



EMPLOYMENT TRIBUNALS

Claimant: Mr N Hodgson

Respondent: EHLUK Building and Maintenance Facility Services Ltd

Heard at: Newcastle Employment Tribunal
via CVP

On: 30th March 2021

Before: Employment Judge AE Pitt

Representation

Claimant: In Person

Respondent: Mr R Stainsby - Director

RESERVED JUDGMENT

1. The respondent made an unlawful deduction from the claimant's wages.
2. The respondent shall pay the claimant the sum of £1,152 less any Income Tax or National Insurance which falls to be deducted.

REASONS

1. This is a claim by Mr Nigel Hodgson, date of birth 1st December 1964, in relation to his brief employment with EHL UK Building and Maintenance Facility Services Ltd. The claimant makes a claim for unlawful deduction from his wages pursuant to Section 13 Employment Rights Act 1996. The claim is that he worked for the respondent for several days, equivalent to 72 hours. When he left the respondent's employment, he was not paid for any of the time he had worked for it.
2. I read witness statements and heard evidence from Mrs Christine Baker, Service Manager for the respondent, and Mrs Hodgson, the claimant's wife. I did not have a witness statement from the claimant, but I did hear evidence from him. The claimant represented himself aided by his wife. The respondent was represented by Mr Ryan Stainsby, a Director of the company.

3. Both the claimant and the respondent had sent some documents to the Tribunal for the purpose of today's hearing. It is clear the case was still not fully prepared by either party. The respondent complained that although it had received a bundle of documents from the claimant, it did not, crucially, include invoices from Crossling Ltd dated 22nd and 28th of July 2020. The claimant told me he had sent the bundle via recorded delivery to the respondent. He told me he had not left out those invoices. On the balance of probabilities, I concluded that the claimant did send those documents and it is probable, the respondent has mislaid them. I was reluctant to adjourn the hearing as it has already been delayed because of problems with the parties using the CVP link. However, I did permit the respondent times to consider the documents before we started the hearing. They were able to challenge the documents as they told me that they have yet to be paid. I am satisfied, therefore, that the respondents were not prejudiced by this either because they had seen the documents prior to this morning's hearing or because they had an opportunity to see them during the hearing today. I had to make the decisions upon what was before me.

The Facts

4. The claimant obtained employment with the respondent's on 6th July. On 13th July 2020, he visited their premises to go through an induction procedure with Mrs Baker. At that time he completed the relevant documents to start work. He was given the keys to a vehicle which was inspected before he left the site with it. He commenced work on 14th July. On 15th July he attended a training course to bring his qualifications up to date. Although he did not produce any documentary evidence of that, I accept his evidence. His evidence was on 16th July he had an appointment and didn't attend work.
5. The claimant's evidence was thereafter he worked from 20th July until 28th July. On two occasions during that period, he placed orders through Mrs Baker for goods to be used on site. The invoices produced show that the claimant attended Crossling Ltd's premises in Stockton-on-Tees and collected the items on 22nd July and 28th July. The claimant told me he had worked on two sites, one being Greggs, the other an Academy school in Middlesbrough. On 28th July, he contacted Mr Gary Stainsby to inform him he had been offered another position which he was going to take. He had telephoned Mr G Stainsby to tender his resignation with notice. He told me that Mr Stainsby was exceptionally angry and told him to come back to the office immediately with the van and finish work that day.
6. Having contacted his wife to pick him up from the office, the claimant duly went to the office to return the vehicle and the keys. His evidence was having entered the office, he could see Mrs Baker was on the telephone. He put down his timesheets and the keys to his vehicle on a counter. He tried to speak to another member of staff in the office, but she was busy. At this point, Mr Gary Stainsby came out of his office. He was very angry and was shouting at the claimant. As a result, the claimant left the office pursued by Mr Stainsby. There was a further confrontation outside. The claimant alleges he was again abused and threatened by Mr Stainsby.

7. When his wages were not deposited in his bank as anticipated, the claimant contacted the respondent by email and text. He did not receive any wages or a P45. In the bundle was a text message from Mr Gary Stainsby, which was offensive, calling the claimant lazy and barefaced liar.
8. Mrs Hodgson told me that her husband had been work for the whole of that week. She had gone with him to the office on his last day; she waited outside for her husband. When he came out, Mr Stainsby pursued him, and although she could not hear what was being said, it was clear to her that the claimant that Mr Stainsby was offensive and aggressive.
9. Mrs Baker's evidence was she remembered the claimant coming into the office on 16th July 2020 because she had an appointment with her mother that day. When the claimant did attend, she was busy on the telephone. This was a mobile phone, so she was able to move around the office. She remembers the claimant coming in, putting the van keys on a desk in front of her and then leaving. She did not see Mr Gary Stainsby, who is a director of the company. She went to a window and she could see the claimant's wife sat waiting for him in a car outside the premises. She confirmed that the respondent worked at a site for Greggs and a school Academy in Middlesbrough. She confirmed that the company had an account at Crossling Ltd in Stockton-on-Tees. She told me the procedure for ordering goods through that company which accorded with the claimant's account. She told me that the invoices produced were not ordered through her nor the company. She points to the fact that the invoice number starts with a '2' rather than a '5'. She was unable to explain why that is simply that it is significant. She also told me that the invoices remain unpaid. She did confirm, however, that the account number on the invoices is correct.
10. These two accounts do not bear any resemblance to the other. In making my findings of fact, I have taken account of the witness statements, the oral evidence of the witnesses, and the contemporaneous documents I have been provided with. Where there was a conflict of evidence, I determined it on the balance of probabilities I was particularly hampered by the fact that I did not hear from Mr Gary Stainsby, although it was clear from the witness statement of Mrs Hodgson the issue of his behaviour when the claimant came into the office was going to be raised. I took account of the following matters: Mrs Hodgson confirms that her husband was in a confrontation with Mr Stainsby on the day he resigned. The fact that no-one at the respondent's checked the vehicle or completed any paperwork in relation to it's return by the claimant, supports the claimant's account of him leaving the office because of the behaviour of Mr G Stainsby. The evidence of the text of 30th July from Gary Stainsby. It is written in capitals and I concluded it came from an angry person. I also concluded this supported the claimant's account of the events when he went into the office. Mr Stainsby was clearly unhappy with the claimant. Therefore, I accept a confrontation between Mr Stainsby and the claimant on the day the claimant attended the leave his vehicle keys. I also accept that the claimant left his time sheets at this time.

11. Having looked at the claimant's document of the list of days he worked, I concluded that he commenced working on 14th July 2020, worked on 15th July, attended training on 15th July, and was absent on 16th July.
12. As to the date, I take account of the invoices produced showing dates of 22nd and 28th of July. Whilst it was not directly put to the claimant that these were forgeries, this was clearly why they were queried by the respondent. For me to conclude these were forgeries, I need a very high standard of proof. I find it difficult to accept that a business, i.e. Crosslings Ltd would still have outstanding invoices some seven months after they were due without some action being taken by it. I concluded that the claimant had ordered these items possibly through someone other than Mrs Baker. He collected these goods and signed for them as shown on the invoice and used them for the purpose of working for the respondent.
13. I can see no reason and none was put to the claimant why he would order these goods if he were not taking them to a site the respondent was engaged to work upon. I take account of the fact that the claimant identified sites upon which the respondent was working. Having accepted that the claimant's account of the day he left was accurate, I concluded that the date he left the respondent's employment was 28th July.

The Law

14. Section 13 Of The Employment Rights Act 1996 provides an employee with the right not to suffer an unlawful and unauthorised deduction from his wages. The section reads:
an employer shall not make a deduction from wages worker employed by him unless –
the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers' contract, or the worker has previously signified in writing his consent to the making of the deduction.

Submissions

15. The respondent's case was that as the claimant had only worked for two days, the respondent was entitled to claim to refuse to pay him. The respondent relies upon the Employee Handbook specifically at section 9(c), which relates to notice periods. It reads:
'If you leave without giving notice and without the company's agreement, you are in breach of your contract and you may forfeit some or all of any salary due to you.'
16. The claimant's case is he tendered his resignation with notice. He was told to leave immediately and was not paid for the hours he had worked.

Discussion And Conclusions

17. The crux of this case is whether the claimant came to work on 16th July and resigned without notice or did he leave on 28th July and therefore is

due his wages for those hours set out in his documents. It is agreed by the respondents he worked on 14th, 15th 16th July.

18. I have concluded that the claimant left the respondents employment on 28th July; having worked 14th and 15th of July, he had one day training on 16th July and returned to site 20th July. I accept the claimant's account entirely, having tried to resign with notice on 28th July. This is compatible with his new position starting on 17th August 2020. I concluded Mr Gary Stainsby rejected the resignation and the claimant was dismissed immediately.

19. Even if the claimant resigned without notice, I am not satisfied that the Employees Handbook was brought to the claimant's attention concerning the notice period, nor have I seen any signed document that would permit the respondents to withhold two days pay.

20. The claimant is entitled to recover 72 hours at £16 per hour, which is £1152. The claimant is only entitled to recover those sums which are properly payable to him; therefore, the respondent shall pay the claimant the sum of £1152 less any sums due for Income Tax and National Insurance.

Employment Judge AEPitt

Date 28th June 2021