



EMPLOYMENT TRIBUNALS

Claimant: Mr J Spencer

Respondent: Darren John Boyle t/a DMS Racing

Heard at: Watford Tribunal via CVP

On: 23 August 2021

Before: Employment Judge Brewer

Representation

Claimant: In person

Respondent: In person

JUDGMENT having been sent to the parties on 10 September 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This case came before me for hearing on 23 August 2021 via CVP. The parties attended in person. Both gave evidence on oath. I had a bundle of documents consisting principally of pay slips and related financial information.

Issues

2. The single issue before me was whether the claimant had suffered unlawful deductions.

Law

3. In relation to a claim for unlawful deductions from wages, the general prohibition on deductions is set out in section 13(1) Employment Rights Act 1996 (ERA), which states that:

'An employer shall not make a deduction from wages of a worker employed by him.'

4. However, it goes on to make it clear that this prohibition does not include deductions authorised by statute or contract, or where the worker has previously agreed in writing to the making of the deduction (section 13(1)(a) and (b)).
5. In order to bring an unlawful deductions claim the claimant must be, or have been at the relevant time, a worker. A 'worker' is defined by section 230(3) ERA as an individual who has entered into or works under (or, where the employment has ceased, has worked under):
 - a. a contract of employment (defined as a 'contract of service or apprenticeship'), or
 - b. any other contract, whether express or implied, and (if express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.
6. Section 27(1) ERA defines 'wages' as:

'any sums payable to the worker in connection with his employment'
7. This includes '*any fee, bonus, commission, holiday pay or other emolument referable to the employment*' (section 27(1)(a) ERA). These may be payable under the contract 'or otherwise'.
8. According to the Court of Appeal in **New Century Cleaning Co Ltd v Church** 2000 IRLR 27, CA, the term '*or otherwise*' does not extend the definition of wages beyond sums to which the worker has some legal, but not necessarily contractual, entitlement.
9. Finally, there is a need to determine what was 'properly payable' on any given occasion and this will involve the Tribunal in the resolution of disputes over what the worker is contractually entitled to receive by way of wages. The approach tribunals should take in resolving such disputes is that adopted by the civil courts in contractual actions — **Greg May (Carpet Fitters and Contractors) Ltd v Dring** 1990 ICR 188, EAT. In other words, tribunals must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasion.

Findings of fact

10. I made the following findings of fact.
11. The claimant was employed from 9 December 2013 until 19 December 2020 as Store Manager.

12. From 2016 to the date of termination of his employment, the claimant was paid £250.00 net per week which equates to £13,000.00 net per annum.
13. The claimant's personal allowance in the tax year 2018/2019 was £11,850.00. For the two following tax years the claimant's personal allowance was £12,560.00.
14. The claimant paid tax only at the rate of 20% of his taxable income.

Discussion

15. The claimant says that his pay did not alter in relation to changes in the personal allowance and therefore he had been underpaid in the tax years 2019/2020 and 2020/2021.
16. As set out above, in 2018/2019 the claimant's personal allowance was £11,850.00. For the next two tax years it was £12,560.00. The claimant was taxed at the 20% rate. The claimant's national insurance contributions were £698.88 in the tax year 2019/2020 and £594.72 in the tax year 2020/2021.
17. For the complete tax year 2019/2020 the claimant's gross pay was £14,456.04. His PAYE tax should have been £379.20. His national insurance contributions amounted to £698.88. His total deductions should therefore have been £1,078.08. Thus, his net earnings should have been £13,377.92 (£14,456.04 - £1,078.08). Given that he was paid £13,000.00, this represents an underpayment of £377.92.
18. For the tax year 2020/2021 the claimant was employed for 39 weeks. The claimant's gross annual pay was £14,456.04. His tax on that sum should have been £379.20. His annual national insurance contributions amounted to £594.72. His total deductions should have been £973.92. Thus, his net annual earnings should have been £13,482.11 (£14,456.04 - 973.92). Thus, over the 39 weeks of his employment in this period, his net pay should have therefore been £10,111.59. He received actual pay of £9,250.00. This was therefore a shortfall of £861.59.
19. The sum of the underpayment was £1,239.54. I find that the claimant did not authorize this underpayment which arose from an uninterrupted series of unauthorized deductions from the claimant's wages.

Employment Judge Brewer

Date. 17 September 2021

Case No: 3315211/2020

REASONS SENT TO THE PARTIES ON

20 September 2021.....

..THY.....

FOR THE TRIBUNAL OFFICE