



THE EMPLOYMENT TRIBUNALS

Claimant: Mr G Scott

Respondent: ISS Facility Services Limited

Heard at: Newcastle ET

Sitting at: Civic Centre

On: Monday 21st June 2021

Before: Employment Judge Martin

Members:

Representation:

Claimant: In Person

Respondent: No attendance or representation

JUDGMENT

1. The claimant's complaint of unlawful deduction from wages is well-founded and the claimant is awarded the sum of £778.20.
2. The claimant's complaint of a failure to provide an itemised pay statement is also well-founded.

REASONS

Introduction

1. The claimant gave evidence on his own behalf. He also submitted a witness statement from Mr D Noble, another colleague. The respondent did not attend today but sent in written submissions, which included a witness statement and supplemental witness statement for Mr Scott Garland who is the regional payroll audit and support manager. The tribunal was also provided with an agreed bundle of documents marked Appendix 1. The claimant added a couple of additional documents to that bundle which were documents which he said had been sent to the tribunal and copied to the respondent on 30th March namely an

e-mail of 12th May from the claimant to Mr J Morrall dated 12th May 2020 and an e-mail of 6th January 2021.

The law

2. The law which the tribunal considered was as follows:

Section 13 (3) of the Employment Rights Act 1996 “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.”

Section 8 (1) of the Employment Rights Act 1996 provides that a worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

Section 8 (2) “The statement shall contain particulars of the gross amount of the wages, the deductions to be made, the net amount of wages, where different parts of the net amount are paid in different ways and by reference to the time worked or number of hours worked.”

Section 12 (3) “Where on a reference to an employment tribunal, the tribunal finds that an employer has failed to give a worker any pay statement in accordance with Section 8 or that a pay statement does not... contain the particulars required to be included in that statement by that Section, the tribunal shall make a declaration to that effect.”

3. The tribunal also considered Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (Section 1) which applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

Section 207A (2) TULRA 1992 “if, in the case of proceedings to which this section applies, it appears to the employment tribunal that:-

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies and
- (b) the employer has failed to comply with that code in relation to that matter, and
- (c) the failure was unreasonable

the employment tribunal may, if it considers it just an equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

Issues

4. The issues which the tribunal had to consider were as follows:
5. In relation to the claim for unlawful deduction from wages, the tribunal had to consider whether the claim had been brought in time and, if not, whether it was brought within a reasonable time period thereafter. This did not remain an issue in these proceedings, as the claims related to the period March – November 2020. The claimant had issued the proceedings in this tribunal in January 2021. Therefore the proceedings had been issued in time. The tribunal then had to consider what, if any, sums were due and owing to the claimant, over what period and in what amount.
6. In relation to the complaint of a failure to provide an itemised pay statement, the tribunal had to consider whether the respondent had provided the claimant with or access to such pay statements in accordance with Section 8 of the Employment Rights Act 1996.

The Facts

7. The claimant is employed by the respondent as a security officer as part of the telephonic contract at premises in Newcastle. He remains employed with the respondent.
8. The respondent operated an on-line payslip portal for which the claimant was given a username and password. The claimant's evidence to this tribunal was that he struggled on various occasions over an eighteen-month period to access his payslips. That evidence is supported by the witness statement of Mr Noble who did not attend to give evidence today, but said in his witness statement that he had on a couple of occasions had to help the claimant to try and access his payslips. It appears that the respondent automatically issue a payslip under that system. If there are any errors or corrections need to be made, a further payslip is then issued.
9. The claimant said in evidence that raised queries with the respondent over a period of time up to the date of these proceedings regarding outstanding pay which he said was due to him for the period from March to November 2020. He also raised concerns about the problems which he had in accessing his payslips. The tribunal accepts the claimant's evidence that he did raise these queries with the respondent, which is not disputed by the respondent.
10. The claimant said that he was not paid his correct pay in his payslip for 3rd March 2020. He said he was only paid £78.15 net, as is noted at page 32 of the bundle – the payslip which related to that period. However, it appears that there was a problem with a malicious ransom attack on the respondent's internet access. As a result, they paid the claimant the money he was due on 3 March in advance on 13th February, as is noted at page 71 of the bundle. That document is the corrected payslip for the 3rd of March, albeit it does not indicate what the sums actually relate to. There is a merely a reference to a deduction regarding a payment of money which was made in February in advance of his March payslip.

11. The claimant now accepts that he has been paid all the sums due to him in March 2020.
12. At the end of March 2020, the claimant, who is over 70 years old was required to shield due to the Coronavirus pandemic. Accordingly from the 31st March 2020, the claimant was permitted by the respondent to take unauthorised absence. He was informed that he would be paid in accordance with the terms of his contract as is noted at page 61 to 62 of the bundle.
13. The claimant also complained about the wages which were paid to him in April and May. Again, it appears that errors were made on the claimant's payslips. Although some corrections were made to those payslips, again no details were actually given about what they related to, as is noted at page 73 and 74 of the bundle. For example there is a reference to the sum of £544.00 which the claimant accepts was paid to him, except it is described as an advance payment, which is incorrect, because it was in fact money that was due to him. Therefore it was back payment of wages.
14. The respondent says that, after the issue of these proceedings, they have had the opportunity to review in detail their records. They concluded that the claimant was due an outstanding payment of £835.12 gross in relation to payments due in April and May. Those monies were not paid to him until 6th May 2021, as is noted at page 89 of the bundle. Again, the payslip produced does not explain what the sum actually relates to or how it has been calculated.
15. In his evidence today, the claimant has accepted that he is not due any sums for April or May 2020, except in relation to outstanding bank holidays over that period.
16. In his evidence, the claimant said that he always worked bank holidays. He said he was paid twenty-four hours for each bank holiday at his normally hourly rate. He said that in April and May, before he was put on furlough, there were three bank holidays. For the first one his hourly rate was £8.50; for second and third bank holidays his hourly rate was £8.72.
17. The claimant was put on furlough from 18th May 2020 under the government scheme. The letter to him is at pages 63 to 64 and 66 to 67 of the bundle. The claimant says that he is entitled to 100% of his pay under that scheme. He referred to page 36 of the bundle, which is an e-mail referring to the furlough scheme. He referred to part of that e-mail talking about over 70's being high-risk group and being placed on furlough. The reference to the furlough scheme refers to 80% of wages being paid. The scheme provided for the government to pay 80% of wages and for employers to top that up if they agreed to do so. However in this case. It appears that the respondent did not agree to do so.
18. The claimant returned to work in August 2020. The claimant was paid incorrectly in November 2020. It appears that error was corrected by the respondent in December 2020. The claimant was then paid his correct salary except for 40p outstanding, which was then paid in May 2021. In his evidence, the claimant said that it was difficult for him to ascertain exactly what he had been paid because the

payslips were inaccessible to him for substantial periods of time. He said that, even when he was able to access them, they were unclear as to what he was being paid for or for what period.

19. In his evidence, the claimant said that when corrections being made to his salary, they were often described as advance payments, which in some cases was correct, but in other cases was incorrect as they related to back-payment of wages.
20. In his submissions, the claimant raised concerns about the way the respondent paid their employees and allowed access to payslips.

Conclusions

21. The tribunal concludes that the claimant's complaint of unlawful deduction from wages is well-founded to the extent that the claimant is entitled to his outstanding wages for the three bank holidays in April and May; at which time he was on authorised absence. The respondent had agreed to pay the claimant according to his contract of employment, which included bank holidays.
22. The claimant is not entitled to a top-up of 20% of his wages under the furlough scheme. The claimant was informed he was being put on furlough in accordance with the terms of the Government's scheme. Under the terms of that scheme, he was entitled to be paid 80% of his wages under the government's scheme, which the respondent did. There is no evidence that the respondent agreed to top up the claimant's wages by 20% to his full wages. Under the terms of the scheme, there was no obligation on them to do so and it appears that the respondent did not agree to do top up the claimant's wages to 100% under that scheme.
23. Although the respondent allowed employees the opportunity to view their payslips through an online portal, this tribunal finds that the system did not properly operate to enable the claimant to be able to properly access his payslips, so that effectively he did not have access to them. Therefore he was not being provided with his payslips in accordance with the respondent's obligations under Section 8 of the Employment Rights Act 1996. Further, this tribunal finds that the payslips which were provided to the claimant, in some cases where adjustments were made, were not correct in that they referred to advance payments when in fact they were not advance payments, but should more properly have been described as back payments which is what they were. Furthermore the respondent provided no breakdown of what the sums related to or how those sums had been calculated.
24. Accordingly this tribunal finds that the claimant's complaint of a failure to provide itemised pay statements is also well-founded.
25. On the basis of the evidence presented, this tribunal finds that the claimant's various complaints to the respondent about his outstanding wages and payslips did effectively amount to a grievance about those matters, which the respondent failed to deal with. This led to the claimant having to issue these proceedings to this tribunal, after which the respondent paid him some further outstanding wages

as referred to above. Accordingly, this tribunal is minded to increase the award made to the claimant in respect of his outstanding wages for a failure to comply with the code of practice relating to the claimant's grievances.

26. For those reasons, the tribunal is minded to uplift the award by 25% to reflect the tribunal's concerns about the way the matter has been handled and therefore the claimant is awarded the total sum of £778.20 in respect of his complaint of unlawful deduction from wages. That sum is calculated as follows: 1 x 24 hours @ £8.50; 2 x 24 hours @ £8.72 which amounts to a total of £622.50. That sum is uplifted by 25%.amounting to £155.64. That makes a total award of £778.20.

EMPLOYMENT JUDGE MARTIN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 1 July 2021**

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