



EMPLOYMENT TRIBUNALS

Claimant
Mr Mathew Allcock

Respondent
She Beauty Clinics Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at Newcastle by CVP

On 26 November 2021

Before Employment Judge Garnon (sitting alone)

Appearances

For the Claimant in person

For the Respondent no attendance

JUDGMENT

1. For the avoidance of doubt the name of the respondent is amended to that shown above.
2. The claim of unlawful deduction of wages is well founded. I order the respondent to repay to the claimant the sum of £1193.44
3. The claim for compensation for untaken annual leave is well founded. I order the respondent to pay to the claimant the sum of £569.68

Reasons

1 Introduction

The claims are unlawful deduction from wages and for “holiday pay”. On 17 September 2021 they were presented against “She Beauty Clinic”. Employment Judge (“EJ”) Sweeney spotted the respondent was a limited company Number 12397590 but his order to amend does not appear to have been actioned. Service was effected on the correct address of its registered office and no response has ever been received . A judgment under Rule 21 of the Employment Tribunal Rules of Procedure 2013 (the Rules) would have been possible if the claim was clearer. Unfortunately the claimant, like many unrepresented litigants, confused “notice pay” and “expenses”, which are both claims for breach of contract, with wages payable during the notice period when he was on “garden leave” which is a claim for wages (Delaney-v-Staples), as is commission.

2. Relevant Law

2.1. The law relating to unlawful deduction of wages is in Part 2 of the Employment Rights Act 1996 (the Act) and that relating to compensation for untaken annual leave in The Working Time Regulations 1998 (WTR). These two elements are awarded gross of tax and NI. Section 27 of the Act defines “wages”, so as to include any sums payable by way of commission. Section 13, so far as relevant, provides:

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

2.2. The Court of Appeal in Agarwal-v-Cardiff University held tribunals are entitled to determine questions of contractual interpretation, including whether a term should be implied, in the context of a wages claim. Terms cannot usually be implied simply because a tribunal thinks it is "reasonable". They can to insert terms which are obviously what the parties intended but failed to say, sometimes called the "officious by-stander test". The claimant says it was agreed he would be paid £10 for every customer he signed up to a scheme and another £10 on their first appointment . I imply such a term though it is not mentioned in the written contract, which is not well drafted .

2.3. The Working Time Regulations 1998 say where a worker's employment is terminated during the course of a leave year, and on the date on which the termination takes effect the proportion he has taken of the leave to which he is entitled under Regulations 13 and 13A in the leave year differs from the proportion of the leave year which has expired, Regulation 14 requires his employer to make a payment in lieu of untaken leave. The claimant started on 1 May 2021. His annual entitlement is 5.6 weeks and 97 days of the leave year had expired on termination on 5 August 2021

3. Findings of Fact

3.1 The claimant gave evidence and produced a document bundle . His gross annual basic pay was £23000= £442.31 per week or £88.46 per working day. His entitlement to leave up to termination was 7.44 days. He had taken one day so £88.46 x 6.44 = £569.68 compensation ifor untaken annual leave .

3.2. He gave one week's notice to expire on 5 August and was put on garden leave but not paid . That forms **£442.31** of his claim for wages. The payslips are very confusing because advances of money for expenses (purchase of goods for company) are shown on them. However, the claimant agreed he was not owed expenses but in June he had an underpayment of wages of **£391.13**. He was owed £20 for each of 18 customers he signed up as commission + **£360**. Adding the emboldened figure together gives a total underpayment of wages of **£1193.44**.

EMPLOYMENT JUDGE T.M. GARNON

JUDGMENT AUTHORISED BY THE EMPLOYMENT JUDGE ON 26 NOVEMBER 2021