



EMPLOYMENT TRIBUNALS

Claimant: Ms C Watton

Respondent: Secom plc

Heard at: London South (Croydon) by CVP

On: 20 January 2022

Before:

Employment Judge Tsamados (sitting alone)

Observing: Employment Judge Chong and Employment Judge D Wright

Representation

Claimant: Did not attend, was not represented

Respondent: Mr N Fanthorpe-Hodgson, Finance Director

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practical because of the Covid-19 virus.

JUDGMENT

The **Judgment** of the Employment Tribunal is as follows:

- 1) The Claimant's complaint of unauthorised deduction wages is not well-founded.
- 2) Her claim is dismissed.

REASONS

The claim

1. By a claim form presented to the Employment Tribunal on 22 April 2020, the claimant originally brought complaints of disability discrimination and unauthorised deductions from wages. However, she subsequently withdrew the disability discrimination complaint. This was dismissed on withdrawal in a Judgment dated 23 November 2020.
2. In its response received on 3 August 2020, the respondent denies that it made any unauthorised deductions made from the claimant's wages and contends that she had been paid the correct amount owing to her.
3. The claim form at its highest simply states that the claimant is seeking £1350 unlawfully deducted from her final wages in March 2020.

4. At a case management hearing held on 23 November 2021, the respondent explained that the deduction from wages was made in accordance with the claimant's contract of employment. The claimant further identified that she was owed 3 days' holiday outstanding on termination of employment. The respondent's position was that 4 days were outstanding, of which the Claimant had taken 2 and the remaining 2 days were paid to her.
5. At a further telephone case management hearing held on 12 April 2021, the claimant was required to write to the respondent and the Tribunal by 18 May 2021 setting out precisely why she believed that the respondent's calculation of her final salary was incorrect and how she calculated the sums due to her.
6. Whilst the Claimant provided a schedule of loss and a number of other documents, these do not support her claim. The schedule of loss relates to what appear to be complaints in respect of unfair dismissal and discrimination but does not provide any information about her unauthorised deductions complaint.
7. The respondent's response sets out clearly its grounds of resistance and it has provided a bundle of 32 pages in support. The respondent sent the bundle and copies of the claim form and response, as well as the records of the previous case management hearings to the Tribunal cc the claimant by email on 21 December 2021. The covering email explains that the bundle of documents was sent to the claimant on 7 December 2021 asking her to inform the respondent of any additional documents that she required to be included. However, the email goes on to explain that there was no response from the claimant.
8. Notice of today's hearing was given at as well as in the record of the first case management hearing which was sent to the parties on 16 December 2021. The hearing was converted to a CVP hearing and joining details were sent to the parties by letter dated 4 January 2022.

Today's hearing

9. By the start of the hearing at 10 am, the claimant had not attended. My clerk attempted to contact her on the mobile telephone number provided but it did not even ring. I instructed my clerk to email the claimant advising her that she was supposed to be in a hearing now, that I would start at 10.20 am by which time she needed to attend either to participate or if she was not able to do so to explain why. I asked my clerk to make it clear that if she did not attend, the hearing would proceed in her absence. My clerk emailed the claimant at 10.17 am on the address provided. I did not start of the hearing until 10.40 am, by which time there had been no contact from the claimant.
10. Under rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:

"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."
11. I explained this to Mr Fanthorne-Hodgson I told him that having considered the information available to me after making practicable enquiries as to the reasons for the claimant's absence, I had decided to proceed with the hearing in her absence.

Evidence

12. I heard evidence from Mr Fanthorne-Hodgson and considered the documents provided in support from which I reach the following findings. References to the respondent's bundle are indicated by "B" followed by the relevant page number and

to the Claimant's documents by "C" followed by the relevant page number.

Findings

13. The claimant was employed as a Control and Command Operative from 15 June 2019 until 20 March 2020. Her terms and conditions of employment are set out in a contract of employment which she signed on 14 June 2019 (at B1-11). Clause 4 sets out entitlement to notice of termination of employment of one week if the employee has been continuously employed by the company for up to one year. Clause 10 sets out entitlement to paid annual leave accruing during the calendar year. Clause 11 indicates that during the first year of employment there is no entitlement to payment of wages for sickness absences and that any remuneration payable would be inclusive of Statutory Sick Pay ("SSP").
14. The claimant worked a shift pattern of four days on and four days off and at the time of her dismissal was paid an annual gross salary of £18,900. I was referred to a document entitled Salary Calculations, at B3, which had been prepared by Mr Fanthorpe-Hodgson. This explains that based on 182 working days per annum, the claimant's daily rate of pay was £103.85. In addition the document indicates that the claimant was entitled to a daily rate of SSP of £23.57 based on her shift pattern.
15. I was referred to a document entitled Explanation of Salary Process, which had also been prepared by Mr Fanthorpe-Hodgson. This indicates that any adjustments to pay in respect of sickness absences are made in the salary paid in the following month.
16. The claimant had been off sick on a number of occasions during 2019 and 2020, as set out in a document headed Rotacloud Attendance Report at B20. The relevant periods of sickness absence are those shown for February and March 2020.
17. In addition this document indicates that the claimant had taken 2 days annual leave during the calendar year 2020. I was also referred to documents in support of the days taken at B26 & 27. At the point of dismissal the claimant had accrued 4 days annual leave of which she had already taken 2.
18. The claimant's final payslip is at B14 and is dated 26 March 2020. This indicates that the claimant was paid £536.93 (in respect of the days worked during March), SSP of £287.75 (in respect of her 12 days of absence during February and March, £363.47 (in respect of one week's payment in lieu of notice) and holiday pay of £207.70 (in respect of 2 days accrued that undertaken annual leave). From these payments the respondent deducted £1350.02 (in respect of 12 days of absence during February and March 2020). This would appear to be the figure of £1350 that the claim form refers to.
19. The Salary Calculations document at B20 explains that SSP is not paid for part days and the claimant had 12 full days of sickness during February and March 2020 as indicated at B20. The document also indicates that were some small errors in the calculations of salary, SSP and holiday pay which resulted in an overpayment of £17.71. However, the respondent is not seeking to recover this amount.
20. Whilst the explanations shown in parenthesis at paragraph 18 are not included in the payslip, the claimant was sent an email by the respondent on 25 March 2020 which sets out clearly what these amounts represent and how they have been calculated. This document is at C3-4. In particular, the email explains that £1350.02 was a sickness deduction in respect of the claimant's sickness absences during February and March 2020. It is clear to me that this follows the adjustment process referred to above, the claimant having been paid her wages in full for the previous month when she was only entitled to SSP and represents the adjustment made in

respect of that payment in February as well as in respect of her further absences in March. In turn, the claimant was paid her entitlement to SSP for those days. Although not relevant, I accept that the 3 waiting days in respect of her entitlement to SSP had been accounted for in respect of the earlier period of entitlement to SSP prior to February and March 2020.

Relevant Law

21. Section 13 of the Employment Rights Act 1996:

'(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.

(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...'

Conclusions

22. In essence, the legislation requires me to determine whether the claimant has been paid less than the amount of wages that were properly payable to her, in this case in her March 2020 payment of wages made on 26 March. If she has been paid less than that which was properly payable, I would then go on to determine whether the shortfall in her wages amounted to a deduction and whether that deduction was authorised or not.
23. I take into account that the burden of proof is on the claimant and she has not advanced any evidence in support of her complaint. However I have clear evidence from the Respondent.
24. Having considered my findings, it is clear to me that the claimant was properly paid her wages in accordance with her contract of employment. The amount that she seeks was a legitimate adjustment made in respect of overpaid wages during February 2020 during which she was only entitled to SSP and similarly for those days in March 2020. I am also satisfied that she received the correct salary for the days in which she worked during March 2020 as well as her accrued but untaken holiday pay.
25. I therefore find that her complaint of unauthorised deduction from wages is not well-founded and I dismiss her claim.

Employment Judge Tsamados
20 January 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
7 February 2022

FOR THE TRIBUNAL OFFICE