



EMPLOYMENT TRIBUNALS

Claimant: Mr Amneet Singh Bains

Respondent: EHALAH FZ-LLC (t/a Intrro)

Heard at: London Central (via CVP) **On:** 26th April 2021

Before: Employment Judge Nicklin

Representation

Claimant: in person

Respondent: no attendance

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face to face hearing because of the COVID-19 pandemic.

JUDGMENT

1. It is the judgment of the tribunal that the Respondent made two unauthorised deductions from the Claimant's wages in January 2020.
2. The Respondent shall pay the Claimant **£1,205.80**.

REASONS

Introduction

1. By a claim form presented on 10th February 2020, the Claimant brought a claim of unauthorised deductions from his wages in respect of his two weeks unpaid notice period under his contract of employment.
2. The Claimant was employed by the Respondent as its Head of Marketing from 20th November 2019 until 13th January 2020. The Respondent acknowledged that the claim is for unpaid wages in its ET3. Whilst the claim concerns the Claimant's notice period, he remained employed during this period (although not required to attend work) and, as such, claims for wages rather than a contractual sum in lieu of notice.
3. No ET3 having initially been filed, Employment Judge Adkin entered judgment without a hearing in this matter pursuant to Rule 21 of the tribunal's Rules of

Procedure on 6th May 2020. This was subsequently varied at a hearing before the same judge on 23rd October 2020, whereupon judgment was entered for the sum of £487.20, an amount the Respondent confirmed it did not dispute. The issues were clarified at that hearing with case management orders being made before the matter was eventually listed before Employment Judge McKenna on 26th March 2021 for final hearing.

4. At that hearing, the Claimant attended but nobody appeared from the Respondent. The Claimant confirmed that the £487.20 had been paid. On the day before the hearing, Mr Oudjidane, a co-founder of the Respondent who completed the ET3 Response and appeared on 23rd October 2020, responded to an email from the tribunal to advise he had relocated to the USA and it would not be possible to join the hearing. Employment Judge McKenna put the matter back to 3pm that day but the Respondent did not join the hearing. She then decided to adjourn the case and re-listed it to today's hearing at 2pm for 3 hours. The tribunal sent out the case management orders, which included notice of the date and time of today's hearing, by email to both parties on 30th March 2021. The Claimant received this email and confirmed it was copied to the Respondent's email address.
5. The case management order made on 26th March also required the Respondent to prepare a witness statement and send this to the Claimant and the tribunal along with the evidence and documents on which it relied, by 19th April 2021.
6. The Claimant sent an updated hearing bundle to the tribunal, in accordance with the case management order, on 22nd April 2021, copying in the Respondent. This bundle included the ET1, ET3 and evidence of both parties submitted to date. The Claimant confirmed he did not receive anything from the Respondent before or after 19th April.

The Respondent's non-attendance at the hearing

7. Nobody from the Respondent attended today's hearing at 2pm. My clerk sent an email to Mr Oudjidane, but there was no reply. I also asked the tribunal to telephone his international mobile telephone number. Two unsuccessful calls were made. The tribunal had not received any documentation or correspondence from the Respondent since the emails sent to the tribunal just prior to the last hearing on 26th March, which was adjourned.
8. I decided to proceed with today's hearing in the absence of the Respondent, pursuant to Rule 47 of the tribunal's Rules of Procedure, for the following reasons:
 - 8.1. Notice of today's hearing was given to both parties in the order of 26th March 2021, sent out by email on 30th March 2021. The Claimant confirmed he received the email and confirmed that it was sent to the Respondent's email address too. The Respondent therefore had notice of the hearing and has not contacted the tribunal to ask for a different date or alert it to any problems with the listing. The hearing was listed in the afternoon which necessarily accommodates the fact that Mr Oudjidane had told the tribunal previously that he is resident in the USA on eastern time.
 - 8.2. Further, the Respondent was aware of the last hearing on 26th March 2021 and had advised the tribunal he could not attend. If for any reason he did not receive the order, there is no evidence of any contact with the tribunal

after the hearing regarding the orders made. The Claimant confirmed there has been no contact with him.

8.3. The Respondent was also copied into the Claimant's email of 22 April 2021 attaching the bundle and the tribunal's email of 23 April 2021, providing the joining instructions, which expressly refers to the date and time of the hearing. The tribunal received no correspondence from the Respondent after these emails.

8.4. The tribunal had made all enquiries it could to ascertain why the Respondent did not attend the hearing. The Respondent was contacted by email and telephone at the time of the hearing and the tribunal waited, whilst this took place, to see if the Respondent would attend. The hearing did not commence until 2.50pm whilst these enquiries were made.

8.5. The hearing has already been adjourned once as a result of the Respondent's non-attendance. In the absence of any reason for not attending, it was not in accordance with the overriding objective to delay hearing this matter any further.

Issues to be determined

9. The issues I had to determine had previously been identified at the hearings on 23rd October 2020 (when the Respondent did attend) and on 26th March 2021. The following matters were agreed:

9.1. The Respondent accepts in the ET3 that the Claimant's wages owing, before any deductions, are £1,693 in respect of his notice period. In his witness statement, the Claimant confirmed he accepted this sum as the correct figure.

9.2. The Respondent accepts that £487.20 of the above figure is owing and has now paid this to the Claimant. The outstanding claim is therefore for £1,205.80. The Respondent's case is that all of this sum is lawfully deducted from the Claimant's wages for the following reasons:

9.2.1. £480 is owing to the Respondent by the Claimant for a sum allegedly incurred by the Claimant acting on behalf of the Respondent in circumstances where it is said the Claimant acted outside the scope of his authority. The Respondent says that the Claimant signed an agreement with a supplier on behalf of the Respondent about which the co-founders had no knowledge. I refer below to this as the 'invoice issue'.

9.2.2. £725.80 represents holiday pay the Respondent says it has paid to the Claimant in December 2019 for 5 days of leave between 23rd and 30th December 2019. The Respondent contends that this should be set off against any wages owing in the notice period. I refer below to this as the 'holiday pay issue'.

10. The issues for this hearing were:

10.1.1. What sum was properly payable as wages, before any deductions?

- 10.1.2. Were there deductions from the Claimant's wages in respect of either the invoice issue or the holiday pay issue, or both?
- 10.1.3. If so, were such deductions authorised?
- 10.1.4. If not, were either deductions exempt, meaning they were lawful?
- 10.1.5. If not, what sum is owing to the Claimant?

Evidence

11. I heard sworn evidence from the Claimant and considered all of the documents which had been submitted to date. This included the ET1, the Claimant's witness statement, the Respondent's ET3, an email dated 2nd January 2020 described as 'Holiday screenshot' (concerning the holiday pay issue), a subscription agreement on which the Respondent relies for the invoice issue and the November and December 2019 payslips. I also had a copy of the Claimant's employment contract. As above, the Respondent had not submitted any further evidence in compliance with the last case management order.

Findings of Fact

12. I set out the following findings of fact below.

The contract

13. The Respondent was described by the Claimant as an HR and hiring platform. It is a company incorporated in the United Arab Emirates with its principal place of business in Dubai. The Claimant was employed under a written contract, signed by him on 5th November 2019, as Head of Marketing, based in London. He began his employment on a 3-month probationary period, during which time the notice period to terminate the contract was 2 weeks.
14. The contract provides that the Claimant was employed on a salary of £45,000 per annum (in addition to other benefits), with the Claimant being required to account personally for any tax liability. The Claimant was paid monthly £3,750 gross. The contract also includes provision for 25 days paid leave in addition to bank holidays.
15. There are no terms in the contract which authorise the Respondent to withhold payment of salary or wages. The contract also provides, at paragraph 9, that it constitutes a complete agreement between the parties.

The invoice issue

16. This was a contract for the supply of a subscription to a PR platform to assist the business. The Claimant signed the subscription agreement on behalf of the Respondent on 29th November 2019. The agreement is for a value of £400 excluding VAT. It provides for a one-year subscription for the Respondent and records the Claimant's details as the contact.
17. I have not been presented with any invoice to prove exactly what cost has been incurred by the Respondent.
18. On the balance of probabilities, I accept the Claimant's evidence that he signed this agreement with the express authority of Mr Oudjidane, one of the co-founders of the Respondent. This is because:
 - 18.1. The Claimant told me that it was verbally agreed between himself and Mr Oudjidane that the Claimant would arrange the subscription. I found

the Claimant to be straight forward and open in giving his evidence to the tribunal.

- 18.2. He explained that there had never been any issue taken about this subscription until it was raised in these proceedings. He was not made the subject of any disciplinary procedure. I consider that the Claimant's version of events is more likely than not to be correct because there is no evidence of the Respondent taking any action about this subscription after it had been set up.
19. I also accept the Claimant's evidence that he has not been asked to give consent, in writing or otherwise, at any time, to a deduction from his salary in relation to invoices for which the Respondent is liable or contracts entered into by the Claimant on the Respondent's behalf. There has been no evidence produced to suggest otherwise.

Holiday pay issue

20. The Claimant told me that he did not take any holiday during his short period of employment with the Respondent. The email dated 2nd January 2020 says:

Hi Amneet,

What we mean is that we do not expect you to physically work your notice period.

We ok to pay lieu. the days of leave you have taken since we left Georgia, 23rd -31st, excluding bank holidays, will also be taken into consideration. This payment will be released when our company assets (in the condition we gave them to you,) and access to the accounts have been received.

Please meet Neel on Monday 6th of Jan at 2 pm, I have sent a calendar invite.

21. The Respondent relies on the dates in this email, not including bank holidays, alleging 5 days leave have been taken. I accept the Claimant's evidence that the parties went on a business trip to Georgia, as referred to in this email, and then went to different destinations. The Claimant went to Norway and worked remotely from there whilst Mr Oudjidane went to Dubai. Apart from the bank holidays, he did not take any time off. I accept what he says about this because there is no other evidence to suggest he did book off or take any leave and, further, the Claimant's pay slip for December 2019 shows him being paid the full month as salary. There is no reference at all to any holiday pay. Mr Oudjidane was mistaken in his email and this is explained by the fact that both he and the Claimant were not working in the same location at this time.
22. At no time did the Claimant provide his consent or agreement, in writing or otherwise, to any set off for alleged holiday pay.

Notice of termination

23. On 30th December 2019, the Respondent met with the Claimant during a video call. He was told that his employment was terminated and it was established that, pursuant to the contract, he was entitled to 2 weeks' notice. Rather than pay this to the Claimant in lieu (which appears to be suggested in the email), he remained employed until the end of this period, 13th January 2020, as is agreed in the ET1 and ET3.
24. The Claimant met with the Respondent on 6th January 2020 to hand back company assets. The Respondent accepted there were wages owing but did

not make any payment until the sum conceded at the hearing on 23rd October 2020.

Law

25. Section 13 of the Employment Rights Act 1996 (“the ERA”) provides as follows (in respect of an unauthorised deduction from wages claim):

- (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.*
- (2) *In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—*
 - (a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
 - (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
- (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.*
- (4) *Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*
- (5) *For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*
- (6) *For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*
- (7) *This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer*

26. Section 14 provides for the circumstances where a deduction is exempt from the application of section 13:

- (1) *Section 13 does not apply to a deduction from a worker’s wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—*
 - (a) *an overpayment of wages, or*
 - (b) *an overpayment in respect of expenses incurred by the worker in carrying out his employment,*
made (for any reason) by the employer to the worker.
- (2) *Section 13 does not apply to a deduction from a worker’s wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.*

- (3) *Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.*
- (4) *Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—*
- (a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or*
 - (b) otherwise with the prior agreement or consent of the worker signified in writing,*
- and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.*
- (5) *Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.*
- (6) *Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.*

Conclusions

What sum was properly payable as wages, before any deductions?

27. As the parties are agreed that, before any deductions, the amount payable for the period of notice was £1,693, I conclude that this is the amount which was properly payable by the Respondent as wages in January 2020, in accordance with section 13(3) of the ERA. As above, £487.20 of this sum has now been paid, leaving £1,205.80 outstanding.

Were there deductions from the Claimant's wages in respect of either the invoice issue or the holiday pay issue, or both?

28. Both the sum of £480 for the invoice issue and £725.80 for the holiday pay issue have been deducted from the Claimant's wages payable in January 2020. These two amounts add up to £1,205.80 and this sum has not been paid.

If so, were such deductions authorised?

29. I conclude that neither deduction was authorised for the following reasons:

29.1. On the basis of the factual findings set out above:

29.1.1. there was no basis to deduct the £480 for the invoice issue because, as I have found, the subscription contract was entered into by the Claimant on behalf of the Respondent with the Respondent's permission. The Claimant was therefore acting within the scope of his duties and the Respondent was aware of the subscription agreement; and

29.1.2. there was no basis to deduct anything as regards holiday pay because the Claimant did not take any of his contractual leave in December 2019. However, even if he had done so and this was paid in December, it would not entitle the Respondent to set it off against the two weeks' notice pay in January 2020. The Claimant's

contractual entitlement to paid leave in one particular month is separate from his entitlement to two weeks' notice pay during another month when, it is agreed between the parties, the Claimant remained employed. Whether or not the Respondent required the Claimant to physically attend work during his notice period does not affect the Claimant's entitlement to be paid his wages in that period.

29.2. Applying section 13(1)(a), such deductions were not required or authorised by a statutory provision or a relevant provision in the Claimant's employment contract in respect of either of the issues advanced by the Respondent, even if it had established its factual case on either point.

29.3. Applying section 13(1)(b), the Claimant has not previously signified his consent or agreement in writing to either deduction.

29.4. Accordingly, the deductions are not authorised under section 13(1) of the ERA.

If not, were either deductions exempt, meaning they were lawful?

30. In order to be a deduction which is exempt from the requirements of section 13 of the ERA, a deduction needs to come within one of the provisions of section 14, set out above. In my judgment, none of those provisions apply. There was no previous overpayment of wages or expenses to be reimbursed and as I have found above, there were no disciplinary proceedings at all. Subsections 14(3) – (6) clearly have no application to the issues being raised.

31. Accordingly, the deductions are not exempt from the requirements of section 13 of the ERA. Both deductions were therefore unlawful.

If not, what sum is owing to the Claimant?

32. The Respondent therefore owes the Claimant £1,205.80 in unpaid wages.

Outcome

33. For the reasons given above, the two deductions from the Claimant's wages in January 2020, amounting to £1,205.80, were unlawful and the Respondent shall therefore pay the Claimant this sum. In accordance with his contract, this sum is to be paid gross because the Claimant is responsible for making arrangements for settling any tax liabilities on his wages.

Employment Judge Nicklin

Date 26th April 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

27th April 2021..

FOR EMPLOYMENT TRIBUNALS