



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Huseynov

**Respondent:** Laraka Limited

**Heard at: London Central (remotely by CVP)**  
**On: 23 September 2021**

**Before: Employment Judge Heath**

## **Representation**

Claimant: In person

Respondent: Ms L Lanina (director)

# JUDGMENT

1. The claimant's claims for unauthorised deductions from wages in respect of wages to 31 May 2021 are not well-founded and are dismissed.
2. The claimant's claims for unauthorised deductions in relation to holiday pay and wages due in June 2021 are well founded, and the respondent is to pay the claimant £1400.47 in respect of these claims.
3. No order for costs is made against the claimant.

# REASONS

## **Introduction**

1. By a claim form presented on 4 June 2021, the claimant claims unauthorised deductions from wages against the respondent. In essence, he says that he was simply not paid for a period of nine months apart from a handful of small payments. The respondent's case is that, apart from his June 2021 pay and holiday entitlement, it paid him in full in cash at his request.

## **Issues**

2. It was agreed that what I had to determine was what was the total amount of wages due to the claimant? And was the amount payable on each occasion less than what was properly due on each occasion? The claimant confirmed that he

was not bringing a discrimination or breach of contract claim with these proceedings. He indicated, however, that he may seek to bring further claims against the respondent.

### **Procedure**

3. This matter was initially listed before me for a Full Merits Hearing (“FMH”) on 2 August 2021. The case did not go ahead for reasons which I outlined in my Case Management Order of that date. I made directions for the matter to progress to a further FMH which was listed for hearing today. On 2 August 2021 I gave the claimant permission to amend his claim to claim sums which he alleged fell due after the presentation of his ET1.
4. The claimant had prepared submissions with documents attached for the 2 August 2021 FMH. He provided amended submissions with further documents. The respondent also provided submissions with some attached documents. These submissions stood as witness statements. Additionally, included within the respondent’s documents was an email from Mrs D Batsuuri, which effectively took the form of a short witness statement. The claimant, Ms Lanina and Mrs Batsuuri all gave live evidence. There was no bundle, as such, but the documentary evidence I considered was attached to each parties’ submissions.
5. Due to an oversight of mine, I neglected to swear Ms Lanina in prior to her evidence. At the end of her evidence, when I realised the error, she took an oath and confirmed that the evidence which she had given was true.

### **Facts**

6. The respondent business is a café run by Ms Lanina. Ms Lanina and the claimant and their respective families have been friends for a number of years. Although the claim form and the response put the claimant’s starting date with the respondent as September 2020, his payslips and the evidence of Ms Batsuuri make clear that he started work in August 2020.
7. The claimant was employed part-time as a general handyman and he helped out with the respondent’s business in a number of respects, such as shopping, repairs, cleaning and other services. It was agreed that the respondent would pay the claimant £590 per month. This the payslips attached to the submissions of both parties express that salary was “Paid by Credit transfer”. It was common ground that the claimant was not paid by credit transfer.
8. At the heart of this dispute was the, on the face of it, simple dispute as to whether the claimant was paid in cash or not paid at all. I find that the claimant was paid monthly in cash at his suggestion, for reasons which I will return to.
9. The claimant’s employment with the respondent was his only employment, and only source of income, although he was in receipt of a student loan paid at the rate of £4000 per quarter. He had outgoings in respect of child support, rent and other living expenses.
10. Payslips were produced each month from August 2020 to June 2021. Apart from the first and last payslip the monthly pay was between around £535 to £644 each month. Pay was due in the first week of each month.
11. In around September 2020 Mrs Batsuuri was asked by Ms Lanina to give the claimant a blue Metrobank envelope to the claimant as she would not be at the business for payday. Although she did not see the contents, Mrs Batsuuri understood that this envelope contained cash. Mrs Batsuuri on two or three other occasions saw Ms Lanina counting out cash in £20 and £10 notes and coins and

passing them to the claimant. Mrs Batsuuri said that although she was not certain what was going on, as the claimant and Ms Lanina were both speaking Russian, she assumed the claimant was being paid.

12. On 28 February 2021 the claimant's accountant emailed her, observing, among other things, that the claimant's "*salary has not been paid through bank from Oct '20, therefore we assume this has been paid in cash, pls advise if not the case*". The next day Ms Lanina responded "*yes Elman paid by cash. Next month we will take cash exactly amount from business account*".
13. For the tax year to 5 April 2021 the claimant was paid £5088.33 as set out on his P60 certificate. Additionally, Ms Lanina made payments to the claimant on 2 October 2020 (£50), 25 December 2020 (£165), 30 January 2021 (£60) and 14 February 2021 (£50). These came from her own personal bank account, and I find these were not payment of wages, but rather personal loans made to a friend.
14. In early May 2021 the respondent employed the claimant's girlfriend on a trial basis. On 26 May 2021 the respondent dismissed the claimant's girlfriend.
15. On 27 May 2021 the claimant wrote a letter to the respondent headed "Final Request for the earnings/Pre-Action Letter/Letter before Claim". In it he writes "*I am writing with regards to my previous telephone conversations requesting the payment as till today's date despite multiple promises and requests I have never received a single payment from you for my wages despite multiple promises and requests*". He indicated that he sought payment for £6263 by 4 June or he would institute legal action. In oral evidence the claimant confirmed that none of his requests over the previous nine months had been put in writing, text or email. He claimed that this was not something he would do as Ms Lanina and her family were friends.
16. Ms Lanina responded on 1 June 2021, and wrote "*Speaking about your salary payments we don't have any outstanding payments according to our records, but we would like to inform you that from this month we will make bank transfer to your nominated bank account and cash payment will no longer be available for you*". She asked for confirmation of his bank details and indicated that his may salary would be transferred into his account shortly.
17. The claimant again wrote to the respondent on 2 June 2021 providing his bank details, saying that he did not want to go into the subject of the withholding of his salary, and saying that his position remained the same as in his previous letter.
18. On 3 June 2021 Ms Lanina wrote to the claimant stating that her accountant confirmed that there were no outstanding salary payments, apart from the May payment which would be transferred shortly. She indicated that future salary payments will be transferred to the claimant's bank account "*to avoid any unreasonable claims from your side and cash payments are no longer available*".
19. On 11 June 2021 the claimant again wrote to the respondent saying that he did not feel well, and he wished to take the remainder of June as holiday. On 29 June 2021 the claimant resigned by letter, saying that he felt uncomfortable working given the issues raised in his employment tribunal claim. He asked for 47.02 days annual leave to be paid for.
20. On 2 July 2021 Ms Lanina sent the claimant a text at 11:30 PM. She admitted that she had been drinking at this point. The text included "*I'd better pay you what I need to pay, and help you if you need, just stop you get so aggressive and I am happy to pay what I need to pay*". The following day she apologised for the previous night's text and asked if he could "*refund all money being transferred*".

*from my personal account you ask me to lend you and 140 girlfriend refused to give me back". The claimant responded that he wanted his P45 and payslip for June and payment for June, including leave. The rest of the issues would be dealt with in court. Ms Lanina responded that she would send the payslips and P45 when she got them from her accountant, and said "you will get your pay as soon as we get furlough on business account from the government".*

21. It is right to say that the relationship between the claimant and Ms Lanina and their respective partners has deteriorated. They have made serious allegations against each other which I do not need to elaborate on to determine the issues in the case.

### **The law**

22. Section 13 Employment Rights Act 1996 ("ERA") provides that an employer shall not make deductions from a worker's wages unless required or authorised by statute or contract, or the worker has signified his or her consent to the deduction in writing. A deduction is where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of wages properly payable to the worker on that occasion.
23. Section 24 ERA obliges the tribunal i) to make a declaration where a complaint of authorised deduction from wages is well-founded, and ii) to order the employer to pay the amount of the deduction made. Additionally, under section 24(2) ERA, the tribunal may order the employer to pay "*such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of*".

### **Conclusions**

24. As indicated earlier, at the heart of this dispute is whether the respondent paid the claimant over the course of nine months in cash, or paid him nothing apart from the small amounts referred to in paragraph 12 above. I find the respondent's account inherently more plausible for the following reasons.
- a. Employment with the respondent was the claimant's only source of income apart from £4000 per quarter student loan. He additionally had regular outgoings.
  - b. It is inherently unlikely that someone would work for nine months with virtually no pay. It might be said that this is something a friend is more likely to do for another friend. But equally, it might be said that it is unlikely that someone would employ a friend and not pay them. In this regard I also take account of Mrs Batsuuri's evidence that she was paid in full and on time.
  - c. It is beyond belief that someone with debts and regular outgoings would work for nine months, effectively without pay, and not make one single request for payment in writing. On 27 May 2021, the claimant in his letter referred to multiple requests for payment. It is notable, that after this date, and when there had been a non-payment of wages that is now admitted, the claimant made multiple references in text and letter to money he is owed.
  - d. The payslips throughout the employment show regular payment. The P60 and P45 also appear to evidence payment. Of course, these could simply be created when there have been no payments, but it is not readily understandable why an employer would do this. The claimant suggests some sort of fraud relating to be furlough scheme, but there is no

evidence of this beyond the claimant's simple assertion.

- e. There is contemporary evidence that the respondent's accountant specifically addressed the issue of the claimant being paid in cash. Ms Lanina confirmed to the accountant that he was. This was over three months before the claimant's dispute with the respondent. It is not readily apparent why Ms Lanina would choose to lie to her accountant and no reason was suggested to me.
  - f. There was evidence corroborating Ms Lanina's account from Mrs Batsuuri. Her evidence was she once handed the claimant an envelope she assumed contained cash, and had observed Ms Lanina handing the claimant cash. Of course, it could be that she has come to the tribunal to lie for her employer. However, her evidence is not inherently improbable or inconsistent with other evidence and was not effectively undermined in any way during the course of the hearing.
  - g. It is inherently unlikely that the claimant's girlfriend would choose to take up employment with an employer which has not paid her boyfriend for around eight months.
25. Accordingly, I find that the respondent agreed to pay the claimant £590 per month, and that it paid him those amounts in cash, at his request, until May.
26. At the end of May there was a serious falling out between the claimant and Ms Lanina and their respective partners. On the available evidence I cannot be sure why this happened, and is not necessary to determine this in order to deal with the case. However, it does appear that the first written claim for payment came from the claimant the day after the respondent dismissed his girlfriend.
27. This disposes with the claims up until the end of May. The respondent conceded that the sums set out in the June payslip, namely £1400.47 are owing to the claimant, being June salary and accrued but untaken holiday. What the respondent has urged me to do is to set off such claim against her legal expenses. This is, essentially, an application for costs. Which I will return to below.

## **Remedy**

28. The respondent has conceded that £1400.47 has been deducted from the claimant's wages, and I make a declaration to that effect and order the payment of that sum.
29. In addition to his wages the claimant seeks consequential loss. The claimant sets out his claim for consequential loss in his submissions on his amendment. He claims £1300 in relation to 10 parking tickets which increased from £65-£195 as he was not able to make payments to cover the penalties at the discounted rate. He claims for compensation for not being able to travel with his son on holiday in July and August which has compounded tension in his divorce proceedings. He has claimed £20 for disruption of mobile and Internet charges and £20 loss of earning from not being able to check emails. He puts his loss in respect of his holiday with his son and his Internet and mobile disruption as being £5000.
30. The claimant is claiming £1400 loss of wages, and loss consequent on that deduction of £6300.
31. *Harvey on Industrial Relations and Employment Law*, the leading textbook on employment law, observes that there is no case law relating to the application of section 24(2) ERA. It points out that the provision is broadly worded "*is no doubt*

*designed to cover items such as bank and interest charges incurred as a result of the employer's failure to pay wages. However, the wording is wide enough to cover any financial loss that can be shown to be causatively linked to the employer's failure if the tribunal considers it appropriate (there being no requirement that the loss be reasonably foreseeable)".*

32. I would have been sympathetic to any claim for bank charges or interest. I do not consider that it is appropriate in all the circumstances to compensate the claimant in respect of parking tickets, lost holiday or disruption of Internet and mobile. By his own admission he has debts of around £20,000, and it is difficult to say that any of the sums he claims are attributable to the £1400 the respondent has failed to pay as opposed to his general indebtedness.

### **Costs**

33. Having given an oral decision, I then set out to the parties the provisions in the ET Rules governing costs. Ms Lanina applied for her costs on the basis that the claimant had acted unreasonably in bringing or conducting proceedings. The claimant resisted this on the basis that he had been reasonable in bringing the claim and still believed his claim had merit, and that he would appeal my decision.
34. I enquired into the claimant's means. He told me that he was not currently working but was not in receipt of benefits, had debts in the region of £20,000 and had outgoings which included child support and other regular financial commitments.
35. While I was concerned that I had resolved the case against the claimant and effectively held that he had brought the claim on no sustainable basis, I considered that it was not unreasonable for him to bring the claim in circumstances when he actually did recover sums, albeit ones added on the amendment to his claim. Accordingly, I made no order for costs against the claimant.

Employment Judge **Heath**

24 September 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

24/09/2021..

FOR THE TRIBUNAL OFFICE