



EMPLOYMENT TRIBUNALS

By Telephone

Claimant: Mr M Fern

Respondent: Samy Investments Ltd

HELD AT: Leeds **ON:** 18 August 2020

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person (with Amanda Reed witness)

Respondent: Did not enter a response, did not appear and was not represented

JUDGMENT

The Tribunal gave Judgment as follows:-

1. In respect of the claim of unauthorised deduction of wages from 27 August 2019 to 4 November 2019 the claim is dismissed because the Claimant did not present the claim before the end of the period of three months beginning with the date of payment of wages from which the deduction was made and further the Tribunal was not satisfied that it was not reasonably practicable for the complaint to be presented before the said period.
2. In respect of the complaint of unauthorised deduction of wages between the period 1 January 2020 and 5 March 2020 the Respondent will pay compensation to the Claimant in the sum of £2,020.20.
3. In respect of the claim for two weeks unauthorised deduction of wages in September 2019 the claim is dismissed because it covers the same period and same point of jurisdiction as in paragraph 1. above.
4. In respect of the claim for holiday pay the claim is dismissed.
5. For the avoidance of doubt the Claimant did not present a claim for breach of contract which might allow him to recover the cost of loans which might have

been alleged to have been taken out as a result of unauthorised deduction of wages.

REASONS

1. Claims

- 1.1. Unauthorised deduction of wages 27 August 2019 to 4 November 2019.
- 1.2. Unauthorised deduction of wages 1 January 2020 to 5 March 2020.
- 1.3. Unauthorised deduction of two weeks wages in September 2019.
- 1.4. No holiday pay
- 1.5. [Breach of contract].

2. Issues

- 2.1. Unauthorised deduction from wages – whether the Respondent had unlawfully deducted wages which the Claimant was entitled.
- 2.2. Holiday pay – whether the Claimant is entitled to holiday pay.
- 2.3. [Breach of contract – this was not pursued].
- 2.4. Time.

3. The law

The law relating to issues of time as far as it relates to claims for unauthorised deduction of wages is set out in section 23(2) and (4) Employment Rights Act 1996.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The Claimant was not paid between 27 August 2019 and 4 November 2019 when he was on paid suspension. The Claimant presented his claim on 26 May 2020 and an early conciliation certificate was issued on 14 March 2020. The date for a claim should have been on or about 14 December 2019.
- 4.2. The claim was not presented on or about that date.
- 4.3. The Tribunal had to consider whether or not it was reasonably practicable for the claim to be presented in time. The Claimant said that he was still employed during the period and therefore did not think about making a claim and he did not know anything about the time limit. He did however receive the assistance of USDAW both at a hearing on 25 September 2019 and in relation to an email in October 2019. The union did not at any time advise the Claimant of his rights in relation to time limits.
- 4.4. The Claimant was suspended on pay between 1 January 2020 and 5 March 2020 and never paid. Net weekly pay was £218.13 and the Claimant was not paid for 65 days at £31.08 per day entitling him to £2,020.20.
- 4.5. The claim for two weeks unauthorised deduction of wages is encompassed within the claim ending 4 November 2019 and therefore would be a double claim and is out of time.

- 4.6. The claim for holiday pay was consequent upon the Claimant's contract of employment which he had with One Stop before the Respondent took over. That had a holiday year of 1 March in one year to 28 February in the next with no carry over rights. The Claimant was only 5 days into the new holiday year when his contract was terminated. There was a suggestion that the holiday year had moved from 1 May in one year to 30 April in the following year but there was no written evidence of this.
- 4.7. The Claimant did have to take out loans because he was not paid but did not issue the claim for breach of contract.

5. Determination of the issue

(After listening to the factual submissions made by and on behalf of the Claimant)

- 5.1. The Tribunal is satisfied that the claim ending 4 November 2019 was out of time and that it was reasonably practicable for the claim to have been issued in time. The Claimant's obligations did not stop running just because the Claimant was employed and in these circumstances ignorance of the law so far as the time limit is concerned does not assist him. At the key time the Claimant had the support of his trade union and yet he was not informed by them of the time limit. The claim is therefore dismissed.
- 5.2. As to the claim expiring on 5 March 2020 the Respondent shall pay the Claimant the sum of £2,020.20.
- 5.3. The claim for two week's pay in September 2019 is dismissed being a duplicate of the claim expiring 4 November 2019 and was out of time in any event.
- 5.4. So far as holiday pay is concerned when the Claimant left the Respondent it was only five days into the new holiday year with no carry forward according to his contract of employment and therefore the claim is dismissed.
- 5.5. The claim for breach of contract and loans was not pursued.

Employment Judge Shulman

Date 28 August 2020

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