



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Kemp-Hall

Respondent: Berisford Bex Limited

Heard at: Newcastle Hearing Centre On: Tuesday 18th August 2020

Before: Employment Judge Johnson sitting alone

JUDGMENT

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay to the claimant the net sum of £94.14.
2. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay to the claimant the sum of £117.40.

REASONS

1. By a claim form presented on 15th January 2020, the claimant brought complaints of unauthorised deduction from wages and failure to pay accrued holiday pay. The claim form also included allegations of failure to provide a written statement of terms and conditions of employment and failure to provide written itemised pay statements. The latter two allegations have been withdrawn, leaving only the complaints of unauthorised deduction from wages and failure to pay accrued holiday pay.
2. Both parties have agreed to the remaining claims being considered by the employment tribunal "on paper" and without a hearing. The above judgment is based upon the written representations made by both parties.
3. By letter dated 5th March 2020 and 29th April 2020, the claimant set out his calculations of the sums allegedly due to him. The claimant alleges that he did 42 hours work at £8.21 per hour but was only paid for 31.98 hours leaving a shortfall of £82.26. He alleges that a further sum of £3.82 was deducted from his wages to make up a shortfall in the respondent's till. He also alleges a further

deduction of £8.06, for which there is no meaningful explanation. Finally, the claimant sets out his calculation of entitlement to holiday pay, which amounts to £117.40.

4. The respondent defends the claim by alleging that the claimant left his place of work without good reason and failed to return. He was then dismissed without notice. The respondent states in its response form ET3 “having had no response from Mr Kemp-Hall I had no choice but to terminate his employment.”
5. The respondent opposes the claim for unpaid wages and holiday pay on the basis that it was entitled to withhold any wages or holiday pay due to the claimant, either under the specific terms of his contract of employment or under what the respondent refers to as “implied terms” in that contract.
6. The contract itself states as follows:-

“The employee agrees and confirms his consent to a deduction from his final salary and any other contractual entitlement paid upon the termination of his employment of the whole or part of monies to reflect any loss suffered by the company as a result of the employee’s activities in breach of any express or implied terms of this agreement.”
7. In its letter dated 4th May 2020, the respondent states as follows:-

“The company would like to add that, as no contract has been issued, that the company has met the legal test for implied terms of contract in its actions following the claimant leaving the business with no notice. The claimant in this case did not. The claimant has a duty of fidelity under implied terms of contract to not act against the interests of the employer whilst employed. Leaving without notice does not meet this legal test.”
8. The claimant has made no claim for notice pay. Accordingly, the respondent cannot bring a counter claim alleging breach of contract.
9. Section 13 of the Employment Rights Act 1996 states that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
10. It is accepted in this case that the claimant has not given his written consent to the making of any deduction. I am not satisfied that the respondent has established that it has suffered any quantifiable monetary loss as a result of the termination of the claimant’s employment. It is not the case that the claimant left without giving notice. The respondent accepts in its response form that it dismissed the claimant.
11. I accept the calculation of both unpaid wages and unpaid holiday pay as set out in the claimant’s letter of 5th March 2020 and I order those sums to be paid.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 27 August 2020

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