



EMPLOYMENT TRIBUNALS

Claimant: Mr B Mulcrone

Respondent: TK Lynskey Excavations Limited

Heard at: Leeds (by CVP)
On: 10 November 2021

Before: Employment Judge Anderson

Representation
Claimant: Did not attend and was not represented
Respondent: Mr M Lynskey (Managing Director)

JUDGMENT

1. The claim of unauthorised deductions from wages is not well founded and is dismissed.
2. The complaint of unpaid notice pay is not well founded and is dismissed.
3. The complaint of unpaid holiday pay is not well founded and is dismissed.

REASONS

4. The Claimant did not attend the hearing. He wrote to the Tribunal on 8 November 2021 to indicate that he would not be able to attend, and asking that the matter proceed in his absence. He said that he had “given all the information and evidence”. I considered Rule 47 of the Employment Tribunal Rules of Procedure and considered that it was appropriate to proceed in his absence as requested.

5. The Respondent produced evidence and gave oral evidence. Documentary evidence included time sheets and the Claimant's final pay slip.
6. The Respondent gave evidence that the last day the Claimant worked was 1 April 2021. The Claimant had sent in a 'tachometer' print out, which indicated that the vehicle used by the Claimant was used on 6, 7 and 8 April 2021. The Respondent said they didn't know what this document was or where it had come from. It was not a document the Respondent had produced, nor one they had seen before.
7. I accepted the evidence of the Respondent that the Claimant had ceased working for the company on 2 April 2021 and that he had been paid up to and including that date. I therefore dismissed the complaint of unauthorised deductions from wages.
8. The Respondent said that the Claimant telephoned on 2 April 2021 and stated he would not be returning to work, and did not in fact return to work. I accepted this evidence. I therefore found that the Claimant had resigned without giving notice and so the Respondent was not in breach of contract for failing to pay notice pay. I dismissed the complaint of unpaid notice pay.
9. The Respondent told me that the holiday year runs from January to December and that employees were entitled to 20 days holiday plus 8 statutory bank holidays. I accepted this evidence.
10. The Claimant's final pay slip showed that he had been paid for 11 days of holiday up to 9 April 2021. The Claimant had not yet accrued 11 days of holiday at the termination of his employment. I therefore dismissed the complaint of unpaid holiday pay.

Employment Judge Anderson

Date 10 November 2021