



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Chamorro Arellano
Respondent: ISS Facility Services Ltd

JUDGMENT

The Tribunal finds the unauthorised deduction from wages complaint made under s. 23 Employment Rights Act 1996 (ERA) to be well-founded. The Tribunal makes a declaration under s.24 ERA and orders the respondent to pay to the claimant the gross sum of £527.10 deducted in contravention of s.13 ERA.

REASONS

1. On 28/2/2020 the respondent and on 3/3/2020 the claimant, agreed this claim would be dealt with by means of written representations, rather than attending the hearing in person.
2. On 14/11/2019 the claimant presented a claim for unauthorised deductions from wages. She originally sought the sum of £1,124.08. She says the deductions started on 1/1/2018.
3. At the time the claim was presented the claimant remained in the respondent's employ. The parties are in agreement that the claimant worked on two sites for the respondent. She works at Barclays Bank for 13.75 hours per week at an hourly rate of pay of £10.76 and at NatWest for 9 hours per week at an hourly rate of pay of £10.55. She is paid fortnightly. The claimant says the deductions relate to the Barclays site. There were also issues at the NatWest site, but these were resolved. The claimant worked five days a week, Monday to Friday on the days the bank was open.
4. The respondent denies the claimant has been underpaid and says she was paid for the hours she worked. The respondent's investigation revealed the claimant did not work her full contractual hours and concludes that she did not clock in for the full shift. The respondent's position is that if there was an issue with the clocking in process, the claimant should have alerted her manager to the situation. The respondent's other explanation was that on other occasions, the claimant was absent from work and as a result she was paid statutory sickness pay (SSP).

5. The Tribunal has reviewed the: ET1; ET3; a witness statement from Vasile Balan (the respondent's retail support manager); the respondent's documents; and the claimant's written submissions, statement and documents appended thereto (the claimant confirmed that she was now seeking the sum of £821.32 having accepted the respondent's explanation in part).
6. It is clear from the papers, there are issues with the respondent's clocking in system. Vasile Balan said:

'Sometimes our clock in systems do not work and [the claimant] she may have faced some issues because of this. However on 14 occasions (which I have outlines below) [the claimant] has raised difficulties with clocking in with her supervisor and has been paid.'

and

'I am aware [the claimant's] representatives have said that she notified another supervisor, called Royston, that she was having problems clocking in. Royston is [the claimant's] supervisor for her NatWest shifts and would not deal with any issue over Barclays. [The claimant] has let her Barclay's supervisor know of her problem with the Barclays clock in/out system.'

7. It appears from the respondent's records provided, that over the period of time from 29/1/2018 to 4/8/2019, on 17 occasions the records were manually overridden due to problems with clocking on/off system. On these occasions, the claimant was aware of the issue and she reported it to her supervisor. The claimant also provided copies of messages she had sent to her manager where she had taken a photograph of the system, when she reported the issue.
8. Going methodically through the claim as it is understood from the papers, the Tribunal makes the following findings. Although the parties agreed to the matter being determined on the papers and the sum claimed is quite modest, it was time consuming to navigate through the papers provided. Not all of which were legible. There was gaps and unanswered questions. In view of that and the overriding objective, the Tribunal has done the best it can from the information which was available to reach and just and fair conclusion.
9. This is a claim under s.13 ERA. The respondent does not say what provision it relies upon in respect of the deductions. The respondent's view is the claimant did not work her full contractual hours and so she was not paid. There is no written statement of particulars of employment, contrary to s. 1 ERA.

10. As submitted by the claimant, these are not deductions authorised by statute such as tax or national insurance. The claimant has not agreed to the deductions as per s. 13 (1)(b) ERA. The only other subsection the respondent could rely upon, would be if the deduction was authorised by a provision of the worker's contract – it cannot be as there is no written contract as per s. 13 (2) ERA.
11. The pleaded sums claimed by the claimant are:
12. February 2018 £32.25 – the respondent says this is as a result of the claimant not clocking out.
13. March 2018 (paragraph 10 of the ET1) this was conceded by the claimant in her submissions as so is no longer pursued (despite it appearing in the list of deductions in paragraph 11 of the submissions).
14. May 2018 £109.20 – the respondent's records show that the claimant worked 1/5/2018 to 4/5/2018. The 7/5/2018 was a public holiday. There is no record of the claimant having worked during the period 8/5/2018 to 18/5/2018. The 21/5/2018 is recorded as holiday. There is no explanation on the respondent's records as to why or whether the claimant was absent during this period. In her witness statement, the claimant said she attended work as per her contracted hours. This is the only block period (other than time off for a shoulder injury and operation) that appears in the records. The respondent says the claimant did not report any clock on/off issues to her supervisor during this period of time and there was no evidence that she had worked the shifts. She was therefore not paid.
15. The Tribunal has considered whether this was time taken as holiday by the claimant. There is no other 'block' of annual leave taken and in fact, the only day which shows as 'holiday' is the 21/5/2018, that is the first working day after the period in question. This tends to indicate that this was a period of annual leave which the claimant took; and for which she should have been paid.
16. There was certainly no evidence from the respondent to the effect that the claimant had gone 'AWOL' during this time. Nor was there any evidence that the respondent's client was complaining that its office had not been cleaned. On the balance of probabilities, the Tribunal concludes this was a period of leave and for which the claimant should have been paid.
17. July 2018 £28.60 – the respondent says the claimant did not clock out.
18. September 2018 £57.20 – the respondent says the claimant did not clock out.

19. December 2018 and January 2019 (paragraphs 15 and 16 of the ET1) were withdrawn by the claimant.
20. March 2019 £1.80 – the respondent says the claimant did not clock out.
21. May 2019 pleaded as £2.15 (there was no explanation as to why the figure of £29.56 was used in paragraph 18 of the claimant's submissions) – the respondent says the claimant did not clock out.
22. June 2019 £147.95 – the respondent says the claimant did not clock out.
23. July 2019 £147.95 – the respondent says the claimant did not clock out.
24. The Tribunal finds there was nothing in writing which authorised the respondent to make deduction when the claimant did not clock out from a shift. She is therefore entitled to these sums. It is self-evident that the claimant started the shift. There is no evidence of complaints from Barclays that the work was not completed. There is however evidence of the clocking in/out system failing on many occasions. It may have been the case that the claimant thought she had in fact clocked out, but that the system failed, without her realising and so she did not raise it with her supervisor.
25. On the balance of probabilities, the Tribunal finds that the claimant did complete her shift. Not only is she entitled to be paid, the respondent has no written authority to make a deduction from wages if the clocking in/out system indicates the shift was not completed.
26. For those reasons, the claimant's claim succeeds. The claimant is awarded the sum of £527.10 ($£32.25 + £109.20 + £28.60 + £57.20 + £1.80 + £2.15 + £147.95 + £147.95 = £527.10$).

Employment Judge Wright

Date:16/4/2020