



EMPLOYMENT TRIBUNALS

Claimant: Mr D Megyesi

Respondent: Oxdale Products Limited

Heard: via Cloud Video Platform **On:** 28 January 2021

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr C Butcher, Managing Director

JUDGMENT

1. The respondent made an unlawful deduction from the claimant's wages in the sum of £1,037.98. The respondent is ordered to pay that sum to the claimant.
2. The respondent breached the claimant's contract of employment by failing to pay him one week's notice. The respondent is ordered to pay the claimant the sum of £313.92 in respect of his notice pay.

REASONS

The Proceedings

1. By claim form presented on 1 October 2020 following a period of early conciliation from 21 September 2020 to 1 October 2020, the claimant brought a claim of unfair dismissal, for unlawful deduction from wages, and for notice pay.
2. The claimant had less than two years' employment with the respondent and, following a strike out warning issued by the Tribunal on 14 October, the claim for unfair dismissal was struck out by Employment Judge V Butler on 31 December 2020.
3. I heard evidence from the claimant and on behalf of the respondent from Chris Butcher, Managing Director.

4. The claimant had prepared a brief witness statement and sent it to the Tribunal with a few documents. The respondent had not prepared any witness statements but had sent some documents to the Tribunal.
5. Neither party had copies of the other party's documents, and the respondent did not have a copy of the claimant's statement. The clerk sent copies of the missing documents to the parties and I adjourned to give them time to consider them.
6. At the end of the hearing the respondent admitted that the claimant is entitled to be paid one week's pay in lieu of notice.

The issues

7. The issues that fell to be determined at the hearing on 28 January were :-
 - a. When did the claimant's employment end? The claimant alleges his employment terminated on 21 September 2020, the respondent says that it terminated on 21 July 2020.
 - b. Did the respondent make an unlawful deduction from the claimant's wages by failing to pay him furlough pay during August and September 2020?
 - c. If so, how much, if any, should the respondent be ordered to pay to the claimant?
 - d. How much notice pay is the claimant entitled to?

Findings of fact

8. The claimant was employed by the respondent from 13 January 2020 as a welder. He was good at his job and the respondent had no concerns about his performance. The claimant was born on 2 January 1983 and throughout the period that he was employed by the respondent was aged 37.
9. The claimant was one of two welders employed by the respondent, the other being 'Steve'. The claimant worked a 40 hour week and was paid £8.50 an hour. His average monthly pay was £1,473 gross and £1,297.47 net.
10. In late March or April 2020, after the announcement of the national lockdown, the claimant was placed on furlough under the Coronavirus Job Retention Scheme ("CJRS"). He was paid 80% of his normal monthly pay whilst on furlough, and the respondent did not top up to full pay.
11. The claimant's net monthly pay under the CJRS was £1,037.98. The claimant was paid on 21st day of every month. He produced payslips for the months of May and June and a bank statement showing that he had been paid by the respondent on 21 April 2020, 21 May (when he received two payments in error) and on 21 July 2020.

12. On 21 July 2020, the claimant went into the respondent's office to collect payslips that he needed as proof of earnings for child maintenance purposes. Whilst in the office that day the claimant did not speak to Steve, as Steve had left before the claimant arrived, and the claimant did not tell Steve, or indeed any other of the respondent's employees, that he had another job.
13. The claimant did not resign from his employment with the respondent, either on 21 July or on any other date.
14. On 21 August, which was pay day for the month of August, the claimant was not paid anything by the respondent. On the evening of 21 August he sent a message to Mr Butcher: *"Hi Chris I've heard u have been told I have another job which aint true"*.
15. Mr Butcher replied immediately; *"Yes was told that you had been in to collect your stuff and all you paper work as you had got another job so that's why we finished you at oxdale"*. The claimant wrote back: *" I needed my wage slips for child maintenance for proof."*
16. Mr Butcher did not reply to that message, and 6 days later, on 27 August, the claimant sent a further message; *"Hi Chris. So were do I stand now as I haven't give you any notice I'm leaving you have had no contact with me to say I'm finished I'm still employed by you. I have been waiting for my start date back. Which u was going to contact me I don't know were its come from that I have another job I only collected wage slips for proof of earning for csa so were ever its come from it's a load of crap"*.
17. Mr Butcher did not reply to that message, and on 3 September the claimant contacted him again: *"Hi chris I been in touch with acas and I believe I am owed holiday pay and my wages to the date u terminated my contract and my p45 as far as I; concerned I'm still employed as no p45 has been received I also have proof I have not worked anywhere else like u have stated"*.
18. Again, Mr Butcher did not reply.
19. The claimant was subsequently sent his P45, which stated his termination date was 21 July 2020 and, on 21 September, was paid £348.80 by the respondent in respect of holiday pay and an underpayment of wages owed for June 2020.
20. The claimant was not paid for either August or September 2020, but the respondent did prepare pay slips for the claimant for August and September, showing his pay as 'nil'.
21. The claimant applied for Universal Credit but did not receive any for the relevant period because he was showing as still employed by the respondent.
22. He started a new job on 21 September 2020.
23. The claimant was not given written notice of termination of his employment. During the course of giving evidence today, Mr Butcher said that a letter of termination had been sent to the claimant. I do not believe that evidence. It is

inconsistent with the messages between the claimant and Mr Butcher at the time, and there is no mention of it in the Response form. Not only that, but earlier on in his evidence he referred to the claimant having left, although he accepted that the claimant had not resigned. When I asked Mr Butcher why he had written in a message to the claimant on 21 August “*we finished you at oxdale*” his response was ‘that doesn’t mean we finished him’.

24. In light of the evidence above, I find that the claimant’s employment terminated on 21 August 2020 when Mr Butcher sent him a message making it clear that his employment with the respondent was terminated. The use of the words ‘we finished you’, when combined with the respondent’s behaviour towards the claimant, namely the refusal to pay him and the lack of further communication, amount in my view to a dismissal.
25. The claimant was entitled to one week’s notice of termination of his employment. He was not given a week’s notice or paid in lieu of notice.
26. In April 2020 the National Minimum Wage for those aged 25 and over increased to £8.72 an hour.

The Law

27. Section 12 of the Employment Rights Act 1996 (“**the ERA**”) provides that :-

“(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 his agreement or consent to the making of the deduction....*

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion....”

Conclusions

28. The claimant’s employment terminated by the respondent on 21 August 2020, when the respondent sent the claimant a message saying that he was finished with the respondent.
29. The claimant was entitled to one week’s notice of termination. The respondent did not give him a week’s notice or pay him in lieu, and was therefore in breach of the claimant’s contract of employment. To his credit, Mr. Butcher accepted during the hearing today that the claimant was entitled to a week’s pay in lieu of notice.

- 30.** The claimant was employed to work a 40 hour week. At the time of his dismissal the National Minimum Wage for an employee of his age was £8.72 an hour. 40 hours at £8.72 gives a gross weekly pay of £348.80. I have applied a 10% deduction for tax and NIC, in line with the gross and net figures provided by the respondent, which suggest an effective tax rate of approximately 10%.
- 31.** The claimant is therefore entitled to be paid a week's pay in lieu of notice amounting to £313.92.
- 32.** The claimant was also entitled to be paid up to the date upon which his employment terminated, namely 21 August 2020. The claimant was last paid on 21 July 2020, leaving one month's pay outstanding. The claimant did not work during that period. He should have been paid furlough pay under the CJRS of £1,037.98 net for that period.
- 33.** The respondent made an unlawful deduction from the claimant's wages in respect of that sum, and is therefore also ordered to pay the sum of £1,037.98 to the claimant.

Employment Judge Ayre

28 January 2021

Sent to the parties on:

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For the Tribunal:

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