



EMPLOYMENT TRIBUNALS

Claimant: Mr A Cooper

Respondent: Loudslurp MHS Ltd

HELD AT: Sheffield

ON: 25 June 2020

BEFORE: Employment Judge **Little**

REPRESENTATION:

Claimant: In person

Respondent: No attendance or appearance

JUDGMENT

After a Telephone Hearing

The complaint of unauthorised deduction from wages is well-founded and the respondent must pay to the claimant forthwith the sum of £223.73.

REASONS

1. The basis of the complaint brought by Mr Cooper is that the final payment which he received in respect of his employment with the respondent was less than he had been expecting and he believed there had been an unlawful deduction. The claimant was not provided with a payslip for the last period of work and this has made it difficult for him to ascertain precisely how much has been deducted. The claimant had a brief employment with the respondent which began on 10 December 2019 and ended on 30 January 2020. I make findings about the circumstances surrounding the termination of employment below.
2. The respondent defended this claim on the basis that they were entitled to make the deduction because the claimant had not worked his notice period. Alternatively, they said that they might be entitled to recover training costs.
3. Unfortunately, the respondent did not participate in today's telephone hearing. Prior to the hearing my clerk had made contact with David Dalton, the sole director of the

respondent, to ask him if some of the documents he had sent to the Tribunal could be re-sent. That enquiry was made at my request. I have only had electronic documents before me today and one of those was the claimant's contract of employment. As sent in by the respondent that had a majority of the pages printed upside down which therefore made it rather difficult to read. I therefore asked my clerk if a copy could be provided with all pages the right way up. Mr Dalton's initial response in his email timed at 8:17 today was that he did not have the documents and that these were with his manager. He said that he would have to speak with his manager. In a subsequent email he said that he was currently outside the UK. In a third email timed at 8:44 Mr Dalton wrote - "If there has been no provision to check these docs until now the case will have to be adjourned. It's not great on the morning of the hearing for this to happen when the docs where (sic) sent months ago??"

4. I should stress that I had never contemplated adjourning the hearing. Although my clerk had written to Mr Dalton to the effect that I was unable to open the documents on my computer, which was not precisely correct, I consider that the email exchange between my clerk and Mr Dalton this morning in no way properly explains Mr Dalton's failure to telephone into the hearing today. If he did think that an adjournment was appropriate he could have raised that then. If, as appears to be the case, Mr Dalton had decided to delegate attendance at today's hearing to an unnamed manager, that manager did not ring in either. In these circumstances I considered that it was appropriate to proceed in the respondent's absence. I have taken into account what they say in their grounds of resistance and in Mr Dalton's email of 5 May 2020 in response to Employment Judge Rogerson's Order of 30 April 2020. I should also add that when after the hearing began I asked my clerk to telephone Mr Dalton to explain why no one from the respondent had joined, Mr Dalton's mobile phone was not answered.

5. The contract of employment which the claimant signed on 11 December 2019 included a Clause 11 which is in these terms:

"If on leaving our employment you fail to work your full contractual notice period without prior agreement, an amount equal to any loss suffered by us, or the additional costs of covering your duties for the period not worked may be deducted from any final monies due to you."

6. The contract does not include any provision whereby any training costs can be recovered by deduction from an employee's wages.

7. I have seen a copy of the claimant's letter of resignation dated 23 January 2020. It reads:

"I regret to inform you that I will be handing in my one week's notice starting 23/1/20 and my last day being 30/1/20 due to that the job isn't right for me and I want to seek work elsewhere".

I am satisfied that the claimant did give the original of that letter to his manager, Maria Mirza. Accordingly, the claimant complied with his contractual obligation to give one week's notice. The claimant told me that during his notice period he was only required to work three shifts. I am satisfied that if he had been required to work more shifts within that period he would have. If he was not offered shifts by the respondent that does not in my view mean that he was not nevertheless working his notice period.

8. I find that the text from a chat group dated 23 January 2020 written by the claimant and copied to me by the respondent is not evidence that the claimant was giving short notice. That message is dated 23 January 2020 and reads as follows:

"Hey guys I know I haven't been here long but I have decided to hand my notice in. The job isn't for me so gonna find something else instead. My last day Saturday so just wanna say it's been nice meeting you all."

I accept the claimant's evidence that that was not him giving notice to his employer but rather as a matter of courtesy informing his colleagues that he would shortly be leaving. That is borne out by the three replies to that message from individuals called Bethany Mount, Jenna Birks and Haika Darr who I assume to be some of those colleagues. Accordingly, this is not evidence that the claimant gave short notice.

9. In these circumstances I am satisfied that the respondent had no grounds for making any deduction from the claimant's final pay. He had served the appropriate notice. Whilst the respondent has never explained what training costs were allegedly incurred, there is no contractual provision which would have permitted those to be deducted in any event.
10. In his claim form the claimant said that he was expecting his gross final payment to be £1143.14 but all he received into his bank account was £859.41. I have explained to the claimant that that is not comparing like with like. It is here where the claimant is in difficulty because of the absence of a pay slip. He told me that he believed approximately £60 would have been deducted for tax and national insurance with the result that the net payment he should have received would have been in the region of £1083.14. On that basis the deficit is £223.73 and it is that figure which I now order the respondent to pay the claimant forthwith.

Employment Judge Little

Date: 26 June 2020

JUDGMENT SENT TO THE PARTIES ON

Date: 30 June 2020