



EMPLOYMENT TRIBUNALS

Claimant: Mr Joseph Azapiedi
Respondent: PL Logistical Solutions Limited
Heard at: East London Hearing Centre
On: Monday 14 September 2020
Before: Employment Judge John Crosfill

Representation

Claimant: No appearance or representation
Respondent: No appearance or representation

JUDGMENT

**Upon the Respondent failing to attend the hearing and failing to present an ET3
AND Upon considering the Claimant's ET1 and the documents provided by him.**

- 1. The Claimant's claim for unlawful deduction of wages brought under Part II of the Employment rights Act 1996 is well founded.**
- 2. The Respondent unlawfully deducted the sum of £1,402.02 from the Claimant's net wages for work done during the period 1 July 2019 to 31 July 2019.**
- 3. The Respondent is ordered to pay the Claimant the said sum of £1,402.02.**

REASONS

1. The Claimant has presented his ET1 in which he claims that the Respondent has unlawfully deducted the entirety of his pay for the period ending 31 July 2019 which was the final payment due to him. The Claimant's employment ended on 2 August 2019.
2. The Respondent has taken no part in the proceedings despite correspondence being sent to the registered offices of the Respondent. The hearing was listed via CVP. It was known that the Claimant would not attend as he had informed the Tribunal that he was on a training course. The Respondent was invited to make representations as to why the matter should not be dealt with on the papers but did not do so. The case remained listed but the Respondent did not attend via CVP.
3. I decided that it was in the interests of justice to proceed on the basis of the information before me. The Claimant had sent the Tribunal a copy of his final pay slip and copies of e-mail correspondence between himself and Jason Whitmore, a Director of the Respondent.
4. From the documents I have seen I make the following findings of fact:
 - 4.1. The Claimant was a driver working for the Respondent from 20 October 2018 to 2 August 2019.
 - 4.2. On 19 July 2019 the Claimant sent Jason Whitmore a grievance complaining of the failure to pay him on time. He said that he had sought assistance from UNITE. Jason Whitmore responded saying that he would give the Claimant copies of documents he had signed where he had agreed to pay any insurance excess of £1000 in the event of an accident. He asserted that there had been 5 accidents.
 - 4.3. The Claimant sent further e-mails challenging the Respondent to produce any documents bearing his signature. On 26 July 2019 Jason Whitmore accepted that he did not have any contract signed by the Claimant but asserted that he did have documents showing that the Claimant had agreed that any insurance excess could be deducted from his wages. He said he would pay the Claimant the balance of any wages.
 - 4.4. It is implicit in that correspondence that the Respondent had not and did not intend to make payment of the final instalment of the Claimant's wages.
5. In a case such as this it is for the employer to show that the Claimant's contract gave the right to make deductions from wages or that the employee had agreed in writing to the deduction – See Section 13 of the Employment Rights Act 1996. It is also incumbent on the employer to show that the conditions for making any deduction have been met. Typically, in a case of damage to vehicles that might include showing that the accident was the employees fault (depending on the terms of the contract/notice).

6. There is no evidence other than an assertion in correspondence, that there was a written agreement or notice permitting a deduction and no evidence at all as to the scope of any right to make a deduction.
7. In the circumstances I am satisfied that the Respondent deducted the sum of £1402.12 from the Claimant's pay and I am not satisfied that either of the conditions set out in sub sections 13(1) (a) or (b) were met. The deduction was therefore unlawful.

Employment Judge John Crosfill
Date: 15 September 2020