



THE EMPLOYMENT TRIBUNALS

Claimant: Miss J Wilde

Respondent: GM Packaging (UK) Ltd

Heard at: Newcastle Hearing Centre (by CVP) **On:** 15 January 2021

Before: Employment Judge Morris (sitting alone)

Representation:

Claimant: In person

Respondent: Not represented

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The claimant's complaint that the respondent made an unauthorised deduction from her wages in that it did not pay her at all in respect of the final 10 days of her notice period (i.e. 2 to 13 March 2020) contrary to Section 13 of the Employment Rights Act 1996 is well-founded.
2. In respect of the above unauthorised deduction the respondent is ordered to pay to the claimant £750.00.
3. The award referred to above has been calculated by reference to the claimant's gross pay and should there be any liability to income tax or employee's national insurance contributions in respect of that award, that shall be the liability of the claimant alone.

REASONS

Representations and evidence

1. The hearing was conducted by way of the Cloud Video Platform. The claimant appeared in person and gave evidence herself. Despite a Notice of Hearing having been sent to the respondent it was not represented at the hearing.

2. By coincidence I was the Employment Judge who had conduct of a hearing, by telephone, in this case on 14 July 2020 the purpose of which was to obtain further information from the claimant so as to make a determination of her claim in circumstances where respondent had failed to submit a response. Notice of that hearing had been given to the parties and Mr Fallon attended on behalf of the respondent. I agreed that he could participate in the hearing. Mr Fallon explained that the respondent had not received the Notice of Claim and the first that he knew of the proceedings was the Notice of Hearing for that day. That said, he confirmed that the email address to which the Notice of Claim had been sent was the correct email address. I decided to give the respondent the benefit of the doubt and directed that the Notice of Claim should be reserved. I explained that the respondent would then be required to present a Response, which it has done.
3. In the circumstances of the respondent not being present at the hearing today I asked the clerk to make enquiries of the respondent. Having done so, the clerk relayed the following information to me: she had been informed that Mr Fallon was no longer with the respondent and had not been employed by it for about 1½ months; the respondent did not have anyone suitable to attend the hearing on behalf of Mr Fallon; the hearing “must have been overlooked when Mr Fallon left”.
4. In these circumstances, with reference to rule 47 of the Employment Tribunals Rules of Procedure 2013, I determined to proceed with the hearing in the absence of the respondent. The respondent not being represented at the hearing, I have paid particular attention to the content of its formal response (ET3).
5. Evidence of the claimant was given orally by reference to a written witness statement that she had previously provided. I also had before me a small bundle of documents that were relevant to the issues in this case.

The claimant’s complaints

6. The claimant’s complaint was that the respondent had made an unauthorised deduction from her wages contrary to Section 13 of the Employment Rights Act 1996 (“the 1996 Act”) in that it had not paid her salary during the final 10 working days of her notice period: i.e. 2 to 13 March 2020.
7. The issues in this case are relatively straightforward. It is a matter of determining the following: the date upon which the claimant’s contract of employment terminated; whether during the period of the claimant’s employment the respondent made any unauthorised deductions from her wages; if so how much was deducted; how much, if anything, is the claimant therefore owed.

Consideration and findings of fact

8. Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral) and the relevant statutory and case law (notwithstanding the fact that, in pursuit of some conciseness, every aspect might not be specifically mentioned below), the Tribunal records the following facts either as agreed between the parties or found by me on the balance of probabilities:

- 8.1 The respondent is a company supplying packaging particularly in respect of takeaway and/or delivery of food. The claimant was employed by the respondent as a sales administrator. Her contract of employment records the commencement date of her employment as being 6 August 2018.
- 8.2 The claimant's contract of employment continued until, by letter of 19 February 2020, she terminated it on notice to expire on 13 March 2020. In the respondent's Response (ET3) Mr Fallon of the respondent states that the claimant "handed her notice in dated 14th February." Having seen a copy of the letter of resignation, which is dated 19 February, I do not accept that alternative date.
- 8.3 The claimant was not at work during the period 27 January 2020 until the termination of her employment on 13 March 2020. The reason for this was that on Monday 27 January 2020 she had asked Mr Fallon if she could have time off work due to some personal issues. She offered to take the time as unpaid leave. He agreed that she could have that week off work and that she would be paid. The claimant duly returned to work the following Monday, 3 February 2020, to find that she had been removed from all the respondent's computer systems. She was initially told that this had been a mistake but it was then suggested that maybe returning was not right for her or the business at that time and she should take the rest of the week off. Mr Fallon advised the claimant that this was just temporary and that she would be paid.
- 8.4 Mr Fallon confirmed this to the claimant in a telephone conversation on 4 February 2020 and then telephoned her again on 7 February 2020 to advise her not to return to work during the following week. He again confirmed that this would be paid leave.
- 8.5 In these circumstances the claimant realised that she was now facing the likelihood of not being permitted to return to work as she wanted and began looking for alternative employment, which she secured on 19 February 2020. That day she attended at the respondent's offices and handed in a letter giving notice of her resignation including, "I will continue to work for the company for the next four weeks completing my employment on 13 March 2020". The respondent acknowledged the claimant's notice. Despite that, in its Response Mr Fallon on behalf of the respondent states, "We declared Josie's last working day as 28th February."
- 8.6 On 25 February 2020 the claimant received her salary for the month of February. She was due the next payment of her salary on 25 March 2020 but did not receive any pay on that date. The claimant made enquiries of Mr Fallon who replied by email of 27 March 2020 to the effect that she had asked for leave on 27 January since when she had only worked for one hour on the morning of 3 February, the respondent had paid her a full month salary for February and in the circumstances, "we deem it fair that no other monies are owed."

- 8.7 This is echoed in the respondent's Response within which Mr Fallon expresses his "belief that Josie has already been significantly overpaid and to ask for anything else is absolutely unreasonable and it is GM packaging (UK) Ltd who are out of pocket as a result of our support for Josie."

The law

9. The principal statutory provision that is relevant to the issues in this case is as follows:

Deduction from wages – the 1996 Act

"13 Right not to suffer unauthorised deductions.

(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.

Application of the facts and the law to determine the issues

10. The above are the salient facts relevant to and upon which I based my judgment having considered those facts in the light of the relevant statutory law and the case precedents in this area of law.
11. As indicated above, a contract of employment existed between the claimant and the respondent regulating her employment which commenced on 6 August 2018. Apart from in certain rare and exceptional circumstances that are not relevant to this case, a contract of employment will continue until it was terminated by one of the parties. By letter of 19 February 2020, the claimant gave notice to terminate that contract to expire on 13 March 2020. A contract was not terminated by the respondent whether before or after its termination by the claimant and it is not open to the respondent, as Mr Fallon has asserted, to declare the claimant's "last working day as 28th February."
12. That being so, the contract between the parties continued until Friday, 13 March 2020. The claimant was ready, able and willing to work throughout the period of 3 February to 13 March 2020. She attend work on the first of those dates and one can only speculate what Mr Fallon meant when he suggested that returning that day was not right for her or the business at that time. Thereafter the claimant contacted Mr Fallon seeking to return to work but he declined to allow her to do so.
13. In the circumstances I have no hesitation in finding that the claimant was entitled to be paid throughout her employment until its termination on 13 March 2020 whereas she was only paid up to and including 28 February 2020. Thus, the claimant was entitled to be paid for the 10 working days between Monday, 2 March and Friday, 13 March 2020. She did not, however, receive any pay in

respect of those working days and that amounts to an unauthorised deduction from her wages contrary to section 13 of the 1996 Act as set out above.

14. In those circumstances the claimant has complained to this Tribunal under section 23 of the 1996 Act. By reference to section 24 of that Act I find the claimant's complaint to be well-founded and order the respondent to pay to the claimant the amount of the deduction that it made in contravention of section 13 of the 1996 Act.
15. The claimant's annual gross salary is £19,500. One day's gross pay is therefore £75. The claimant was not paid for the 10 working days referred to above and, accordingly, a deduction of £750 was made from her wage. I order the respondent pay to the claimant that amount of £750.

Conclusion

16. In conclusion, my judgment in respect of the claimant's complaint is as follows:
 - 16.1 The claimant's complaint that the respondent made an unauthorised deduction from her wages in that, contrary to Section 13 of the 1996 Act, it did not pay her at all in respect of the 10 working days of her period of notice referred to above during which she was ready willing and able to work is well-founded.
 - 16.2 In respect of the above unauthorised deduction the respondent is ordered to pay to the claimant the sum of £750.00.

EMPLOYMENT JUDGE MORRIS

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE
ON 15 January 2021**

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.