



EMPLOYMENT TRIBUNALS

Claimant: Mr D Faella

Respondent: Chuanglee Ltd

Heard at: London South Employment Tribunal (by remote video hearing)

On: 10 November 2021

Before: Employment Judge Ferguson

Representation

Claimant: In person

Respondent: Mr M Paterson (manager)

JUDGMENT having been sent to the parties on **17 November 2021** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. By a claim form presented on 29 January 2020, following a period of early conciliation from 18 December 2019 to 18 January 2020, the Claimant brought complaints of unauthorised deduction from wages and failure to provide a written statement pursuant to s.1 of the Employment Rights Act 1996 (“ERA”). The Respondent defended the claim on the basis that the deduction in question was “a legitimate deduction in accordance with Pension Rules and Regulation”. It also claimed it had “always maintained a full and up to date contract of employment”.
2. It is not in dispute that the Respondent deducted the sum of £520.15 from the Claimant’s final payment of wages in December 2019. The issues to be determined are:
 - 2.1. Was the deduction an unauthorised deduction from wages within the meaning of s.13 ERA?

- 2.2. Did the Respondent give the Claimant a written statement of particulars of employment in accordance with s.1 ERA?
3. With the agreement of the parties the hearing took place as a remote video hearing. Mr Paterson, who attended on behalf of the Respondent, had technical difficulties in joining the video hearing. It was agreed that the hearing could continue with Mr Paterson joining by audio only.
 4. I heard evidence from the Claimant. I also had a bundle of documents from the Claimant containing all of his payslips from his employment with the Respondent.
 5. The Respondent did not call any witnesses or provide any documents. Mr Paterson said during the hearing that he had a copy of the Respondent's standard contract which he could provide. He asserted that such a contract "would have been" given to the Claimant, but he accepted he did not have any evidence showing that it was in fact given to the Claimant and he had no direct knowledge on the matter. I did not allow the document to be admitted on the basis that directions had been issued requiring the parties to submit documents electronically or by hard copy in advance of the hearing and in any event the document would not assist the Tribunal on the issue of whether the Claimant himself was given a contract of employment.

FACTS

6. The Claimant was employed by the Respondent from 1 March 2019 until 27 November 2019 as a delivery driver.
7. The Claimant gave evidence that when he joined the Respondent he discussed his pay with Benjamin Kok Keong, a director of the Respondent. It was agreed that he would receive £340 weekly as his take-home pay, i.e. £1,475 per month. There was no agreement and nor was the Claimant informed that employee pension contributions would be deducted from his net pay. He was never given a written contract, despite repeatedly asking for one.
8. Mr Paterson put to the Claimant in cross-examination that he was given a contract of employment. He also put to the Claimant that the agreed net salary was subject to deductions for pension contributions. Both contentions were denied by the Claimant.
9. The Claimant was paid monthly. His payslips generally show gross pay of £1,812.42 and deductions for tax (£141), national insurance (131.40) and pension (£65.02), resulting in net pay of £1,475.
10. The Claimant's final payslip shows gross pay of £1,812.42 plus 8 days (presumably accrued holiday) of £544.62. The deductions shown are the same as usual and the net pay is £2,019.62. The actual amount paid to the Claimant by bank transfer was £1,499.47. It is not in dispute that the Respondent deducted £520.15 from the Claimant's final payment of wages.

THE LAW

11. The ERA (as it applied at the time of the Claimant's employment) provides, so far as relevant:

1 Statement of initial employment particulars

(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

(2) The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.

...

13 Right not to suffer unauthorised deductions

(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 worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

12. Pursuant to s.38 of the Employment Act 2002, if an employer was in breach of the duty under s.1 ERA when the proceedings were begun, the Tribunal must increase any award by either two weeks' or four weeks' pay unless there are exceptional circumstances which would make an such an increase unjust or inequitable.

CONCLUSIONS

13. During submissions Mr Paterson accepted that the Respondent did not have proof that the Claimant was issued with a contract and he asked for time to look for a document showing that he was. I treated that an application for an postponement and refused the application. It was clear from the claim form that the Claimant alleged he had not been given a contract. The Respondent had had ample time to gather any evidence relevant to that issue. It would not be fair to the Claimant to postpone the hearing simply because the Respondent had failed to carry out that exercise.

14. On the basis of the Claimant's oral evidence I find that he was not given a written contract. The Respondent has not produced any evidence to counter

what the Claimant says. I bear in mind that the Respondent says it has a standard contract of employment which it could provide today, but that does not assist because it is not evidence of a contract having been given to the Claimant. In the absence of any evidence from the Respondent that a contract, or any other document complying with s.1 ERA, was given to the Claimant, I find that it was not.

15. Mr Paterson argued that the deduction was to recoup the employee pension contributions, i.e. the £65.02 a month shown on the payslips. He said those payments had not in fact been made to the pension provider until after the Claimant's employment ended, and it was agreed with the Claimant, or should have been obvious to him, that employee pension contributions would be deducted from the agreed amount of net pay. As noted above, the Respondent did not call any witness evidence or provide any documents to support its case.
16. I accept the Claimant's evidence that the verbal agreement at the start of his employment was that he would be paid a net amount equivalent to £1,475 a month. There was no agreement that employee pension contributions would be deducted from this sum. The Respondent has not produced any evidence to the contrary. The Claimant's evidence is also consistent with the payslips which indicate that the "grossing up" of the Claimant's net pay included the pension contributions.
17. There was therefore no contractual basis for the deduction and nor was there any overpayment to the Claimant. There was no provision in a written contract or other prior written agreement authorising the deduction. It was an unauthorised deduction pursuant to s.13 ERA and the Claimant is entitled to a declaration and an award of the amount deducted, namely £520.15.
18. The Claimant was not given a statement complying with s.1 ERA for the duration of his employment. This was a serious failing and I consider the higher amount of four weeks' pay is appropriate. His gross weekly pay was £418.15. The Claimant is therefore awarded £1,672.60.

Employment Judge Ferguson

Date: 8 December 2021