



EMPLOYMENT TRIBUNALS

Claimant: Ms S Webster

Respondent: Intesa (Leicester) Limited

Heard: via Cloud Video Platform **On:** 7 May 2021

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: In person

For the respondent: Did not attend and was not represented

JUDGMENT

1. The claimant presented her claim in time.
2. The respondent made an unlawful deduction from the claimant's wages in the sum of £953.29.
3. The respondent breached the claimant's contract of employment by failing to reimburse her the £30 that she spent on a headset for work.
4. The respondent is ordered to pay the sum of £983.29 to the claimant.

REASONS

The Issues

1. The issues that fell to be determined at today's hearing were the following :
 - a. Did the claimant present her claim in time?
 - b. If so, did the respondent make an unlawful deduction from the claimant's wages and / or breach her contract of employment?
 - c. If so, what sums, if any, should she be awarded to the claimant?

The Proceedings

2. The claimant was employed by the respondent from 3 August 2020 to 24 August 2020.
3. She presented a claim on 22 October 2020 following a period of Early Conciliation lasting from 6 to 22nd October 2020 (“**the First Claim**”). The claim was assigned to London Central Employment Tribunal and given the case number **2206841/2020**. Richard Logan was named as the respondent on the claim form, but within the details of claim the claimant referred to working for ‘intesa’.
4. The deadline for the respondent filing a response to the First Claim was 24 December 2020. No response has been filed.
5. The First Claim was listed for a hearing in London Central on 25 January 2021. On 14 January 2021 the Tribunal wrote to the claimant in the following terms:-

“Employment Judge Elliott orders that the hearing listed for 25 January 2021 has been postponed because she is not satisfied that the respondent has been effectively served with the ET1 claim.

You have issued your claim against an individual named Richard Logan but said in the claim itself that you worked for “intesa”. It is not clear that you have brought your claim against the correct respondent. You should check who was your employer by looking at any correspondence, contract or payslip. What or who is “Intesa”. If it is a limited company you need to state its full and correct name and registered office which you can find by googling “find information about a company” and checking the records held at Companies House. If it is a company it is also sensible to check if it is active or insolvent.

If you need to amend the name of the respondent you will need to make an application to the tribunal.”

6. On 18th January 2021 the claimant began and ended a second period of Early Conciliation. She also presented a second claim form, which was assigned to the Midlands (East) region and given the case number **2600148/2021** (“**the Second Claim**”).
7. The Second Claim named “Intesa Leicester Ltd” as the respondent and was served twice on the respondent – on 22 January 2021 and 3rd March 2021. No response has been received to the Second Claim.
8. The respondent did not attend the hearing today or send in any written representations.
9. The claimant attended the hearing and gave evidence. She also sent in some documents in support of her claim, which I have considered.

Findings of fact

10. The claimant began working for the respondent as a sales advisor on Monday 3 August 2020. She worked for the respondent for 3 weeks until her resignation on the morning of Monday 24 August 2020.
11. The respondent is an online business and the claimant performed her role entirely from home. Her line manager was a Mr Ian Beaumont, Sales Training Manager. Mr Beaumont communicated with the claimant and her colleagues primarily through a group WhatsApp chat.
12. The claimant was required to buy a headset in order to carry out her duties, and it was agreed between the claimant and the respondent that the respondent would reimburse her for the cost of the headset. The claimant bought a headset for £30. The respondent has not reimbursed her for it.
13. The claimant decided that the role of sales advisor with the respondent was not for her. She did not enjoy the job, and was successful in finding another role.
14. On 24th August she left the respondent's WhatsApp group. Mr Beaumont sent her a message asking "*Have you left?*" The claimant replied that she had found another job, and asked whether she needed to work a notice period. Mr Beaumont replied that she was supposed to work 1 week's notice.
15. The claimant told Mr Beaumont that she was happy to work a week's notice, but had an induction for her new role on Wednesday, and asked if she could go to that. Mr Beaumont's response was that the claimant would need to work her full notice and could not attend the induction. The claimant then asked what would happen if she didn't work her notice, would she still get paid. Mr Beaumont replied "*Yes but the following month*".
16. The claimant told Mr Beaumont that was fine with her, and it was agreed that she would not work her notice period.
17. The claimant was not paid anything by the respondent for the three weeks that she worked there. In early October she sent a WhatsApp message to Mr Beaumont asking: "*...Just wondering when pay day is? I thought it was the 4th of the month but I still haven't received any money from nearly 2 months ago, I know I needed to wait longer for not working my notice period, have you got an email for hr/someone who deals with wages?*".
18. Mr Beaumont replied that payday was the 6th of the month, and suggested that the claimant contact Richard Logan or Chris Ward.
19. On 6th October, having still not been paid, the claimant contacted ACAS and began Early Conciliation. She sent a message to Mr Beaumont telling him that she had done this and asking for the contact details of someone at the company that ACAS could contact. Mr Beaumont replied "*Richard Logan*". Mr Logan was the owner and managing director of the respondent.
20. The claimant sent an email to Mr Logan and Mr Ward on 6 October in which she explained that she had not been paid for the work that she had done for the respondent. She also stated that she had contacted ACAS to start Early Conciliation and asked to be paid her wages.

21. The claimant did not receive any response to this email.
22. On 22nd October ACAS issued the Early Conciliation Certificate that the claimant presented the First Claim to the Employment Tribunal. She told me in evidence that the reason she named Richard Logan as the respondent was because he was the owner and managing director of the business, and she mistakenly thought that the claim should be issued against him. The claimant issued the claim herself, without the benefit of legal advice.
23. No response was filed to the First Claim. The case was listed for a hearing on 25 January 2021 but that hearing was postponed by Employment Judge Elliot on 14th January 2021 as set out at paragraph 5 above.
24. On 18th January the claimant started and ended a second period of Early Conciliation and presented the Second Claim, naming Intesa Leicester Ltd as the respondent. The Second Claim was sent twice to the respondent but again, no response was filed.
25. The respondent did not attend the hearing today, or send a representative or any written representations to the Tribunal. The respondent has failed to engage at all in either the First Claim or the Second Claim.
26. The claimant's salary whilst working for the respondent was £17,000 a year gross. The claimant worked out, using the government 'net pay' calculator that this gave a weekly net salary of £292.77. The claimant worked for the respondent for three weeks and three weeks' net pay amounts to £878.31.
27. In addition the claimant accrued holiday pay of £74.98 during the period that she worked for the respondent. The respondent did not pay any holiday pay to the claimant on the termination of her employment.

The Law

28. Section 13 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.

29. Section 23 of the ERA gives workers the right to present complaints of unlawful deduction from wages to an Employment Tribunal. In accordance with section 23(2) of the ERA:-

“Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made...

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is present within such further period as the tribunal considers reasonable.”

30. The right to bring a complaint of breach of contract before the Employment Tribunal is set out in the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“**the Order**”).

31. Article 3 of the Order states that:-

“Proceedings may be brought before an employment tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –

...(c) the claim arises or is outstanding on the termination of the employee’s employment.”

32. Article 7 of the Orders sets out the time limits within which proceedings for breach of contract can be brought before the Employment Tribunal, namely *“within the period of three months beginning with the effective date of termination of the contract giving rise to the claim.”* There is also provision for the time limit to be extended *“where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented “[on time] “ within such further period as the tribunal considers reasonable.”*

Conclusions

33. It is clear that the claimant presented the First Claim on time. The date upon which she was due to be paid her wages and holiday pay was 6th October 2020. She presented the First Claim just fourteen days later, on 22 October. Her claim for unlawful deduction from wages was therefore presented within the time limit set out in section 23 of the ERA.

34. The effective date of termination of the claimant’s employment was 24th August 2020 and the First Claim was presented within two months of that date. The

claim for breach of contract was therefore presented within the time limits set out in Article 7 of the Order.

- 35.** The First Claim identified the wrong respondent, but the claimant did state clearly within the claim form that she worked for 'Intesa'. The claimant presented the claim herself and had not had the benefit of legal advice. I accept the claimant's evidence on this issue and find that naming the incorrect respondent was a genuine mistake on the claimant's part.
- 36.** The claimant did not realise that she had named the wrong respondent until she received the email from London Central Employment Tribunal on Thursday 14th January 2021. She then acted promptly, completing a new Early Conciliation and presenting the Second Claim just four days later, on Monday 18th January 2021.
- 37.** The Second Claim was presented three months and thirteen days after the 6th October 2020, the date upon which the claimant was due to be paid. The period of Early Conciliation for the First Claim lasted fourteen days (6th to 22nd October 2020) and the time limit for presenting the complaint of unlawful deduction from wages is therefore extended by fourteen days, to 19th January 2021. The claim for unlawful deduction from wages set out in the Second Claim was therefore made in time.
- 38.** Time to present the breach of contract complaint set out in the Second Claim ran from 24th August 2020 and, even allowing for the period of Early Conciliation, the Second Claim for breach of contract was out of time. The primary time limit expired on 23 November 2020 and, adding the fourteen day period of Early Conciliation, ended on 7th December 2020.
- 39.** I am satisfied, however, that it was not reasonably practicable for the claimant to present the Second Claim on time. The claimant reasonably believed that she had presented a valid claim on 22 October 2020 (the First Claim) and only became aware on 14th January 2021 that she may have named the wrong respondent. As soon as she became aware that she had named the wrong respondent she acted quickly and filed a new claim just four calendar days (and two working days) later.
- 40.** I therefore find that the First Claim was presented on time and that the complaint for unlawful deduction from wages set out in the Second Claim was presented on time. I also find, in the alternative, that it was not reasonably practicable for the Second Claim to be presented on time because the claimant did not know that she had presented the First Claim against the wrong respondent; and that the Second Claim was presented within a reasonable period of the claimant becoming aware of the error.
- 41.** The respondent has not responded to either the First Claim or the Second Claim. I have no reason to doubt the evidence given to me today by the claimant, who appeared to me to be a credible witness.

- 42.** The claimant worked for the respondent for three weeks, for a salary of £17,000 gross. The claimant's net pay for the three weeks that she worked came to £878.31. The claimant is entitled to be paid the sum of £878.31 for the work she carried out for the respondent. That sum fell to be paid to the claimant on 6th October 2020, but the respondent has not paid it. The respondent has therefore made an unlawful deduction from the claimant's wages by failing to pay her the sum of £878.31 on 6th October 2020.
- 43.** I accept the claimant's evidence that she was also entitled to be paid the sum of £74.98 in respect of holiday pay, and that this sum was not paid to her.
- 44.** The claimant's complaint of unlawful deduction from wages in respect of unpaid salary and holiday pay (totaling £953.29) therefore succeeds. I find that the respondent made an unlawful deduction from the claimant's wages in the sum of £953.29.
- 45.** I also find that the respondent breached the claimant's contract of employment by failing to reimburse her the £30 that she paid for a headset to use in the course of her employment.
- 46.** The claimant's complaints of unlawful deduction from wages and breach of contract therefore succeed. The respondent is ordered to pay the sum of £983.29 to the claimant.

Employment Judge Ayre

7 May 2021