



EMPLOYMENT TRIBUNALS

Claimant: Mr. R Allsopp
Respondent: Hilltop Motorcycles Ltd
Heard at: Nottingham
On: 27th November 2020
Before: Employment Judge Heap (Sitting alone)

Representatives

Claimant: In person
Respondent: Mr. G Whale – Director
Mr. N Robinson - Accountant

COVID-19 Statement

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V – fully remote. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT

1. The claim of unauthorised deductions from wages is well founded and succeeds and the Respondent is Ordered to pay to the Claimant the sum of £119.00 less any necessary deductions for tax and national insurance.
2. The claim for accrued but untaken annual leave is well founded in part and therefore succeeds in part and the Respondent is Ordered to pay to the Claimant the sum of £59.50 less any necessary deductions for tax and national insurance.
3. The claim for unpaid notice pay fails and is dismissed.

REASONS

BACKGROUND AND THE ISSUES

1. This is a claim brought by Mr. Robert Allsopp (hereinafter referred to as “The Claimant”) against his now former employer, Hilltop Motorcycles Ltd (hereinafter referred to as “The Respondent”).
2. The claim is for unauthorised deductions from wages, for unpaid holiday pay and for notice pay.

THE HEARING

3. The hearing was held by way of Cloud Video Platform (“CVP”) due to the ongoing Covid-19 pandemic. I am satisfied that we were able to undertake an effective hearing. Both parties had submitted relevant documents in support of their respective positions and we were also able to view an electronic calendar from the Respondent during the course of the hearing.
4. We were able to have a constructive discussion at the outset of the hearing as to the issues and where there were areas of disagreement between the parties. Mr. Robinson accepted on behalf of the Respondent that the Claimant was entitled to two days payment for 30th and 31st March 2020 which had not been paid to him and that matter could therefore be easily resolved.
5. There was no disagreement that the holiday year of the Respondent ran from 1st January to 31st March 2020 or that that latter date was the effective date of termination of the Claimant’s employment.
6. There was also no dispute that during that period the Claimant accrued entitlement to 7 days annual leave. It was agreed that he had taken holiday on 1st and 2nd January 2020 and on 17th March 2020. The only dispute was that the Respondent contended that the Claimant had also taken annual leave on 14th January 2020; 5th February 2020 and 25th February 2020 and the Claimant’s position was that he would have been at work on those dates.
7. The Claimant’s Claim Form set out that he was unsure if he was entitled to any notice pay. The Respondent’s position was that he was not.
8. I therefore heard evidence from both the Claimant and Mr. Whale on that issue and also viewed the Respondent’s online calendar for the dates in question.

THE LAW

9. Before turning to my findings of fact I remind myself of the law which I am required to apply to each of those facts as I have found them to be.

Unauthorised deductions from wages – Section 13 Employment Rights Act 1996

10. Section 13 Employment Rights Act 1996 provides for protection of the wages of a worker as follows:

“Right not to suffer unauthorised deductions.

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2)In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3)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.

(4)Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5)For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7)This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting

“wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

Annual leave – Regulation 14 Working Time Regulations 1998

11. Compensation for periods of untaken annual leave upon termination of employment is dealt with by Regulation 14 Working Time Regulations 1998 which provide as follows:

“14.—(1) This regulation applies where—

(a) a worker’s employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—

A is the period of leave to which the worker is entitled under regulation 13(1);

B is the proportion of the worker’s leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.”

Notice pay

12. The Employment Tribunal is seized of jurisdiction to consider claims for notice pay under the provisions of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

FINDINGS OF FACT

13. I turn now to my findings of fact based on the evidence that I have seen and heard during the course of this hearing. That has been relatively limited due to the fact that the parties were, on the facts, only at odds on the question of annual leave taken.
14. The Claimant worked for the Respondent from 29th April 2019 until his employment terminated on 31st March 2020. On that date, he had a meeting with Mr. Whale who is a director of the Respondent. It was not a particularly amicable meeting. The Claimant said words to the effect that for the sake of their friendship it was better if he left. That was a reference to leaving employment. He did not make any reference to giving notice and he then left the premises. I find that that was consistent with the Claimant ending his employment there and then.
15. The Claimant's contract of employment provided for 28 days annual leave per annum to be taken. That included statutory holidays. It is not disputed that the Claimant took and was paid for holiday on 1st and 2nd January 2020 and on 17th March 2020.
16. I am also satisfied from the evidence that the Claimant took three additional days leave on 14th January and 5th and 25th February 2020. I prefer the account of the Respondent to that of the Claimant on those matters because it was supported by notes which I have seen in the Respondent's online calendar which recorded that the Claimant was absent all day for a hospital appointment in Coventry on 14th January and recorded "Rob off" for the remaining two days. Whilst the Claimant's position was that he would have attended work before and after his hospital appointment, he could not say what time the appointment was or what happened on that day with any certainty and he did not challenge the evidence of Mr. Whale that the diary recorded was that he was absent for the whole day and that there were no jobs booked in that day and so there would have been no reason for him to have attended work.
17. The Claimant also did not, despite being given the opportunity to do so, challenge the evidence of Mr. Whale regarding the entries in the online calendar and I have no reason to suggest that those were not accurate and genuine records of the dates on which the Claimant had taken annual leave. I also take into account that the Claimant's evidence on holidays was not certain and was to the effect that he "would have" worked on those dates. There was no detail or records to support that unlike with the Respondent's position and I find it more likely than not that he has simply forgotten about taking the additional days with the passage of time.

CONCLUSIONS

- 18. Insofar as I have not already done so, I now deal with my conclusions in relation to each of the complaints before me.
- 19. It is not in dispute that the Claimant is owed two additional days pay for 30th and 31st March 2020 or that that sum would amount to £119.00 gross. The claim for unauthorised deductions from wages therefore succeeds.
- 20. I am satisfied that the Claimant took six days of annual leave in the 2020 leave year for the reasons that I have already given above. He had, however, accrued entitlement to 7 days annual leave up to the effective date of termination of his employment. He was therefore entitled to payment for an additional one day of annual leave which has not been paid to him and the claim for unpaid holiday pay succeeds to that extent. That amounts to the gross sum of £59.50.
- 21. Whilst it was submitted that the Claimant had overtaken annual leave in the 2019 leave year and that should effectively offset any sums owed, there was no relevant agreement under Regulation 14(4) Working Time Regulations 1998 which entitled the Respondent to withhold payment or for the Claimant to now compensate them.
- 22. Insofar as the claim for notice pay is concerned, the Claimant did not give notice of termination of employment to the Respondent and his words and actions were consistent with having brought his employment to an end there and then – i.e. on 31st March 2020. Therefore, the Respondent was not obliged to pay the Claimant for a period of notice that he did not give and so the claim for notice pay fails and is dismissed.

Employment Judge Heap

Date: 27th November 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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