



EMPLOYMENT TRIBUNALS

Claimant:
Mr John Bak

Respondent:
High Access Solutions Ltd

Heard at: **Leeds (By Video Link)** **On: 18 September 2020**

Before: **Employment Judge R S Drake**

Representation:

Claimant: In Person
Respondent: No Attendance/Appearance

JUDGEMENT

1. The Claimant has established that he was entitled to unpaid wages for the period 1 November 2019 to the date of his dismissal 22 November 2019 and also for a week's pay in lieu of notice in the total sum of £1,506.32 but that on his own admission the Respondents were lawfully entitled to deduct the sum of £150 by way of reimbursement of the cost they paid of a course called a "PASMA" course which he undertook. Thus, the Claimant is entitled to and the Respondents shall pay to him the total sum of £1,356.32 to which extent his claim succeeds.

REASONS

2. The Claimant attended in person but despite my ascertaining that the Respondents were notified of today's hearing and its mode (by video link) and were provided with the means of access and couldn't be contacted to find out why they were not attending, they made no appearance nor any representations in any form. Thus, I had to rely solely on the findings in previous Preliminary Hearings and evidence supplied both in documentary and oral form by the Claimant. I had no reason to conclude that the Claimant's testimony was anything other than credible and probative to the required civil law standard.

Issues

2. At the start of the hearing and bearing in mind the Claimant was not legally represented, I took time and care to repeat and articulate the issues as identified initially by Employment Judge Lancaster on 8 April 2020 and further isolated by Employment Judge Cox on 7 May 2020. I also noted her Judgements limiting the findings as to whether certain types of deduction from the Claimant's pay were lawful.

2.1 I will not repeat the isolated issues here save to refer to my findings in relation to them;

2.2 I noted that the Respondents have apparently not complied with the directions made by Employment Judge Cox with regard to disclosure and preparation of documentary and statement evidence – because they were not here to rebut it, I accept the Claimant's oral testimony in this respect;

2.2 The first issue to determine was whether the Claimant could establish the quantum of his claim for wages and pay in lieu of notice left unpaid when his employment ended i.e. how he calculated the quantum thereof as there is no dispute the Respondent paid him nothing and seek to argue they were entitled to deduct all of his final pay due at termination;

2.2 Employment Judge Cox's Judgements assist me in determining what deductions claimed as legitimate by the Respondents were permissible in law; The key issues to be determined were whether the Respondents could show what deductions they had made and that they fell within the bounds of those the subject of Employment Judge Cox's Judgements and how they calculated the quantum thereof;

Facts

- 3 The Claimant's evidences before me consisted of a copy of his contract of employment dated 18 July 2019 and his oral testimony set out in the form of a witness statement. He responded to detailed questions from me as to the content of his evidence. I accepted that throughout the whole course of his employment from commencement until it ended on the 22nd of November 2019 he had not received any pay slips, but that he had received his monthly salary direct by BACS payment into his bank account on the final day of each calendar month. There was nothing in any evidence produced by the Respondent and they were not here to give me any evidence which could amount to any rebuttal of the Claimant's evidence in this respect.

4.1 The claimant was initially paid a salary amounting to a net sum of £1356.24 per month which started on the 31 July 2019. This rate increased in September 2019 so that he was paid £1506.32 on the 31 October 2019. I find that this was the rate to which he was entitled as at that date and that therefore he was entitled to expect that he would be paid that sum had his

employment continued up to and on 30 November 2019;

4.2 I find that in accordance with paragraph 21.1 of his contract of employment he was entitled to one week's notice on termination; I find he did not receive that notice and I find that on his evidence which was not rebutted by evidence from the Respondent that he was therefore entitled to one week's pay in lieu of notice which would have expired 30 November 2019;

4.3 Taking account of and applying to paragraph 1 of Employment Judge Cox's Judgement 7 May 2020, I find that though there is no specific evidence or testimony from the Respondent before me today, it is possible for me to accept the Claimant's oral testimony that the cost of the PASMA course he undertook 19 September 2019, and which the Respondent paid and is repayable to them, was £150;

4.4 Taking account of and applying to paragraph 2 of Employment Judge Cox's Judgement 7 May 2020, I find that in the absence of contrary evidence from the Respondent either in documentary or oral form, I am entirely satisfied that I can accept the Claimant's oral testimony that he returned to the Respondents all tools, equipment or clothing supplied by them to him for the purposes of his work on or about 25 November 2019, and that the Respondent provided no evidence by today in any event of the calculation of the value of such equipment which they say the Claimant had not returned.

The Law and its Application

- 5 The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -

"(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) 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 –

(b) the worker has previously signified in writing her agreement or consent to the making of the deduction ..."

6. The Claimant must first establish non-payment to him of his monthly salary and the quantum thereof. Throughout these proceedings it has been common ground that the Respondents accept that they did not pay to the Claimant any pay accrued for the month of November 2019 nor any pay in lieu of notice as at the date of termination of his employment. In the absence of rebuttal evidence from the Respondent today, I am able to accept the Claimant's evidence about this aspect of his claim in full.

- 7 Further, I find that Employment Judge Cox has identified the only bases upon which lawful deduction can be made but that on the findings of fact made above no deduction is valid in respect of equipment etc., since I have found that the Claimant has established he has returned all that is necessary. Further I find that the only proved value of any repayable course fee for the PASMA course is that which has been conceded by the Claimant in the sum of £150.

- 8 Therefore, the Claimant's claim well founded and that he is entitled to be paid the sum of £1,506.32 but from which shall be deducted the sum of £150 leaving a balance for which I give him Judgement in the sum of £1,356.32 to which extent his claim succeeds.

Employment Judge R S Drake
Signed 18 September 2020
JUDGMENT SENT TO THE PARTIES ON
Date: 22 September 2020