



EMPLOYMENT TRIBUNALS

Claimant: Simon Vaughan
Respondent: KDC Scaffolding North West Ltd
Heard at: Wales Employment Tribunal, Cardiff via CVP
On: 28th January 2022
Before: Employment Judge P Mason

Representation

Claimant: Simon Vaughan
Respondent: Kevin Vaughan

RESERVED JUDGMENT

1. The judgment of the Tribunal is that the Claimant's claim for unlawful deduction of wages pursuant to s.13 (1) of the Employment Rights Act 2002 is not well founded and is dismissed

REASONS

INTRODUCTION

1. In a claim form dated 18th September 2021, Mr Simon Vaughan brought a claim against the Respondent, KDS Scaffolding North West Ltd for unlawful deduction of wages in relation to arrears of pay since November 2020.
2. He also seeks an additional 4 weeks' pay under section 38 Employment Act 2002 for failure to provide him with a written statement of employment particulars.
3. In its response form received on 1st December 2021, the Respondent resisted the complaint. Their case was that the Claimant had no claim for wages after 6th December 2020, when the Claimant had been issued with his P45. Further, that the monthly wage was not £1900 as the Claimant contends, but is £372.40.

ISSUES

4. The issues to be determined by the Tribunal were agreed as follows:
 - a. Was the claimant dismissed by the respondent?
 - b. If so, when?
 - c. How much was the Claimant entitled to be paid?
 - d. Did Respondent make an authorised deduction from wages by withholding payment after November 2020?

EVIDENCE

5. Both parties appeared via CVP. I heard evidence from the Claimant and from Mr Kevin Vaughan for the Respondent. There were no witness statements from either party. In an email to the Tribunal, dated 25th January 2022, the Claimant had provided bank statements from the Respondent bank account from 11th June to 20th Sept 2018; and from Oct to Dec 2020. Respondent did not have copies of this, but his payments for those periods was not contested.

6. The Respondent provided a P45 for the Claimant, dated 16th June 2021. The Claimant had not been given a copy of the P45, but again there was issue regarding the content of it.
7. There was no agreed bundle of documents. I asked the parties if they had any documents they wanted to refer to.
8. I also heard closing submissions from both parties.

RELEVANT LEGAL FRAMEWORK

9. 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.
10. 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.
11. 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 reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.
12. Under s 13(3) of the Employment Rights Act 1996 ERA provides that:

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.

FINDINGS OF FACT

13. The relevant facts are as follows. Where there is a dispute over those facts, I set out my findings and reasoning.
14. The Claimant, Mr Simon Vaughan was one of three directors of the Respondent, KDS Scaffolding North West Ltd. The three directors are also brothers.
15. They would pay themselves wages by withdrawing sums from the company bank account each month. The Claimant says his wages were paid around 20th of each month.
16. The Claimant held the role of Director of the Respondent company from 1st May 2018.
17. In November 2018, there was a falling out between the Claimant and his two brothers. The result of which is that the Claimant stopped working for the company.
18. The reasons why the Claimant ceased work are disputed. The Claimant says he was prevented from doing so by the Respondent who instructed him not to attend work, and blocked his mobile phone.
19. Further, that from November 2018 until August 2020 the Claimant was signed off from work due to the effect of the dispute on his mental health. He says that fitness to work statements were sent to the accountant at his home address covering the relevant period. I have not been provided with any of these.
20. The Respondent contends that the Claimant walked off site after the argument in November 2018. They note that they received two medical notes, signing the

Claimant off from work between 11th July and 20th August 2019; and from 2nd-27th September 2019. I have not seen those notes either.

21. The Claimant states, and it was not challenged that he did not have any communication with the Respondent during the time that he was off ill between November 2018 and August 2020.
22. In August 2020, the Claimant wrote to Mr Darren Vaughan requesting essentially that he either be permitted to return to work, or that they bought his share in the company. I have not seen that letter, but the Respondent accepts that they received it. It is agreed that at the end of October 2020 there was a meeting in the Respondent company's yard, described by Respondent as "a board meeting".
23. Both sides accept that the Claimant was told he would be removed as a director of the company and removed from the bank mandate, thus being prevented from withdrawing any wages. The Respondent accepts that there was no written record of that meeting. The Respondent also states that the relevant online forms were filled in on Companies House website.
24. The Claimant says that his removal as a director was recorded on the Companies House website as March 2021 and, in any event has never been dismissed as an employee.
25. The Respondent states they issued him with a P45 which states the last day of work as 6th December 2020 and thus the Claimant has no entitlement to wages after that period.
26. The P45 provided by the Respondent notes a leaving date of 6th December 2020. Claimant states he never received it. It is dated 16th June 2021. It is not clear why the P45 was not sent until June 2021. The Respondent says he requested orally for the P45 to be sent by his accountant.

27. The Claimant accepts that he did not carry out any work for the Respondent after his period of illness ended in August 2020. He accepts also that to provide an income he began to work for Bowman Access Service in December 2020.
28. The last date that Claimant was paid was in October 2020.

Wages

29. There is a further dispute concerning how much the Claimant received in wages. It is accepted by both sides that three brothers paid themselves on an *ad hoc* basis, dependent on cashflow. That is clear from the Respondent's bank statements I have been provided with.
30. The Claimant asserts that the three brothers agreed to pay themselves £1900 a month and sometimes more. The Respondent disputes that as the basis of the calculation in the Claimant's claim and contends that the actual monthly wage rate prior to the Claimant's P45 is £372.40.
31. The statements between June and September 2018 show that the Claimant was paid wages of £3900 in July; £1900 in August and £1900 in September. The bank reference is "pay".
32. Over the same period, Kevin Vaughan was paid £2900 in July; £3300 in August; and £2500 in September. David Vaughan was paid £2400 in July; £1900 in August; and £2000 in September. Their reference is "wages".
33. The 2020 statements show a total of £9925 paid to the Claimant October 2020. Kevin Vaughan was paid £2500; and David Vaughan £1500. There are no further payments to the Claimant in November or December 2020.
34. It is not clear to me how the Respondent reaches the figure of £372.40 as an "actual monthly wage rate". In my view the monthly payment based on the evidence of the Claimant and the bank statements provided would be £1900 a month.

CONCLUSIONS

35. There are no issues concerning the Claimant as a worker, nor that the claim concerned wages.
36. The first matter I had to decide was whether the Claimant was dismissed by the Respondent. Claimant asserts that while he was dismissed as Director, he was still an employee.
37. In my view there was no evidence that the two roles were separate. The three brothers are both directors and scaffolders. The Respondent's ET3 notes that the company has now two employees. There is no evidence that the Claimant carried out any work after the meeting in October 2020 as either a director or an employee.
38. I find that his removal as a director was at the end of October 2020 and that ended his employment with the Respondent also. There is no evidence that the Claimant sought to continue working with Respondent after that date. He accepts that he began work with another company, in December 2020.
39. Consequently, I do not find there has been any wages properly payable to Claimant after Oct 2020 under S. 13(3) of the Employment Rights Act 1996.
40. I now consider the period between the end of the Claimant's employment in October 2020 and the P45 date of 6th December.
41. Any claim for payment between termination of the contract at the end of October 2020 and the date of the P45 6th December 2020 would have to be made within three months from which the deduction was made.
42. Even allowing for payment to have been taken by the Claimant around 20th November, the Claimant would have needed to engage ACAS around the same date in February 2021. The claimant notified ACAS under the Early Conciliation Procedure on 9th July 2021 and the ACAS Early Conciliation Certificate was issued

on 20th August 2021. The claim for any unlawful deduction between the end of October 2020 and 6th December 2020 is out of time.

43. The claim is not well-founded and is dismissed.

Employment Judge P Mason
10th February 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 14 February 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche