



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Smith

v

Urban Outfitters and URBN UK
Limited

Heard at: Cambridge

On: 28 February 2020

Before: Employment Judge Tynan

Appearances

For the Claimant: In person

For the Respondent: Mr S Tytherleigh, Solicitor

JUDGMENT

The Tribunal declares that the Respondent made an unlawful deduction from the Claimant's wages and it Orders the Respondent to pay to the Claimant the sum of **£36.65** in respect of the unlawful deduction.

REASONS

1. By a claim form dated 3 July 2019, the Claimant brought a claim against the Respondent alleging that he was unfairly dismissed and wrongfully dismissed. The complaint of unfair dismissal was struck out on 29 January on the basis the Tribunal did not have jurisdiction to determine the claim as the Claimant did not have sufficient qualifying service. The additional complaint that the dismissal, as it was termed then by Employment Judge Ord, was a breach of contract was Ordered to proceed on 28 February 2020 and that is how the matter came before me.
2. In fact, in spite of the claim being described as one of wrongful dismissal, it was evident to me on reading Section 8.2 of the Claimant's claim form that in fact the Claimant accepted that he had received payment in lieu of his notice, but that he believed further monies were due to him in respect of unpaid wages. I was satisfied that the matter should proceed as a complaint of unlawful deduction of wages.

3. I heard evidence from the Claimant and on behalf of the Respondent I heard evidence from Ms Kidd. The Claimant had submitted a hand written statement, albeit this was mainly concerned with the fairness or otherwise of his dismissal, rather than the matter of any unlawful deduction of wages. There was a bundle of documents available to me for the hearing prepared by the Respondent that ran to 91 pages.
4. In the course of the hearing the Claimant clarified, or conceded the following matters:
 - 4.1 He had initially been employed by the Respondent as a seasonal worker and when he had transitioned from being a seasonal worker to a salary paid worker at the beginning of June 2018, any arrears in his pay as a seasonal worker were then caught up and all sums owed to him as a seasonal worker were effectively made good in his June 2018 pay slip;
 - 4.2 From June 2018 he started to receive a regular monthly salary;
 - 4.3 He was paid for his notice period such that there can be no claim for wrongful dismissal;
 - 4.4 The Claimant further conceded in the course of giving evidence that the Respondent could have deducted up to 17 days' pay in respect of holiday which he had taken in excess of his accrued pro-rata entitlement, albeit that it had agreed not to do so.

I pause here just to observe that the Respondent may rightly feel aggrieved that it made that concession in the particular circumstances.
5. The Claimant has failed to put forward any specific evidence in support of the claim he made at Tribunal that he had worked overtime in May 2019 for which he had not been paid. He bears the burden of proving his claim on the balance of probabilities and he has failed to discharge the burden upon this in that regard. He has provided no dates or times when he had allegedly worked overtime and indeed the Cronos record sheets which were produced by the Respondent at the hearing (they are not within the bundle but I have added them into the bundle, as pages 92 onwards), confirm, and I am satisfied, that the Claimant did not work overtime in the course of May 2019. Accordingly, no sums are due to him for overtime worked.
6. The claim really boils down to whether the Respondent was right to make deductions from his wages or an adjustment to his wages in respect of two dates – 22 and 29 April 2019. I can deal with these matters fairly swiftly.
7. As regards 22 April 2019, the Claimant signed a Managing Attendance Return to Work form on 30 April 2019, which records his absence on 22 April 2019 as dependency leave, rather than holiday or other

authorised paid leave. That document is signed both by the Claimant and his Manager Mr Truman. Accordingly, he can have no claim that there was an unlawful deduction from his wages in respect of the unpaid leave he took on that date.

8. As regards 29 April 2019, however, there are two relevant documents. The first is a Managing Attendance Return to Work form dated 30 April 2019 which is signed by Mr Truman but which is not signed by the Claimant and which records his absence on 29 April 2019 as unauthorised absence. I note that in the form, which was completed I find by Mr Truman, Mr Truman refers to the Claimant having *“a sick feeling along with a feeling of anxiety”*. Accordingly, and although I accept that Ms Kidd was an entirely honest witness and reliable in terms of the other evidence she gave, I cannot accept her evidence that the Claimant said he did not want to come into work on 29 April 2019 due to an investigation which was ongoing. That, it seems to me, is not evidence that she is in a position to give. The discussion was between Mr Truman and the Claimant and, as I say, the Managing Attendance form certainly gives some indication that there were anxiety issues which may have impacted the Claimant's attendance.
9. I regard the second document in relation to 29 April 2019 as more relevant; it is a sickness self-certificate form and has been signed by both the Claimant and Mr Truman. It records the absence as being one of sickness. I note in particular, the declaration on that form as follows,

“I declare that the information given is, to the best of my knowledge, correct and understand that this information will be processed in line with the occupational sick pay scheme and the policy and procedure on the management of sickness absence. This information will be retained for a period not exceeding 3 years.”
10. I am satisfied given the form was signed by the Claimant and his manager, that it is consistent with their understanding that he would be paid his salary in the normal way and that his absence that day would not be regarded as unauthorised absence. It is consistent also, in my judgment, with the comments that were made by Mr Rafferty which were recorded by the Claimant and which were played to the Tribunal.
11. On the basis that I find the absence on 29 April 2019 was agreed with Mr Truman to be an authorised absence, the matter therefore does not fall within the ambit of the deductions from pay clause which is to be found at page 56 of the Hearing Bundle. In summary, that clause identifies that the Respondent could deduct a day's pay for each day of unauthorised absence. My finding is that it was agreed to be an authorised absence.
12. In those circumstances, in my Judgment, the Claimant was entitled to be paid in respect of that day. If it was a sickness absence, then under the sickness absence provisions of the Claimant's contract which are to be found at page 58 of the Hearing Bundle, the Claimant would have

expected to have been paid, albeit in the exercise of the Respondent's discretion, half his normal salary. Half his normal daily salary is the sum of £36.65 and that is the sum which I shall Order the Respondent to pay to the Claimant in respect of the unlawful deduction from wages. The sum of £36.65 will be subject to PAYE deductions by the Respondent in the normal way.

Employment Judge Tynan

Date: 20 March 2020

Sent to the parties on: ..01.06.2020.....

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For the Tribunal Office