



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Porebski

v

Barry's Cars and Minibuses Ltd

Heard at: Watford (CVP)

On: 16 August 2021

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: No appearance or attendance.

JUDGMENT

- (1) The claim for unlawful deduction from wages succeeds in the sum of £110.**
- (2) The claim for compensation for entitlement to annual leave succeeds in the sum of £211.**
- (3) The total amount owed by the Respondent to the Claimant is £321.**

REASONS

1. The Claimant was employed by the Respondent as a minibus driver from 24 September 2020. His job was to take children to and from school and collect and deliver cars. He did not have a written contract of employment but it was agreed he would be paid £10 per hour, that his breaks between jobs would be unpaid and that he would be entitled to minimum of 37.5 hrs work per week. He now claims unpaid wages and compensation for untaken leave following his resignation on 29 October 2020.
2. The Claimant says that on Monday 26 October 2020 he was required by the Respondent to attend a First Aid course at a hotel in Kings Lynn. He says that he attended the Respondent's premises at 8.30am, was taken by minibus to the course which started at 9.00am and returned back to the

Respondent's premises at 3.30pm (a total of 7 hours). He says that on Tuesday 27 October 2020 he worked normally and relied on a Tachograph as evidence of him working between 8.30am and 12.30pm. The Claimant couldn't remember if he worked after 12.30pm that day. On Wednesday 28 October 2020 he says he was unwell and called in sick, and on Thursday 29 October 2020 he resigned, having obtained alternative employment. He says he offered to work his notice period of one week but that the Respondent declined this offer. It is common ground that the Claimant was paid until Friday 23 October 2020 but was not paid for Monday 26 or Tuesday 27 October 2020.

3. In its Response, the Respondent says that the Claimant called in sick on Monday 26 October 2020, that he remained sick on Tuesday 27 October 2020 and that he resigned on Wednesday 28 October 2020.
4. I prefer the evidence of the Claimant. The Respondent did not attend the hearing nor submit any evidence in support of its version of events, while the Claimant submitted evidence in the form of photographs taken whilst he was attending the course and messages he sent to his fiancé during the course. The Claimant also submitted the tachograph in support of his claim to have worked on 27 October 2020.
5. It therefore follows that the Claimant is entitled to 11 hours unpaid wages (7 hours in respect of 26 October 2020 and 4 hours in respect of 27 October 2020), namely a total of £110.
6. As regards unpaid holiday pay, the Claimant said he did not take any paid holiday whilst employed by the Respondent and there was no evidence before me to suggest otherwise. Accordingly, since the Claimant was employed between 24 September and 28 October 2020, he is entitled to 0.54 of a week's pay, (5.6 weeks x the proportion of the leave year for which the Claimant had been employed).
7. As regards the appropriate amount of "week's pay", the Claimant had been employed for less than 12 weeks before he resigned and did not have any normal working hours. Accordingly, pursuant to section 228 of the Employment Rights Act 1996, I consider that the amount which most fairly represents his week's pay is the average of his weekly pay during the four weeks of his employment when he was paid for a complete week's work. This amount is £390.55 (gross).
8. It follows that the Claimant is entitled to £211 holiday pay (0.54 x £390.55).

Employment Judge S Moore 16/8/21
Date:

Sent to the parties on:

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For the Tribunal Office