



EMPLOYMENT TRIBUNALS

Claimant: Mr A Di Angelo

Respondent: Reed Smith LLP

PRELIMINARY HEARING

Heard via Cloud Video Platform (London Central) On: 20 July 2021

Before: Employment Judge Davidson

Representation

Claimant: did not attend
Respondent: Ms S Jolly QC

JUDGMENT

The respondent has paid the amounts of unauthorised deductions from wages claimed by the claimant. There are no further valid claims for unlawful deductions from wages and the claim is therefore dismissed.

REASONS

Today's hearing

1. The first issue for me to determine was whether the hearing today should go ahead. The claimant sent the tribunal an email at 9.55am explaining that he was unable to attend the hearing due to medical appointments at 11am and 2.50pm.
2. Prior to the hearing being listed, the claimant had informed the tribunal that he was unavailable on 20 July. It is not clear why the hearing was listed for that date but the parties were aware from the Notice of Hearing dated 2 July 2021 that this was the date of the hearing.

3. On 8 July, the claimant wrote to the tribunal saying that he was unable to attend on 20 July, without giving a reason or any supporting medical evidence.
4. On 9 July he sent a further email to the tribunal requesting an adjournment of the hearing on the grounds of his appeal to the EAT.
5. On 13 July EJ Lewis wrote to the parties confirming that the EAT appeal was not relevant to the matters for the hearing and that the hearing would go ahead.
6. On 14 July, the claimant sent a further email informing the tribunal that he had medical appointments on 20 July. He did not provide any evidence of these.
7. On 15 July, he wrote a further email giving details of the medical appointments he had on 20 July but without providing any evidence of these.
8. The respondent submitted that the claimant has a history of non-attendance at hearings, non-compliance with orders and failure to respond to correspondence. He has, over the period of this litigation, given various explanations for some of these failures but these have generally not evidenced.
9. I took into account the fact that the claimant had indicated that 20 July was not convenient for him and that the hearing had still been listed for that date. It was not a case where his position had changed after a hearing had been listed. However, given the numerous hearings in this case and the claimant's previous lack of attendance, I find that he should have provided the tribunal with evidence of his medical appointments so that an Employment Judge could make an informed decision whether to postpone the hearing. Such evidence is generally required when a party seeks to postpone a hearing which has been listed.
10. Based on his previous non-attendances at hearings, I considered the possibility that, even if today's hearing was postponed, there was a distinct possibility that he would not attend a relisted hearing.
11. I also took into account the matters to be determined at today's hearing. The claimant had provided particulars of his deductions from wages claim and I felt that I was able to address the claim as it was set out in his claim form, as particularised in his further information document.
12. As regards the request for a deposit order, this had been raised by EJ Goodman in her Judgment after the 21 May hearing and it was a matter which could be assessed on the basis of the documents. The respondent was not seeking a strike out but a deposit order in relation to this claim, so any adverse outcome would not be final.

13. In addition, I confirmed to the respondent that I would explain to the claimant in my decision that it is open to him to request a reconsideration within 14 days if there are representations he wishes to make which I did not have the benefit of hearing today.
14. The respondent also submitted that they are chasing claims being brought against them and the case has taken longer and they have incurred more expense than should have been the case for this claim.
15. Taking all these factors into account, I determined that the hearing should go ahead today.

Unlawful deduction from wages

16. I then considered the deductions from wages claim.
17. The claim as set out in the claim form relates to the technical calculations of SSP, taking into account Periods of Incapacity for Work (PIWs), waiting days and qualifying days for SSP.
18. The respondent, on receiving the claimant's claim and further particulars, has recognised some errors in calculating his SSP entitlement and these have been corrected by way of payments to the claimant in October 2020 and July 2021.
19. The point of contention appears to be whether Wednesdays should be counted as a qualifying day for SSP. The claimant had a work pattern, on medical advice, where he worked reduced hours on Mondays, Tuesdays, Thursdays and Fridays and did not work on Wednesdays. This was not a permanent change to his working hours and Wednesdays were treated as days of sickness absence. His holiday entitlement was calculated on the basis that he worked 5 days a week, not 4 days a week.
20. The significance of the 'Wednesday' is the impact it has on the daily SSP rate. The claimant suggests that the weekly rate should be divided by 4, whereas the respondent contends that it should be by 5. This is because Wednesdays are qualifying days. Although the claimant's model gives him a higher daily SSP rate, it works out less favourably for him in the long run as he would be paid for fewer days.
21. Having reviewed the figures, I am satisfied that the respondent has corrected the errors which form the basis of the claimant's unlawful deductions claim and therefore this claim has been resolved.
22. In his further particulars document, the claimant argues that he should have been paid more than SSP as a reasonable adjustment due to his disability. This is not a pleaded claim and so this is not an issue I can deal with at this hearing.

23. The claimant also claims consequential loss by way of loss of Universal Credit which resulted from the late payment of the SSP which he was entitled to. Had the amount of SSP been paid at the correct time, he would not have received payments in October 2020 and July 2021, both of which impacted on his universal credit payments. The claimant has not provided any evidence of the impact on his universal credit payments or whether he has challenged the matter with Universal Credit. I am therefore unable to make any award in respect of this part of his claim.

Victimisation claim

24. If the claimant pursues his claim for victimisation the orders set out below will apply.

Disability claims

25. The claimant's complaints of disability discrimination claims were subject to an Unless Order. It appears that the order was not complied with. In correspondence, the claimant has explained the non-compliance. This is not a matter before me today and I do not deal with this.

Reconsideration

26. As the claimant was not in attendance at today's hearing, he is reminded that he can request a reconsideration of the decisions set out above within 14 days under Rule 70 of the Employment Tribunal Rules of Procedure.

ORDERS

Further information

1. The claimant must write to the Tribunal and the other side by 27 August 2021 with the following information:
 - 1.1 why he says there is a causative link between the protected acts and the detriments;
 - 1.2 why he did not submit the claim relating to the NQ process within the relevant time period.

Documents

2. By 3 September 2021 the claimant and the respondent must send each other a list of all documents they have relevant to the victimisation claim. This includes documents relevant to financial losses and injury to feelings.

3. If the claimant or the respondent want copies of any of the documents, they must ask for them by 10 September 2021. The copies must be sent to them by 17 September 2021.
4. Documents includes recordings, emails, text messages, social media and other electronic information. This includes all relevant documents in the parties' possession or control even if they do not support their case.

File of documents

5. By 17 September, the claimant and the respondent must agree which documents are going to be used at the hearing.
6. The respondent must prepare a file of those documents with an index and page numbers. They must send a hard copy to the claimant by 24 September 2021.
7. No later than three days before the hearing, the Respondents shall send by email to londoncentralet@justice.gov.uk electronic copies of the papers to be presented at the hearing, including the trial bundle, the witness statements, skeleton arguments or written openings and any other relevant document, or a link to a website from which they can be downloaded. The following points should be carefully noted:
 - 7.1 all documents should be sent in pdf format;
 - 7.2 the index to the trial bundle should be sent separately, so that the page numbers of the hearing bundle align with the thumbnail page numbers of the pdf;
 - 7.3 any late additions to the trial bundle must be inserted at the end, not in the middle;
 - 7.4 witness statements should be contained in a separate pdf bundle;
 - 7.5 chronologies, skeleton arguments and other sundry documents should be contained in a further, separate pdf bundle.
8. The claimant and the respondent must both have a copy of the file at the hearing for their own use and ensure that their witnesses have access to the documents.

Witness statements

9. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.
10. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.

11. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
12. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
13. The claimant and the respondent must send each other copies of all their witness statements by 7 March 2022.

Schedule of Loss

14. The claimant must by 7 March 2022 send to the respondent and the Tribunal an updated schedule of loss.

Final hearing

15. The final hearing will take place over 3 days on **21, 22 and 23 March 2022**. The case will be heard by an Employment Judge and two non-legal members. The hearing will start at 10.00 am.
16. Unless you are notified otherwise, the hearing will be by Cloud Video Platform (CVP). You will be sent joining instructions the day before the hearing.

About these orders

17. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
18. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

19. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

20. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
21. The Employment Tribunals Rules of Procedure are here: <https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>

22. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

Employment Judge Davidson

Date 22 July 2021

JUDGMENT SENT TO THE PARTIES ON

22/07/2021.

FOR EMPLOYMENT TRIBUNALS