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EMPLOYMENT TRIBUNALS

Claimant:
Mr Paulius Ragauskas

Respondent:
Building Services Recruit Ltd

Heard at: Leeds (By Video Link) **On:** 29 October 2021

Before: Employment Judge R S Drake

Representation:

Claimant: In Person
Respondent: No Attendance/Appearance

JUDGMENT

The Claimant has established that he was entitled to wages for the period 21 April 2021 to 9 May 2021 (a period of 9 days) at a rate of £11 per hour for 64 hours worked (totalling a gross sum of £1,216.00) but taking account of a part payment in the gross sum of £896.00) and thus there is a shortfall of £320 (before deduction of Tax and NI) and I award Judgment to him in that sum which the Respondents shall pay to him forthwith. Accordingly, the Claimant's claim succeeds.

REASONS

1. The Claimant attended in person but despite my ascertaining that the Respondents were notified on 16 September 2021 of today's hearing, its mode (by video link) and time i.e., 2pm, the Tribunal swiftly corrected the day before an incorrect message an hour earlier that the time was 10am and making it clear the hearing would still start as originally notified a month earlier at 2pm.
2. The Respondent explained in an email today that he had tried to login at 10am but not succeeded and that he now sought rescheduling because he had commitments in the afternoon which he did not explain or evidence. I refused his request and he elected to permit the hearing to proceed on the basis that I would take his ET3 pleading into account. I duly obliged but preferred the testimony of the Claimant especially as to the content of his terms of employment.

Issues

3. At the start of the hearing and bearing in mind the Claimant was not legally represented, I took time and care to repeat and articulate the issues as I found them to be. These are: -
 - 3.1. Could the Claimant establish his terms of employment?

- 3.2. Could he established at what rate per hour he was contractually entitled to be paid?
- 3.3. Could he establish how many hours he had worked during his brief engagement with the Respondent?
- 3.4. Could he establish what he was actually paid and whether there was a shortfall between that figure was and what he was entitled to receive.
- 3.5. Was the Respondent's pleading (that they accepted they had paid him at a rate of £14 because of their client to whom he was assigned would not pay the full rate) a valid argument in law?

Facts

4. The Claimant's evidence before me consisted of a copy of various messages between him and various representatives of the management of the Respondents including Ms Alison Jones and Mr Lee Sutherland, and also a copy of what is described as the "BSR (referring to the Respondents) Candidate Starter Pack" as no other document was provided to him constituting a statement of particulars of employment. I heard the Claimant's oral testimony on formal Affirmation and accepted that the Starter Pack was the only document ever provided to him setting out terms of employment as no other material had been put before me by the Respondent. There was no evidence before me of which could amount to any rebuttal of the Claimant's evidence in this respect.
5. The Claimant's oral testimony before me was clear, concise, and compelling without any blemish as to its credibility. Therefore, I accepted what he told me after I questioned him closely to test his credibility. I found the following:
 - 5.1. The Claimant started work for the Respondents on 21 April 2021 when assigned to their customer Duck Electrical;
 - 5.2. As is evidenced in the Starter Pack, the Respondents agreed to pay him the full electrician's rate of £19 per hour; there was no agreement to limit his rate to Electrician's Mate rate of £14 per hour;
 - 5.3. There are no provisions in the Starter Pack enabling rates to be varied by the Respondent unilaterally or to withhold payment of the full agreed rate of £19 per hour and no terms existed permitting any deductions for any reason whatsoever;
 - 5.4. The Claimant worked a total of 9 days and thus on the evidence before me a total of 64 hours but instead of receiving a gross wage of £1,216.00 he received only £896.00 as is borne out by his payslips shown to me;
 - 5.5. The Respondents say that they reduced the rate per hour because the customer was not satisfied with the Claimant's work and after the event only agreed to pay the Respondent's invoice to them based on the Mate rate; I have not seen the terms between the Respondent and the customer and cannot conclude whether the customer was legally entitled to do this but I doubt it; I have seen the terms between the Respondent and the Claimant and conclude the Respondent had no legal basis for changing the rate agreed with the Claimant, and that therefore non-payment at the full rate agreed amounts to a deduction for which there is no express permission or

right reserved in the terms of employment of the Claimant;

6. I considered what the Respondents put before me albeit in brief terms in their ET3 as I had indicated I would take that as their evidence and their statement of case. Nothing in it was supported by sworn or affirmed evidence and in particular no evidence was before me showing that the Claimant had agreed that deductions could be made from his pay for any reason whatsoever.

The Law and its Application

7. The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -

"(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 workers contract, or –
 - (b) the worker has previously signified in writing her agreement or consent to the making of the deduction ..."
8. The Claimant must first establish non-payment to him of his hourly salary and the quantum thereof. Throughout these proceedings it has been common ground that the Respondents accept that they did not pay to the Claimant at the initially agreed rate. Also, there is no evidence of agreement in writing signed by the Claimant permitting any change of rate simply because the Respondent's customer chose to query the Respondent's account – that is a matter between them, and not between the Claimant and Respondent. In the absence of rebuttal evidence from the Respondent today, I am able to accept the Claimant's evidence about this aspect of his claim in full.
9. Therefore, the Claimant's claim well founded and that he is entitled to be paid the sum of £320.00 and I award him Judgement in that sum which the Respondents shall pay. His claim succeeds.

Employment Judge R S Drake
Signed 29 October 2021

JUDGMENT SENT TO THE PARTIES ON
9 November 2021

Olivia Vaughan
FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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