



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr C Czilek-Meszaros

AND

Respondent

Elfordleigh Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

By Cloud Video Platform

ON

5 August 2020

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Mr H Hujdurovic, Director

JUDGMENT

The judgment of the tribunal is that the claimant succeeds in his claim for unlawful deduction from wages and the respondent is ordered to pay the claimant the gross sum of £627.00.

RESERVED REASONS

1. In this case the claimant Mr Martin Czilek-Meszaros brings a monetary claim for unlawful deduction from wages against his ex-employer Elfordleigh Limited. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 90 pages, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mr H Hujdurovic who is a director of the respondent on behalf of the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The respondent owns and manages a hotel and country club in Elfordleigh near Plymouth. The claimant was employed as a sous chef with effect from 30 November 2016. He

- resigned his employment on 27 July 2019. He was required to give two months' notice, but did not do so and left his employment on 15 August 2019.
6. The claimant claims his August 2019 pay, which is the sum of £715.00 which is 65 hours work at the hourly rate of £11.00 per hour. The respondent accepts that it deducted the sum of £715.00, but has done so relying on clause 18 of the relevant written contract of employment which it says authorises it to deduct any overpaid holiday entitlement, and any other overpayments made. The respondent accepts that it deducted 12 hours of holiday pay to the value of £132.00 which it says had been claimed by the claimant in excess of his entitlement, and the balance was deducted and not paid in respect of hours which the claimant claimed to have worked on his timesheets, and had historically been paid, but did not actually work.
 7. The claimant had signed a contract of employment on 20 December 2016. The provisions which are relevant to the issues to be determined today are as follows.
 8. Clause 5 is headed "Remuneration". It provides: "Your rate of pay is £20,000 per annum hour paid monthly (£1666.67) on or around the 20th day of the month into a bank or building society account of your choice. Should this day fall on a bank holiday or weekend you will be advised as to the date on which you can expect to receive payment." It seems that the word "hour" was not deleted when it should have been, because the claimant was on a salary which was paid monthly. That salary has increased, and was at the level of £23,000 per annum at the time of the claimant's resignation, which equated to £11.00 per hour based on a 40 hour week.
 9. Clause 6 is headed "Hours". It provides: "Your normal working hours are variable, as per the published rota. Hours of work will be spread across Monday to Sunday inclusive and in accordance with the needs of the business. It is envisaged that you will not work less than 40 hours per week; in addition, you should not work less hours than any member of staff who falls under your supervision. Whilst it is expected that you will be able to finish your work within your scheduled hours, you may be required to work additional hours if it is necessary for the proper performance of your duties. The employer reserves the right to vary your hours in order to meet the needs of the business."
 10. Clause 8 is headed "Holidays". It provides: "You are entitled to a total of 28 days' holiday per year which includes any entitlement to bank/public holidays. For part-time staff a pro rata holiday entitlement will apply. If you start or finish your employment during the holiday year, holiday entitlement will be calculated as a pro rata amount of the annual entitlement. Rules relating to holidays and holiday pay are set out in the Employee Handbook provided with this statement."
 11. I have not seen the Employee Handbook which was not in the agreed bundle of documents. However, the parties agree that the Holiday Year commenced annually on 1 January, and that as at the date of termination of his employment the claimant had taken 19 days holiday when his pro rata entitlement for that part of the holiday year was 18 days. The claimant now agrees that he had taken one day in excess of his pro rata holiday entitlement which for eight hours at £11 per hour is £88.00. The claimant now accepts that the respondent was entitled to deduct the sum from his final salary.
 12. Clause 18 is headed "Deduction from Wages". It provides: "If during or on termination of your employment you owe any money to the Employer you agree that the Employer has the right to deduct this sum from your wages or any other money it owes to you. By signing this contract, you expressly consent to any such deductions pursuant to Part II of the Employment Rights Act 1996. Examples of deductions, which may be made by the Employer, include, but are not limited to the following: ... Annual leave taken over and above your accrued entitlement ... Any overpayment made to you by the Employer ..."
 13. The respondent had a system under which the claimant completed weekly timesheets. These recorded Time In and Time Out for each of the seven days of the week. The claimant would enter the hours when he started and finished work for each of the days when he was at work and total up his hours.
 14. However, throughout his employment the claimant was paid his monthly salary, regardless of the hours which he actually worked. For example, as can be seen from the commencement of his employment, for the week ending 4 December 2016 the claimant

- worked 43 hours; for the week ending 11 December 2016 he worked 44.75 hours; for the week ending 18 December 2016 he worked 41.75 hours; for the week ending 25 December 2016 he worked 38.75 hours; and for the week commencing ending 1 January 2017 he worked 36.75 hours. He was paid his normal monthly salary from that time, regardless of the variation in the weekly hours which he worked.
15. Approximately a week before he left employment the claimant made enquiries of the respondent's payroll department relating to what he described as "lieu hours". The enquiry was referred to Mr Hujdurovic of the respondent who requested a full analysis of the claimant's timesheets. Mr H Hujdurovic considered that the claimant had in fact been overpaid because his timesheets show that on average he worked for less than 40 hours a week, but had been paid for that amount. According to the respondent, the calculations indicated that during 2019 the claimant had over claimed 53.5 hours work and 12 hours holiday pay, and from the Christmas week ending 23 December 2019 the claimant overclaimed 69 hours and 12 hours holiday pay. The respondent reached the conclusion that the claimant therefore owed the company 132.5 hours and 12 hours holiday which had been overclaimed during his employment. The respondent therefore declined to pay the claimant anything in his final pay, and deducted the whole £715.00 amounting to 64.25 hours (being the hours which it says the claimant worked in August 2019) together with the earlier amount claimed of 12 hours holiday pay.
 16. Having established the above facts, I now apply the law.
 17. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
 18. In the first place the parties now agree that the respondent was entitled to make a deduction in the sum of £88.00 for one day's holiday pay which the claimant had taken in excess of his pro rata entitlement to the date of his resignation. That deduction was authorised by the claimant under clause 18 of the contract of employment which he had signed to signify his consent.
 19. However, I find that the remaining deduction made by the respondent was unlawful. The reason for this is that I find that there was no overpayment made by the respondent to the claimant which falls to be reclaimed under clause 18 of the contract of employment. The claimant disputes that he worked less hours than those claimed on the timesheets, but in my judgment that dispute is a red herring. The claimant was paid his agreed salary throughout his employment, and that agreed salary was not dependent upon the actual hours worked which then had to be claimed by way of a timesheet. If the respondent thought that the claimant was working fewer hours than the 40 weekly hours which were envisaged, then they were in a position to challenge the claimant on this point. Regardless of that, it cannot be said that the claimant was overpaid in circumstances where he was a salaried employee and paid his normal monthly salary throughout.
 20. In my judgment therefore, the remaining deductions were unlawful because there was no overpayment of salary which fell to be deducted. Of the £715.00 deducted the respondent was entitled to deduct the £88.00 by way of overpaid holiday pay, but the remaining £627.00 was unlawfully deducted and the respondent is ordered to pay the claimant that amount.

Employment Judge N J Roper

Dated 5 August 2020

Judgment sent to Parties on 12 August 2020

FOR THE TRIBUNAL OFFICE