



EMPLOYMENT TRIBUNALS

Claimant

Mrs R M Ghenea

v

Respondent

SGL Labs Limited (formerly Solitaire
Gemmological Laboratories Limited)

Heard at: Central London Employment Tribunal On: 1 February 2021
Before: Employment Judge Norris, sitting alone (via CVP)(V)¹

Representation:

Claimant – In person

Respondent – No appearance

JUDGMENT

1. The Claimant's claim of unlawful deductions from wages is well-founded and succeeds under section 23 Employment Rights Act 1996.
2. The Respondent is ordered to pay the Claimant the following amounts:
 - a. £1,700 (gross) being her pay for December 2019;
 - b. £35.64, being the Respondent's pension contribution for the same month; and
 - c. £156.92 for two days' overtime worked.
3. The Respondent is further ordered to pay the Claimant the sum of £82.71 pursuant to section 24(2) Employment Rights Act 1996.
4. The Claimant gives credit for the £86.92 already received towards her December 2019 salary. The total amount that the Respondent is ordered to pay (without deduction) is accordingly £1,888.35.

REASONS

1. The Claimant worked for the Respondent from 11 September 2017 until her employment terminated by reason of her resignation (which she had tendered in September 2019) at the end of December 2019.
2. In February 2020, the Claimant lodged a claim for her unpaid wages and pension contribution for the last month of her employment and for two days' overtime (24 November and 15 December 2019). In a schedule of loss produced in accordance with the Tribunal's Orders, she also sought recovery of a single day's pay because she has had to take a day's leave from her current employment to be able to attend this Hearing.

¹ This has been a remote hearing which was consented to/not objected to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing.

3. The Respondent submitted an ET3 on 8 March 2020. It asserted that having produced the Claimant's payslip for December 2019, it had noticed "manulpaltion" (presumably intended to say "manipulation") of attendance records and had "ordered a detailed internal report and enquiry". It says that consequently, it has deducted the sum of £1,770 from the Claimant's last monthly payment and paid her the balance of £82.16. It requested an "extension to submit a detailed report of the falsified attendance records by the Claimant".
4. On 23 March 2020, an Order was sent to the parties from Regional Employment Judge Wade, requiring the parties to exchange documents by 4 April and the Respondent to produce a Hearing bundle by 14 April. Witness statements in the case were to be exchanged on 23 April. Notwithstanding the postponement of the Hearing until today, 1 February 2021, as a result of the closure of the Tribunal during the pandemic, the Respondent has not complied with any of those Orders or produced the "detailed report" to which it refers in the ET3. Nobody from the Respondent appeared at the Hearing. The Claimant had forwarded her documents and a witness statement and was present in person. She also emailed me the Respondent's ET3.
5. I considered the documents, which included the Claimant's contracts of employment from 2017 and 2018, the transcript of a covert recording made between her and Mr Chirag Soni (one of the Respondent's directors) on 2 January 2020 when the Claimant returned the keys to the office to him, the Claimant's travel card records and the WhatsApp logs of her conversations with colleagues. The Claimant also showed me her November 2019 payslip showing her gross and net pay and her employer pension contribution figure.
6. I took into account that there was no supporting evidence before me that the Claimant had failed to attend work as alleged or at all. On the contrary, the evidence suggested that she had worked diligently. Mr Soni indeed said on 2 January 2020 that he had no complaint about her work and she had done "a wonderful... a fantastic... an excellent job". However, he appeared also to be most unhappy that the Claimant was refusing to continue to work until the middle of the month. He said that both parties would be protecting their "territories" making reference to "taking the murky waters". In terms, he threatened that the Claimant would not receive her P45 if she refused to stay, commenting "...trust me, it's not going to be... it's going to be ugly for both of us".
7. I am satisfied that the Claimant gave valid notice on 18 September 2019. Her contractual notice period that she was required to give the Respondent was one month. For her employment to terminate only at the end of December reflects the fact of her flexibility. It shows that the Respondent had ample time to recruit a replacement if it had chosen to do so. In any event, the Claimant was not in breach of contract.
8. Accordingly, I am satisfied that there should have been no deductions from the Claimant's December 2019 pay, which was £1,700 gross according to her contract. Since she is no longer on the Respondent's payroll, the

amount will have to be paid gross and the Claimant will have to account for her own tax. In addition, she is entitled to receive the regular employer pension contribution of £35.64 for December 2019.

9. I heard evidence on oath from the Claimant and accept that she worked additionally on two Sundays (24 November and 15 December 2019). That means she is entitled to two days' pay at the rate of £78.46 per day, adding £156.92 gross to the total. From that, the Claimant offsets the amount she did receive, of £86.92.
10. I am satisfied, having made the declaration under section 23 Employment Rights Act 1996 (ERA) that the Respondent should also pay her an amount that is appropriate in all the circumstances to compensate her for any financial loss sustained by her which is attributable to the matter complained of. I order that the Respondent is to pay an additional £82.71 (without deduction) to compensate the Claimant for having to take a day's holiday to attend this Hearing, under section 24(2) ERA.
11. Finally, I note that if the Respondent had been in attendance, I should have considered making an employer penalty as a result of its conduct towards the Claimant. However, section 12A Employment Tribunals Act 1996 requires me to have regard to the payer's means in deciding whether to order such a penalty and if so, the amount thereof, and I did not have evidence thereof. It is to be hoped nonetheless that the Respondent will now acknowledge that it is not entitled to behave in such a manner and will not make unlawful deductions from its employees' salaries in future, nor threaten them with the withholding of their rightful documentation if they do not accede to demands; nor would I expect a director of a Company to suggest that Tribunal/Court dates will have to be postponed to his convenience merely because he is not resident in the United Kingdom. As Mr Soni will now appreciate, hearings are frequently held remotely and, if the Respondent chooses not to attend, will continue in its absence and judgment entered accordingly.

Employment Judge Norris
Date: 1 February 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

02/02/2021.

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FOR THE TRIBUNAL OFFICE