



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Latif

**Respondent:** Mr N Rahman

**Heard at:** Leeds Hearing Centre      **On:** 24 March 2021

**By:** Cloud Video Platform (CVP)

**Before:** Employment Judge Martin

***Representation:***

**Claimant:** In Person

**Respondent:** In Person

**JUDGMENT** having been given orally (with reasons) and sent to the parties on 12 April 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. The claimant gave evidence on his own behalf. He produced a number of documents at various times during the course of the hearing namely: his contract of employment; pay slips of 1 February and 1 March 2021; other documents relating to his sickness absence; and then a bundle of email/text messages between himself and the respondent regarding wages and shifts. These documents were incorporated into a bundle marked Appendix 1.

### **The law**

2. The law which the Tribunal considered was section 13(3) of the Employment Rights Act “where the total amount of wages payable 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”.

**The issues**

3. The Tribunal had to consider what was properly payable to the claimant in respect of his wages and what if any deductions were made; for what; over what period; and in what event.

**Findings of fact**

4. The claimant was employed as a shop assistant. He commenced employment in 2013. His employment transferred to the respondent approximately two to three months ago when the respondent took over the business.
5. The claimant was employed to work 32 hours per week. His hourly rate of pay was £8.75.
6. On 15 January 2021, the claimant was not paid his wages. He issued proceedings to this Tribunal on 19 January 2021.
7. The claimant said that his weekly net pay was £279.
8. It appears that the claimant's wages were not paid, because the respondent did not have details of the claimant's bank account having just taken over the business
9. In his evidence, the claimant said that he was only given 16 hours for the first week in January. He was not given 16 hours for that week. He said that, in the second week, he was given 14 hours, so 18 hours were not given to him. He said that for the third week he was given 26 hours, so 6 hours not being given to him.
10. The claimant provided a note from his GP which is at document 2. It confirms that the claimant is a patient. It also states that the doctor had issued sick notes from 22 January for right shoulder pain and stress, which it describes as work related.
11. In evidence, when questioned about the sick note, the claimant said that he had not received sick notes, but did then say that he had self-certificated for problems with his shoulder.
12. The respondent said that the claimant did not produce any sick notes.
13. The claimant was not given any hours for the fourth week of January 2021, although it appears, based on his own evidence, that he produced self-certificate notes for that period.
14. On 26 January the claimant asked for holidays for the period between 15 February and 18 February which would be four days. He asked the respondent to confirm those holidays, having sent an email to the respondent requesting the holidays. The claimant did not receive any reply to his email.
15. In evidence the claimant said, which was not contested, that he was given 24 hours in the first week of February so was 8 hours short that week; he was given 24 hours in the second week of February so was 8 hours short again. He said that, in the third week of February, he had booked for his holidays.
16. The claimant said in his evidence that from 19 February he was on sick leave until 4 March and was paid sick pay.
17. The claimant said that the respondent told him that he was not able to give him his contractual hours due to Covid-19. The claimant said he asked to be

furloughed, but was told by the respondent that he was not able to furlough the claimant because it was a new business.

18. The respondent said that he did not offer the claimant any hours of work because the claimant had not indicated that he was fit to work.
19. The claimant said that, after the issue of proceedings he had a meeting with the respondent to try and resolve matters. He said that, at that meeting, the respondent offered to give him his contractual hours and allow his holiday.
20. However just before the claimant was due to take his holiday in February, the respondent emailed the claimant to tell him that he could not take those holidays. The claimant said he understood that the holidays had previously been agreed.

### **Conclusions**

21. The claimant produced a number of documents, as indicated, very late in the course of these proceedings. He purported to produce some additional documents after the hearing had commenced including a rota. However those documents were not considered by the Tribunal, as they were produced during the course of this hearing and after the claimant had concluded his evidence. Therefore those documents were produced too late for the Tribunal to take them into account.
22. The respondent had not filed a response to these proceedings in time. The response was therefore rejected. The respondent was accordingly only entitled to defend the claim on the basis of the remedy being sought. He was therefore given the opportunity to cross-examine the claimant on remedy alone.
23. This Tribunal finds that the respondent did deduct some monies from the claimant's wages in January and February 2021.
24. The Tribunal finds that the claimant was not available for work from 22 January until the end of January 2021, as it appears, on his own evidence, that he was self-certificating, albeit his evidence also suggested that he produced sick notes. The respondent however said that no sick notes had been produced. Both parties appear to accept that the claimant was on sick leave during part of February, which is consistent with the claimant's evidence that he was on sick leave from 19 February 2021.
25. The Tribunal finds that deductions were made from the claimant's wages for January as follows:- week one – 16 hours; week two – 18 hours; week three – 6 hours. That therefore made a total of 40 hours when deductions were made from the claimant's wages during January 2021.
26. The Tribunal also finds that deductions were made from the claimant's wages for February as follows:- week one and two – 8 hours.
27. The Tribunal finds that the claimant did book holidays for the third week of February. He was not paid for those 4 days. Therefore deductions were made from his salary for those days which amount to 26 hours. Thereafter, as the parties agree, the claimant went on sick leave and was paid his sick leave from 19 February.
28. Therefore, deductions were made from his wages for February 2021 in the total sum of 32 hours.

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29. Accordingly, the claimant's complaint of unlawful deduction from wages is well founded. The respondent is ordered to pay the claimant the total sum of 72 hours in the sum of £630 for January and February 2021.

Employment Judge Martin

Date: 18 May 2021

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