



EMPLOYMENT TRIBUNALS

Claimant: Miss J Lomas

Respondent: Short Notice Care Services

Heard at: Birmingham (via CVP)

On: 8 December 2021

Before: Employment Judge Hena

Representation

Claimant: In person

Respondent: No attendance

JUDGMENT

The Tribunal makes the following findings:

1. That the respondent has had sufficient notice of this claim and given their failure to file a response in the form of a ET3, pursuant to rule 47 of the Employment Tribunals Regulation 2013 the Tribunal can proceed in absence of a Party.
2. That the respondent made unauthorised deductions from the claimant's wages by failing to pay the full amount of wages from 29th April – 9 May 2021 totalling £508.04 gross and failed to pay the full months wages on 30 April 2021 totalling the sum of £1,312.03 net after income tax and national insurance are deducted.
3. There is a 10% ACAS uplift on these sums of £182.07 for the respondent failing to deal with the claimant appropriately when she tried to enquire as to when her wages would be paid.
4. The respondent is ordered to pay the claimant the total sum of £40.79 compensation for financial loss attributable to the unauthorised deductions of wages in April and May 2021.

Reasons

Service on the Respondent

5. The claimant has been served with this claim twice, the first was to their business address of Short Notice Care Services, The Hollies, Chester Road, Whitchurch, Shropshire SY13 1ZL and then again on 29 September 2021 to the address of 37 Warren Street, London W1T 6AD after the Tribunal conducted a Companies House check on 29 September 2021 showing there to be 1 active Director of the company, Mr Anton Palmer and his address as cited above.
6. Despite re sending the claim form the Tribunal has received no response from the respondent and they have failed to file an ET3.
7. In light of this the Tribunal considered Rule 47 that the matter could proceed without the respondent being present and considering the evidence before the Tribunal.

Witness Statement of the Claimant

8. The claimant filed a schedule of loss and a witness statement with supporting evidence to the Tribunal. The witness statement had not been signed or dated confirming its contents were the truth and correct. The claimant was given the opportunity to do so and signed the document in front of the Tribunal and dating it as today's date.
9. The Tribunal requested that the signed copy to be scanned and sent to the Tribunal so that they have a copy for their records.
10. The claimant went on to adopt this statement as her evidence in chief.

Claims and Issues

11. The claimant in this matter claimed that there had been unlawful deduction of her wages in part by the employer. She had handed in her notice on 1 May 2021 and worked her notice period, however wages owed to her from April to May 2021 had not been made to her.
12. It was also her claim that she had heard from former colleagues that the company had not been paying pension contributions into a pension scheme as they had set out in her employment contract and that she was owed the deductions they had taken for this purpose.

13. The claimant provided evidence to show she had taken out loans and an overdraft from 2020 right up to July 2021 to show the respondent's failure to pay her wages and them consistently paying her wages late.
14. The issues in before the Tribunal as set out in the schedule of loss and statement of the Claimant are as follows:
 - (a) Were there unlawful deductions of wages for the period cited above for failure to pay in part the claimant's wages?
 - (b) Can the claimant claim pension contributions that appear not have been made to a provider?
 - (c) What financial loss can the claimant claim?
 - (d) Any ACAS uplifts the claimant is entitled to.

Procedure, Documents and Evidence Heard

15. After the Tribunal was satisfied the respondent had had notice of these proceedings and decided not to respond the procedure was explained to the claimant. It was made clear that the Tribunal's role was not to act in place of the respondent in their absence and questions would only be asked to clarify evidence she had submitted in support of her claim.
16. The claimant did not have a copy of the full bundle so the Tribunal showed pages of the bundle to the claimant when seeking clarification. The claimant gave evidence on;
 - how her hours were calculated on a daily basis looking at her April wage slip,
 - that she did not have statements from family and friends who had provided her with loans – she did not realise she could do this,
 - that she had provided account details of where her overdraft came from; and
 - that she had nothing from the Pension company about her pension contributions as they were not sure they could provide this but they confirmed they had no record of her.

Fact Findings

17. The Tribunal found the following in relation to each issue;
 - (a) Were there unlawful deductions of wages for the period cited above for failure to pay in part her wages?
18. The claimant had provided clear evidence in the form of her bank statements, her work rota and the April 2021 wage slip that she worked hours the respondent failed to pay her for. The claimant has given consistent and clear evidence on this point and the Respondent has failed to file anything to the contrary.

19. Further to this the claimant has demonstrated in her bank statements from 2020 when her wages have been paid in to that account, often showing them to be paid late or at the end of the working day.
20. The Tribunal finds the claimant has been thorough in how she has calculated the wages owed to her and not added anything above and beyond what she is owed from the respondent.
21. The sum calculated from the April deduction is gross less NI and Income Tax only – not the pension contribution – unless the Respondent can show they are making pension contributions they can then challenge the figure the Tribunal has come to. The sum owed for hours worked from 29 April – 9th May 2021 is net and the respondent should deduct NI and Income Tax as appropriate.

(b) Can the claimant claim pension contributions that appear to not have been made to a pension provider?
22. The claimant's employment contract indicates that monies will be automatically paid into a pension scheme, details of which would be provided separately. She also said former colleagues alerted her to her not having a pension as they had received letters to say pension contributions had not been made on their behalf. She believes this has been reported to the Pension Regulator.
23. Whilst the Tribunal has no reason to doubt this could be the case the Tribunal had no evidence of this. The pension provider would not provide anything in writing and there was nothing to show the respondent had failed to move the money into a pension scheme. Further to this there is nothing to show what the respondent's contribution should have been to the pension provider.
24. Whilst legally it appears the position is that pensions can be claimed where there is loss, in this instance there was insufficient evidence before the Tribunal to make a finding of such a loss.

(c) What financial loss can the claimant claim?
25. It is clear from the relevant law that a claimant can claim loss, however in this case the claimant is seeking the full sums relating to personal loans she has taken out and an overdraft. The claimant appears to have calculated these from 2020, however, these sums are now out of time.
26. Further to this the Tribunal noted the loans in particular were from family and/or friends who had not provided evidence that they had made the loans, the reasons for the loans and what they expected to be paid back. If there were to be interest paid on the most recent loans from April 2021 then that would be a financial loss to the claimant. But the Tribunal had insufficient supporting evidence relating to this.

27. The Tribunal did find in relation to the overdraft that whilst the overdraft itself cannot be described as a loss the interest could be a loss. The only evidence of interest on the overdraft was found at the document titled overdraft balance 01 for the sum of £40.79.

(d) Any ACAS uplifts the claimant is entitled to.

28. The Tribunal found that on the unlawful deduction of wages there should be an ACAS uplift of 10%, which is on the basis that the Claimant gave evidence to say she last spoke to the Employer in May 2021 about her wages and was told it would be paid. Since then, there has been in a breach in the code by the Respondent as they have failed to contact and engage with the Respondent.

The Law

29. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

30. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not.

31. Where a Tribunal makes a declaration that there has been an unauthorised deduction from wages, it may order the employer to pay to the worker, in addition to the amount deducted, such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the unlawful deduction: section 24(2) ERA.

32. With regards to pensions the case of **University of Sunderland v Drossou** [2017] IRLR 1087 which found that the employer's contributions into a work place pension could not be considered as wages owed to an employee. Whilst this is the case in respect in unlawful of deductions of wages it is established that pension loss can be a breach of contract with an employee. The burden of proof is on the claimant to establish a breach of contract relating to their pension.

Employment Judge Hena
Signed on: 09/12/2021