



EMPLOYMENT TRIBUNALS

Claimant: Millie Matthews

Respondent: SGM Fashion Retail Ltd

Heard at: Bristol (by CVP) **On:** 23 October 2020

Before: Employment Judge Housego

Representation

Claimant: Sam Lerway (Claimant's mother)

Respondent: Gerard McMeel (director of the Respondent)

JUDGMENT

- 1. The Respondent is amended to SGM Fashion Retail Ltd.**
- 2. The Respondent made unlawful deductions from the wages of the Claimant.**
- 3. The Respondent is ordered to pay to the Claimant the sum of £596.35.**

REASONS

- The hearing was converted to a CVP (virtual) hearing at short notice, because the Claimant tested positive for Covid-19 yesterday and is required to self isolate. The Respondent had no objection to this. Ms Matthews was able to participate in the hearing.
- I considered:
 - 2.1. A 54 page bundle of documents prepared by the Tribunal office, with claim form and response, and of EJ Cadney's orders of 24 January 2020 (when this case was adjourned and directions given). It also contained a schedule dated 20 February 2020 prepared by the Respondent, which set out detailed figures resulting in a claimed overpayment (from the amount actually paid, so in addition to the deductions) of £536.35. It also contained a witness statement from the

Claimant dated 05 May 2020.

- 2.2. A 31 page bundle of documents provided by the Respondent for EJ Cadney's hearing on 20 January 2020.
- 2.3. A 24 page bundle prepared by the Claimant for the hearing of 20 January 2020 which included a job offer letter dated 29 December 2018 and the apprenticeship agreement.
- 2.4. A 6 page witness statement was provided by Sian Gissing-McMeel, but I did not accord it weight as she did not attend to give evidence. Mr McMeel (her husband) stated that she was on maternity leave, but she is a director of and the owner of the Respondent company and there was no evidence or suggestion that she was ill or otherwise unable to participate in the virtual hearing.
3. Mr McMeel told me that he did not intend to give evidence personally, and that as Ms Gissing-McMeel was not giving evidence either he relied on the documents.
4. The following facts were agreed by both Claimant and Respondent.
 - 4.1. Milly Matthews worked as an apprentice for the Respondent. She started on 07 January 2019, and left on 30 April 2019. She resigned on that day and it was agreed that she did not work a notice period. This is a period of 16 weeks and 1 day. The Claimant had a 5 day week, of which one was day job release to study. As it is job release, it was a 5 day week (which is less advantageous to the Claimant when calculating a daily rate of pay).
 - 4.2. The letter offering the post of sales apprentice is dated 29 December 2018 (6/24). It states "*I am pleased to offer you the position of Sales Apprentice at a starting wage of £148.00 per week.*"
 - 4.3. The apprenticeship agreement (2/31) does not refer to any pay rate or period.
 - 4.4. The Respondent paid the Claimant a total of £1801.25 during her employment, as wages.
 - 4.5. The amount of pay for 16 weeks at £148 a week is £2,368. One day is 1/5th of £148, which is £29.60. Accordingly at £148 a week the Claimant should have received £2,397.60.
 - 4.6. The difference is £596.35.
5. EJ Cadney's order of 20 January 2020 set out with clarity (paragraphs 4 and 7) that it was for the Respondent to prove that the deductions were proper.
6. The Respondent provided no evidence. The schedule setting out why they said that not only were the deductions justified but that the Claimant owed them £536.35 in addition is an assertion, but no evidence was provided to

substantiate it.

7. The letter of 29 December 2018 offering the job to the Claimant was signed by the Respondent (Sïan Gissing-McMeel) and was countersigned by the Claimant on 03 January 2019 to accept the offer, and she worked for the Respondent on those terms. It is a contract. The financial terms were that the Respondent would pay the Claimant £148 weekly.
8. The Respondent bases its calculations on the statutory minimum payment per hour for a young apprentice, £3.70 an hour. That is irrelevant to the claim. Its only relevance to an apprenticeship contract is that it provides a floor to the level of pay that an apprentice must receive. Ms Matthews does not say that she received less than that minimum hourly rate.
9. Nor are the Respondent's assertions about holiday relevant. The right to holiday is to time off with pay. The Claimant makes no claim for money to compensate for holiday not taken while employed. She claims only for £148 a week when employed. (There would be no right to make a financial deduction for holiday taken in excess of entitlement, and in any event the Respondent does not assert this (or provide any evidence)).
10. Accordingly, on the basis of the matters accepted as correct by the Respondent the claim must succeed, and no evidence was required from the Claimant. The Respondent did not pay (that is deducted) the difference between what she should have been paid (at £148 a week) and what she was actually paid.
11. That the Claimant accepted that she signed a form authorising deductions is irrelevant. Such authority permits proper deductions. This was not a deduction for overpayment of wages which would be lawful under S14 of the Employment Rights Act 1996, and so that form has no relevance.
12. The Claimant had calculated her claim on a week by week basis and did not know how it was that her figure (in the claim form) was £625.95 (based on claimed total due of £2427.20). Therefore, I used the weekly contractual figure.

Employment Judge Housego

Dated: 23 October 2020

Judgment and Reasons sent to parties: 12 November 2020

FOR THE TRIBUNAL OFFICE