



EMPLOYMENT TRIBUNALS

Claimant

Mr M Polynski

v

Respondent

Circular Way Limited

Heard at: Bury St Edmunds (by CVP)

On: 28 September 2021

Before: Employment Judge Bloom

Appearances

For the Claimant: Ms A Latoszewska (Friend).

For the Respondent: Mr S Hurton (Director).

JUDGMENT

1. The name of the Respondent is amended to Circular Way Limited.
2. The Claimant suffered an unlawful deduction of wages in the total sum of £1,948.00. The Respondent is ordered to pay that sum to the Claimant.

REASONS

1. The Claimant was represented by a friend of his Ms Latoszewska. Mr Hurton a director of the Respondent Company represented them. I heard evidence from Mr Hurton and from the Claimant. I also considered the content of a Bundle of Documents. The Tribunal was also assisted by an interpreter in the Polish language Ms M Teles.
2. At the commencement of the Hearing it was agreed that the name of the Respondent formerly Proper Oils Company Ltd should be changed to Circular Way Ltd. The Respondent Company changed its name in August 2020. By consent therefore I amended the name of the Respondent to Circular Way Limited.

3. It was agreed between the parties that the Claimant was employed by the Respondent between 15th July 2019 and 18th March 2020. It was also agreed that the first three months of his employment was a probationary period. Unfortunately there was no contract of employment and the Claimant's terms and conditions of employment were not confirmed in any written document. I had to do my best by ascertaining the contractual position having heard evidence from the Claimant and Mr Hurton.
4. On the balance of probabilities I find that for the first three months of the Claimant's employment he was to be paid at the rate of £10.00 per hour. For employees whose employment extends beyond a probationary period the Respondent pays them the London Living Wage. At the appropriate time in 2019 that hourly rate was £10.55 per hour. Mr Hurton informed me that they do not pay the London Living Wage during any period of probation. There was nothing in writing to the Claimant stating otherwise. The Claimant himself accepts that no-one told him that he would be paid the London Living Wage for the first three months of his employment. Therefore I accept that the Claimant was paid the proper hourly rate of £10.00 per hour for the first three months of his employment.
5. Thereafter there is a further dispute between the parties. Mr Hurton on behalf of the Respondent accepts that after 15th October 2019 until the Claimant's employment ended on 18th March 2020 he should have been paid the London Living Wage of £10.55 per hour whereas, by error, he was paid the existing rate of £10.00 per hour. The Claimant states that he was told at the time his employment commenced that after he had completed the three month probationary period his hourly rate would increase to £12.00 per hour. Again nothing was confirmed in writing. Mr Hurton accepted that he had no conversation with the Claimant concerning the probationary period and, in particular, he had no conversation with the Claimant extending the probationary period. Mr Hurton told me that the Claimant's work was poor and it had been decided to extend the probationary period. Nothing in writing was put to the Claimant confirming that purported position. A Mr Kaminski was the Yard Manager who had more contact with the Claimant than anyone. Mr Kaminski was not called by the Respondent to give evidence. He did produce a statement but without him being present to give evidence and without the Claimant having the opportunity to challenge his evidence the written statement is of no value. I accept the evidence given to me by the Claimant namely that he was never informed his probationary period would be extended. I take into account the fact that there is no evidence before me to argue against that position and on the balance of probabilities I accept what the Claimant told me. There is nothing in writing to argue against that position. Therefore I determine that for the period 15th October 2019 until 18th March 2020 the Claimant should have been paid at the hourly rate of £12.00 per hour.

6. There is also a dispute between the parties as to the number of hours the Claimant worked over that period. The Claimant states he worked 1157.62 hours over that period whereas Mr Hurton states it is a lower figure namely 974 hours. Mr Hurton gave evidence and produced some clocking-in records which again, on the balance of probabilities, confirmed to me that his position was to be preferred to that of the Claimant. I accept therefore for that period the Claimant worked 974 hours. There is a shortfall of £2.00 per hour for each of those hours which results in an unlawful deduction of wages in the sum of £1,948.00.
7. The Respondent is ordered to pay to the Claimant the outstanding sum of £1,948.00. That is a gross sum which is subject to deductions for both tax and national insurance contributions.

Employment Judge Bloom

Date: 01 October 2021

Sent to the parties on:

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For the Tribunal Office