



EMPLOYMENT TRIBUNALS

Claimant: Mr Jake Marrow

Respondent: Tyseley Locomotive Works Limited

Heard at: Employment Tribunal | HMCTS | 13th Floor, Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU

On: Thursday 20 January 2022

Before: Employment Judge Hena

Representation

Claimant: Non-Attendance

Respondent: Craig McCracken - Solicitor

JUDGMENT

The Tribunal makes the following findings:

1. The claimant had sufficient notice of the hearing, pursuant to rule 47 of the Employment Tribunals Regulation 2013 the Tribunal can proceed in absence of a party.

2. That the claimant's claim for unauthorised deductions of wages for the period of the 16th April to 30 April 2021 of £600 has not succeeded.
3. The claimant's claim for financial loss as a result of his personal items totalling £700 which remain with the respondent has not succeeded.

REASONS

Rule 47 of the ETR 2013

4. The claimant did not dial into the hearing as he had sent an email on 20 January 2022 to the Tribunal at 12:40 a.m. requesting assistance in dialling into the CVP hearing the Tribunal afforded him time to join the proceedings.
5. To this end the Tribunal attempted to call the claimant, send emails and tried a landline number he used to call the respondent from on 19 January 2022. The claimant eventually spoke to the Tribunal to say he did not realise the hearing was today but on 20 February 2022 and he was at work and could not join the proceedings.
6. The Tribunal was satisfied that the claimant did understand that the hearing was on 20 January 2022 as he had sent an email asking for help to dial in and had engaged with the respondent on the 19 January 2022 about possibly settling the claim and that the hearing would be the following day. The Tribunal continued the hearing in the claimant's absence pursuant to rule 47 of the ETR 2013.

Claims and Issues

7. The respondent in the ET3 response had agreed that the claimant was owed holiday pay and that this was something they were arranging to pay. They believed the claimant had accrued 22.5 days of leave in 2020 (paragraph 9 ET3 response p.g. 26) and at the hearing they stated there may have been around 7 days that he carried over in 2019.

8. At page 40 of the bundle submitted by the respondent they have paid the remainder of the holiday owed to the claimant of £1350 gross on 15 October 2021. They then say that the wages paid on 15 April 2020 which included 2 weeks the claimant did not work as he would not attend the workplace covered the remaining holiday pay.
9. The issues are:
 - 9.1 Does the respondent owe the claimant 2 weeks of wages from 16th April – 30th April 2021?
 - 9.2 Has the respondent paid the claimant the holiday pay that he is owed?
 - 9.2 Is the claimant at financial loss due to his personal belongings being on site with the respondent?

Procedure, Documents and Evidence Heard

10. The respondent submitted a bundle of 42 pages which included;
 - ET1 of the claimant
 - ET2 with notice of hearing
 - ET3 of the respondent with detailed reasons of defense
 - A contract of employment between the respondent and claimant
 - payslips
 - P45
 - An email from Alistair Meanley dated 30 April 2021 to the claimant terminating his employment due to gross misconduct.
 - Holiday record
11. Mr McCracken on behalf of the respondent submitted given that there was only one issue in this matter he did not intend his client to give evidence at the hearing as there was nothing further for him to them to submit in evidence.
12. Mr McCracken clarified his evidence by stating;
 - There was no financial loss to the claimant pursuant to s.24(2) of the Employment Act 2002 regarding the personal items as his client had made attempts to contact the claimant to attend the workplace after 16 April 2021 but received no response.

- His instructions are they have had no contact from the claimant where he has asked to attend the workplace to remove the personal items and been refused.
- That the email of termination on 30 April 2021 stated the claimant could come on site with agreed permission.
- That his client has looked for the claimant personal effects in a locker but cannot locate it and the claimant removed his caravan. But they will search for the personal items again.
- That they have paid the claimant his holiday pay.
- They were able to retrieve the tools the claimant had when he was arrested 6 weeks ago and the claimant will have a hearing regarding the criminal matter on 14 February 2022 regarding this. They believe some of their expensive tools are still missing.

Fact Findings

1. The Tribunal found the following in relation to each issue;

(a) Does the respondent owe the claimant 2 weeks of wages from 16th April – 30th April 2021?

2. The Tribunal found that the wage slips submitted in the bundle showed that the claimant was paid on the 15th of each month which meant that he would be paid 2 weeks in advance each month. Further to this the email of termination on 30 April 2022 set out that the claimant had been paid on 15 April 2022 so the claimant had in fact been overpaid as he did not work until 30 April 2022.

3. The Tribunal found that the evidence submitted showed that the claimant had been paid for the two weeks he claimed he was not. However, the 2 weeks the claimant was paid for he did not communicate or attend the workplace to deal with the gross misconduct concerns. He did do any work for the respondent during this period.

(b) Has the respondent paid the claimant the holiday pay that he is owed?

4. The claimant's ET1 set out that he was owed 20 days of holiday pay and had not received this. The respondent in their ET3 response agreed that the claimant was owed holiday pay but it was in fact 22.5 days (paragraph 9 page 26). At the hearing they said they believed there may have been 7 days carried over in addition to the 2020 leave.
5. The respondent paid the claimant the sum of £1350 gross for 20 days holiday pay on 15 October 2021. At the hearing they submitted the remaining holiday was paid from the overpayment of wages on 15 April 2021. They submit that pursuant to s.14 of the Employment Rights Act 1996 they are permitted to claim back any overpayment which has been offset by owing the claimant holiday pay.
6. The Tribunal found that the claimant had failed to submit evidence to support his claim on this point and had in fact only been pursuing 21 days of holiday pay. Further to this the claimant made no comment on his failure to come into work from 16 April 2021 and his position on being paid for that period where he failed to engage with the respondent.
7. The Tribunal preferred the evidence submitted by the respondent who had been honest in a) that they did need to pay the claimant holiday pay and b) that it was in fact more than what the claimant was claiming was owed.

(c) Is the claimant at financial loss due to his personal belongings being on site with the respondent?

8. The claimant maintains that his personal belongings remain with the respondent despite him removing his caravan from the site. He has said that the respondent will not engage with him to collect these belongings. He has provided not evidence of these attempts.
9. The respondent states he has not contacted them to collect these belongings where they have refused.

10. The Tribunal prefers the respondent's position noting that in the letter of termination on 30 April 2021 at page 36 of the bundle sets out that claimant can come on site with their express permission. Further it is accepted they have attempted to search for these personal items and cannot locate them, but that they are willing to search the site again.
11. With this in mind given that the complaints a) and b) have not been found the Tribunal cannot find that there has been loss in respect to the personal items pursuant to s.24(2) of the Employment Rights Act 1998. Further to this it is open to the claimant to contact the respondent either himself or with the help of an intermediary to locate exactly where these personal items are.

The Law

Unlawful Deductions of Wages and Financial Loss

12. 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. Section 27 of the same Act defines the meaning of wages which includes holiday pay.
13. 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.
14. 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.
15. 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.

Employment Judge Hena

Date: _20 January 2022

JUDGMENT SENT TO THE PARTIES ON
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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