



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Laura Stanbrook

v

Irish Childcare Limited

Heard at: Watford

On:

Before: Employment Judge Cowen

Appearances

For the Claimant:

For the Respondent:

JUDGMENT having been sent to the parties on 25th January 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant makes a claim under s.13 of the Employment Rights Act for a sum of £959 as a result of what she claims to be unlawful deduction of wages.

The facts

2. The facts in this case are that the claimant worked for the respondent from 7 October 2018 to 30 September 2019 as a Recruitment Consultant.
3. Within the first week of her employment the claimant signed a contract, part of which is copied to me at Appendix C to the Employment Tribunal Form 3 that the respondent filed. The parties agreed that Appendix C is part of that contract and that Appendix D to the ET3 shows the claimant's signature as receiving a copy of that contract.
4. The claimant then gave notice to terminate her employment at the end of August 2019. The contract itself, at Clause 2.4, says that commission will be paid monthly two months in arrears from any invoice date. It also says that commission will be paid only on monies received. Thirdly, it says that no commission shall be earned during any notice period and, finally, it also

covers the fact that commission will only be paid on money which is owed and received at the date of leaving.

5. The claimant accepts that these clauses were all part of the contract that she signed. However, she claims that she is owed £959 comprising of £238 accrued in July and £691 accrued in August 2019.
6. The claimant has told me in evidence, which she gave orally to the tribunal, that the fact that the money has not been collected by the respondent is not her responsibility and therefore it is unfair, she says, not to pay her for the work that she legitimately did. The respondent, who was represented by the Director and owner Mrs Katoon??? who also gave evidence on oath, has told the tribunal that one of the July payments that the claimant claims for has never been received from the client and as for the August payments that the claimant claims, the placement monies for those were not received until October and, moreover, one of them has not been paid at all and one of the placements was unsuccessful and therefore the claimant would never have been paid for them.

The law

7. The law on this case is set out at s.13 of the Employment Rights Act which says that a claimant can claim unlawful deduction from wages 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.
8. The question here for me therefore is what was the money that was properly payable to the claimant and if there was money that was properly payable, how much was it?

Decision

9. The claimant signed the contract and accepts that the terms were known to her. She therefore effectively accepts that the money was not due until two months after the placement was made.
10. The money accrued in July therefore would not have been payable to the claimant until September or even October for the money in relation to August. The claimant also accepts that only the money that is received by the respondent is therefore payable. So, the claimant did work during August but left at the end of September. Money accrued in July was not received by the respondent at the point where the claimant had left. Therefore, under clause 2.4 that money is therefore not properly payable to the claimant. The money accrued in August is not properly payable to the claimant until October and by that point the claimant agrees that she was not employed by the respondent. I therefore cannot find that the claimant was owed money in accordance with the contractual terms that she signed.

11. The parties agree that all other money has been paid appropriately and therefore my decision in this case is that there is no money that is properly payable to the claimant under the contract terms that she agreed to and I must therefore dismiss this case.

Employment Judge Cowen

Date: ...13th January 2021.

Sent to the parties on: ..15th June 2021.
THY

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For the Tribunal Office