



EMPLOYMENT TRIBUNALS

Claimant: Mr Alexander Annfield

Respondent: Sawyers Estate Agents Ltd

Heard at: Bristol Employment Tribunal (by video-CVP)

On: 22 January 2021

Before: Employment Judge Millard

Representation

Claimant: In person

Respondent: Steven Sawyer, Director

JUDGMENT having been sent to the parties on 23 January 2021 and written reasons having been requested in accordance with rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. These written reasons are provided at the request of the respondent in these proceedings.
2. I apologise to the parties for the delay in producing these written reasons. This delay was caused by the tribunal failing to communicate that a request had been made until Tuesday 20 April 2021.
3. These written reasons should be read in conjunction with the judgment of 22 January 2021.

Hearing

4. The hearing was conducted via the CVP video platform on Friday 22 January 2021 with both the claimant and the respondent appearing by CVP video.
5. Both the claimant and Mr Sawyer gave evidence at the hearing. No other witnesses were called by either party.
6. I had sight of an agreed bundle of documents totalling 57 pages and produced by the respondent

Claim

7. As per the claimant's claim form, his claim was for,
- Unpaid holiday pay of 2.5 days, for holiday accrued during the notice period
 - Unlawful deduction of wages as Statutory Sick Pay (SSP) was paid for 14 days of the notice period rather than full pay.

Findings of Fact

8. The claimant was employed by the respondent as a lettings and block manager.
9. The respondent is an estate agent and letting agent.
10. The claimant's employment commenced on 14 November 2019 and ended on 18 April 2020.
11. The claimant was paid £2,000 pm gross.
12. On the 19 March 2020, the respondent gave the claimant one week's notice of the termination of his employment. This was subsequently corrected to be one month's notice as per the claimant's contract of employment.
13. For the reasons set out below, the claimant did not work his notice period, but was instead paid 14 days of statutory sick pay with the remainder paid at his usual full pay rate.
14. On Monday 16 March, Mr Annfield sent a text message to Mr Sawyer stating that he was running late for work as one of his children was unwell. A copy of this text message is contained at page 37 of the bundle.
15. On Tuesday 17 March at 22:28hrs, Mr Annfield sent a text message to Mr Sawyer saying that he needed to have half a day off the following morning to care for his children. A copy of this text message is contained at page 38 of the bundle.
16. Mr Annfield subsequently came into the office later that day and was observed by Mr Sawyer and other staff to be unwell himself.
17. On the 18 March 2020, Mr Sawyer phoned Mr Annfield and Mr Annfield informed him that he could not come into work as he needed to look after two of his children who were unwell. As a result of this call, Mr Sawyer informed Mr Annfield that he should self-isolate for 14 days and not come into work during this period.
18. Immediately following the call on the 18 March 2020, Mr Sawyer wrote to Mr Annfield confirming the contents of their earlier call. This letter was contemporaneous, being written the same day and shortly after the telephone call. This letter is at page 1 of the bundle and states,

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*Further to our telephone conversation today when you advised us that you would not be coming to the office today because two of your children are off school as they are presenting symptoms that could be linked to the above virus. **The main one of which is a new continuous cough.** We also discussed that you yourself also appeared unwell in the office yesterday.*

On taking advice from NHS 111 we advised you that the advice from the NHS is that should you have any symptoms of the above virus you would need to stay at home for 7 days and if you live with someone also presenting symptoms you will need to stay at home for 14 days from the day the first person in the home presented symptoms.

[Emphasis added]

19. I heard evidence from both Mr Annfield and Mr Sawyer as to the contents of that call. I am satisfied, on a balance of probabilities, that during the telephone call on 18 March 2020 Mr Annfield informed Mr Sawyer that his two daughters had a high temperature and a new continuous cough. This was confirmed in Mr Sawyer's letter to Mr Annfield of the same date.

The Law

20. Section 13 Employment Rights Act 1996 states that 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.

Conclusions

21. A high temperature and a new continuous cough are symptoms of covid-19. The government advice at that time was that if a member of your household had symptoms of covid-19 then all the members of that household should self-isolate at home and not leave home for 14 days. SSP was payable for this period. Therefore, Mr Sawyer was correct to inform Mr Annfield that he needed to self-isolate for 14 days and not to come into work.

22. Accordingly, Mr Annfield was only entitled to Statutory Sick Pay for that period. During that period, Mr Annfield would only have been required to work for 10 days as the additional 4 days were covered by weekends.

23. Mr Sawyer accepted that he had incorrectly paid the claimant statutory sick pay for 14 days as opposed to 10 days. This resulted in an underpayment to the claimant for those additional 4 days. This underpayment was agreed by the parties as being £293.84. The respondent accepted that he had made an unlawful deduction of the claimant's wages for this amount.

24. The claimant was subsequently informed that he did not have to work the remainder of his notice period. The claimant accepted during the hearing that

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his holiday entitlement was included within the part of his notice period that he was not required to work and withdrew that part of his claim. Accordingly, I dismissed that part of his claim.

25. For the reasons set out above,

- a. The Claimant's claim for unpaid holiday pay was dismissed upon withdrawal by the Claimant, having accepted that he did not have to work his notice period.
- b. The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay him the gross sum of £293.84.

Employment Judge Millard

Date: 04 May 2021

Reasons sent to the Parties: 05 May 2021

FOR THE TRIBUNAL OFFICE