled to be paid for the four days when he was not at work because he was getting a new CSCS card or for 30 January 2019 when he was not at work.
 - 18.2. Mr Wallis was entitled to be paid in full for 28, 29 January 2019 and 8 February 2019. The deductions in respect of those days were unauthorised deductions. Mr Wallis is owed a total of 2 hours' pay for these dates.
 - 18.3. In February 2019, Mr Wallis was not entitled to be paid in respect of the time he did not work on 14 and 25 February 2019.
 - 18.4. Mr Wallis was entitled to be paid for 15 and 22 February 2019. I have found that Mr Wallis worked full days on these dates. The deductions in respect of these dates were unauthorised deductions.

Mr Wallis was paid for 5 hours for these two days. He is owed a total of 12 hours pay for these deductions.

- 18.5. In total the unauthorised deduction from Mr Wallis's pay is 14 hours. A daily rate of pay of £81.68 for 8.5 hours gives pay of £134.53 for 14 hours ($81.68/8.5 \times 14$).

Notice pay

19. The facts relevant to the notice pay are:
 - 19.1. NRT dismissed Mr Wallis on 22 March 2018 because Mr Wallis was unable to travel to work on a site in Basingstoke and he was not offered any other work.
 - 19.2. Mr Wallis was paid for the period 18 to 22 March 2019 in lieu of notice (page 29 and page 36).
20. My conclusions as to what notice pay Mr Wallis is owed are:
 - 20.1. Mr Wallis was dismissed by NRT on 22 March 2018.
 - 20.2. As an employee with employment of more than one month but less than two years, Mr Wallis was entitled to one week's notice.
 - 20.3. Mr Wallis was not given a week's notice. However, he was paid £408.40 ($£81.68 \times 5$) which is equal to the pay he would have received during his week's notice. He has no further entitlement to notice pay.

Holiday pay

21. The facts relevant to the holiday pay owed are:
 - 21.1. NRT's leave year was January to December. Mr Wallis used all of his holiday entitlement for the leave year January 2018 to December 2018 (page 31).
 - 21.2. Mr Wallis did not take any holiday during the period 1 January 2019 to 22 March 2019 when his employment ended.
 - 21.3. NRT did not serve any notice requiring Mr Wallis to take his holiday during March 2019.
 - 21.4. NRT paid Mr Wallis holiday pay in the sum of £245.04 (page 29).

22. My conclusion as to what holiday pay Mr Wallis is owed is:
- 22.1. Mr Wallis did not have any untaken holiday from the leave year 2018.
 - 22.2. In the 2019 leave year, Mr Wallis was entitled to 28 days' holiday. Mr Wallis's employment terminated on 22 March 2019. Mr Wallis accrued holiday during the period 1 January 2019 to 22 March 2019. His entitlement for this period was 6.3 days. Mr Wallis was not given notice by NRT that the days he was not at work in March 2019 had to be taken as holiday.
 - 22.3. Mr Wallis had untaken holiday of 6.3 days at the end of his employment. He was entitled to be paid £514.58 (£81.68 x 6.3) by way of pay for untaken holiday. He was paid £245.04. The unpaid sum of £269.54 is an unauthorised deduction from Mr Wallis's wages.

Summary of award

23. Mr Wallis is entitled to:

1. Pay for 14 hours (January/February 2019)	£134.53
2. Notice pay	No further entitlement
3. Balance of pay for 6.3 days untaken holiday	£269.54
Total	£404.07

24. These sums are the gross sums. If the respondent pays the tax and national insurance due to HMRC on these payments, payment of the net amount will meet the judgment debt.

Employment Judge Hawksworth
Date: 2 April 2020

Judgment and Reasons

Sent to the parties on: 22 April 2020

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For the Tribunal Office

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