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EMPLOYMENT TRIBUNALS

Claimant: Ms D Gentle

Respondent: Kevin Belfall trading as United Recovery

Heard at: East London Hearing Centre

On: 2 July 2021

Before: Employment Judge A Ross

Representation:

Claimant: In person

Respondent: No appearance, no representation

JUDGMENT

1. The name of the Respondent shall be amended to “Kevin Belfall trading as United Recovery”.
2. The Respondent made an unlawful deduction from the Claimant’s wages.
3. The Respondent shall pay the Claimant £1615.60 assessed as follows:
 - 3.1. Unpaid wages: £915.60
 - 3.2. Increase under section 38 Employment Act 2002: £700.

REASONS

1. By a claim presented on 29 April 2021, after a period of Early Conciliation between 18 March 2021 and 29 April 2021, the Claimant brought a complaint of unlawful deduction from wages in respect of her employment between 25 January and 9 February 2021. The Claim was for 108 hours work which were unpaid; in fact, the Claimant was not paid at all during her employment. She clarified today that her schedule of loss contained a mistaken in that 108 hours not 105 hours.

Response to the Claim: Identity of Employer

2. A Notice of Claim with a Notice of Hearing was sent on 14 June 2021.
3. No ET3 Response was filed by the named Respondent, United Recovery.
4. On 14 June 2021, however, Kevin Belfall, emailed the Tribunal, stated that the Claimant had never worked for himself or UCVTS or United Recovery. He stated that she worked for Total Training Logistics Limited and asked for all information to be sent to that company. He signed off the email:

“Proprietor
United Car & Van Transport Services
United Recovery”

5. On 17 June 2021, writing to info@ucvts.co.uk in response to the email from Mr. Belfall, the Tribunal stated that the email of 14.6.2021 could not be accepted as a response.
6. On 22 June 2021, the Tribunal wrote to the Respondent, United Recovery, to warn that a Judgment may be issued under Rule 21 Tribunal Rules of Procedure 2013.
7. On 29 June 2021, Mr. Belfall replied by email. He stated that the van that the Claimant had been in charge of was owned and operated and insured by Total Training Logistics Limited. In this email, he signed off as:

“Director
Total Training Logistics Limited”

Issues

8. There was no ET3 Response to the Claim filed and no substantive defence in any of the correspondence from Mr. Belfall to the Claimant's case that she was an employee nor to the claim for unlawful deduction from wages for 108 hours of work. In fact, in emails provided to the Tribunal by the Claimant, Mr. Belfall stated that if she referred to the correct legal entity then she may “*see some money*” (see email 29.6.21).

9. Therefore, the only issue for determination at this final hearing was the identity of the Claimant's employer, subject to the Claimant proving her case on the unlawful deduction from wages.

Evidence

10. The Claimant had filed a witness statement dated 25 June 2021. This attached documents, including emails which demonstrated work schedules were sent to the Claimant via email. These came from Debbie Belfall from the United Car & Van Transport Services email address.

Findings of Fact

11. I accepted the Claimant's evidence in its entirety; and, as I have said, the only challenge in the correspondence was to the identity of the employer.
12. The Claimant confirmed the contents of her ET1 and Witness Statement were true.
13. I found as facts all the factual matters stated in the Claimant's oral evidence. I found her to be a reliable witness. The Claimant's evidence, taken with the emails with the work schedules on them, demonstrated that there was a contract between the Claimant and her employer.
14. The Claimant had attended an interview with Debbie Belfall on 23 January 2021 and been offered the job as a driver collecting and delivering vehicles. It was agreed between the Claimant and Ms. Belfall, acting for the Respondent, that the wages would be a gross salary of £350 per week for driving a 3.5 ton truck; and £450 per week for driving a 7.5 ton truck. Wages were agreed to be paid at the end of the month.
15. The Claimant started with training on 25 January 2021 with Ms. Belfall.
16. The Claimant worked long hours, hence her claim for 108 hours at the National Minimum Wage. The Claimant was sure her calculation of the hours claimed was accurate because all her hours were recorded in a diary.
17. The Respondent's advertised its services on a FaceBook page: "United Recovery".
18. The Claimant agreed with Mr. Belfall that he would obtain a tachograph so she could drive 7.5 ton trucks; so she paid him personally £32, which was the cost of this.
19. The Claimant was dismissed by Mr. Belfall by Whats App message on 9 February 2021. This followed an accident and discussion about it. This culminated in a message from Mr. Belfall in which he swore and then said that the Claimant was sacked.
20. In addition, I took into account the records on Companies House, as Mr. Belfall had invited the Claimant to do this on 29 June 2021 and because he had stated in response to the Tribunal that the Claimant was employed by Total Training Logistics Limited. These records revealed:

- 20.1. There was no company named “United Recovery”.
 - 20.2. There was a company named “United Car and Van Transport Limited”, but this not incorporated until 17 May 2021.
 - 20.3. There was a company known as “Total Trading Logistics Limited”, incorporated in 2017, with a registered address of 8 Chandlers Row, Colchester. It had filed accounts for a dormant company on 9 May 2021. There was no evidence from previously filed accounts that it had ever traded. Also, the directors’ details had apparently changed on 1 May 2021 and Mr. Belfall was a person with significant control from that date.
21. In her evidence, the Claimant explained that she believed that the Respondent’s business had moved to 8 Chandlers Row after she had left although the move in was process when she was there.

Conclusions

22. In terms of the law, I have directed myself, in particular, to section 13 Employment Rights Act 1996 and section 38 Employment Act 2002. I have reminded myself that the burden of proof lies on the Claimant to prove her case on the balance of probability.
23. I have applied the facts found to the issue set out above. I concluded as follows.
24. The Claimant was employed by Mr Kevin Belfall, trading as “United Recovery”. This is because:
- 24.1. I accepted the Claimant’s evidence as to who employed her and how she came to be employed. This showed that employed by Mrs. Belfall at the garage of business trading as United recovery.
 - 24.2. Mr. Belfall described himself as the “Proprietor” of United Recovery and UCVTS when writing to the Employment Tribunal and ACAS.
 - 24.3. Mr. Belfall dismissed the Claimant, evidenced in the WhatsApp message of 9.2.2021. Previously, he had threatened all drivers with dismissal if they would not work when it was snowing. The power to dismiss is generally that of an employer.
 - 24.4. The Claimant paid Mr. Belfall personally for tachograph. If a company employed her (eg. Total Trading Logistics Ltd), it is inconsistent that the Claimant would have paid Mr. Belfall personally.
 - 24.5. The Claimant received her work instructions from Debbie Belfall, who I inferred was a manager in business, because had not dismissed the Claimant and had not received money from her, but had acted as operations manager by giving out instructions. There was no evidence that Ms. Belfall described herself as proprietor of the business employing the Claimant.

25. I found that it was very unlikely that the Claimant had been employed by Total Trading Logistics Limited because:
- 25.1. This appeared to be a dormant company during the period of her employment.
 - 25.2. The name of this company was not mentioned to the Claimant, which is odd if this were really her employer.
 - 25.3. The trading name of the business which employed the Claimant appeared on the van driven by the Claimant. There is no mention of some, non-transport related, name in this branding. The Claimant drove a van with a business name on its side, "United Recovery". All vans in the photos that I saw were so branded. Uniforms of the drivers, like the Claimant, were also so branded as explained by the Claimant in her evidence.
26. On the Claimant's application, having had the Companies House information explained to her, I decided to amend the name of the of the Respondent in order to further the overriding objective. The Respondent's name shall be amended to "Kevin Belfall trading as United Recovery". There was no prejudice to Mr. Belfall who knew of these proceedings and had an opportunity to file an ET3 Response and witness evidence, but chose not to do so.
27. I concluded that the Claimant had proved that the Respondent had made an unlawful deduction from wages as claimed in the sum of £915.60.
- Should an award be made under Section 38 EA 2002?*
28. The issues raised by the above statutory provision are as follows:
- 28.1. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?
 - 28.2. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
 - 28.3. Would it be just and equitable to award four weeks' pay?
29. The Respondent had breached the requirement in s.1(1) Employment Rights Act 1996 to provide a statement of terms to the Claimant.
30. The Claimant had been disadvantaged by the absence of any contract of employment identifying her employer. In this case, I found that there was a serious breach of the section 1 ERA 1996 requirements. I concluded that this was

aggravated by a failure to co-operate by taking part in the proceedings, so as to conceal the true identity of the employer.

31. However, the issue is whether it is just and equitable to award the higher amount. The Claimant only worked for the Respondent for around 2 weeks. I concluded that it was not just to make the higher award, which was significantly more than the outstanding wages that she was entitled to. Therefore, I award 2 weeks pay in the sum of £350 x 2 weeks = £700.

Summary

32. The Claimant is entitled to a declaration of unlawful deduction of wages and the awards explained above. The Claimant's total award is £1615.60.
33. There is no complaint of breach of contract in the Claim form, so the notice pay claim in the Claimant's witness statement must fail. In addition, there is no statutory right to notice until a worker is employed for 1 month.
34. The claim for statutory uplift also fails because there was no evidence of a grievance and the Claim was not about the dismissal, but about unpaid wages.

Employment Judge A Ross

22 September 2021