



EMPLOYMENT TRIBUNALS

Claimant

Mrs N Rees

v

Respondent

BusinessF1 Magazine Ltd

Heard at: Cambridge (by CVP)

On: 14 January 2022

Before: Employment Judge Wyeth

Appearances

For the Claimant: No attendance

For the Respondent: Mr T Rubython, Director

JUDGMENT

1. The respondent must pay to the claimant the sum of £222.84 following the unauthorised deduction of wages owed to her of that amount.
2. For the avoidance of doubt this is to be paid gross and it is for the claimant to account to HMRC in relation to any tax that may be due upon it.

REASONS

1. By way of a claim form dated 30 April 2021 (following a period of ACAS EC between 1 and 31 March 2021), the claimant brought a complaint of unauthorised deduction of wages, including holiday pay, and notice pay following her resignation from the respondent on 29 January 2021.
2. It was not clear within the claimant's narrative included with the claim form precisely what amounts she was alleging to be due to her. Indeed, the content of the claim form was confusing. The claimant makes reference to one week's pay of £961.54 being due for January 2021, a further two days holiday at £192.31 per day. The claimant then suggests the sum of £961.54 was due in respect of "1 weeks' notice period". There is also reference to a sum of £505 being due.
3. Notwithstanding the fact that the parties have been on notice of today's hearing since 15 August 2021, on 10 January 2022, just four days prior to this hearing, the claimant made an application to postpone today's trial on the

basis that she had secured new employment and had a work commitment. No further details were provided nor any additional reasons given by the claimant for her request. That application was considered and rejected (not entirely surprisingly) yesterday by EJ Tynan.

4. It was regrettable that neither the claimant nor anyone on her behalf was present at the final hearing today to explain the nature and basis of her claim. Furthermore, the claimant had not provided any additional material (not even a written statement or submissions) for the tribunal to consider in her absence.
5. The tribunal was able, however, to hear evidence and representations from Mr Rubython on behalf of the respondent. I noted in advance of hearing from Mr Rubython that in the respondent's defence there was an apparent admission that the sum of £1,184.37 gross was due to the claimant. However, upon hearing from Mr Rubython, he explained that £961.53 of this amount related to the period of 29 January 2021 to 5 February 2021 which was the period in which the claimant should have worked following her serving notice of her resignation upon the respondent. He accepted that he, on behalf of the respondent, had agreed to pay the claimant for that week and that she would be excused from working her notice conditional upon her signing a letter headed Cessation of Employment (a document which was before me as it had been attached to the respondent's "Statement of Fact" that formed its grounds of response). He maintained that he had never agreed to pay her for the period in which she did not work in the event that she refused to sign that document. According to Mr Rubython (which I accept), the claimant did refuse to sign that document and consequently the respondent declined to pay her for a period notice she should have otherwise worked.
6. Ultimately the Cessation of Employment document would have been worthless to the respondent as it did not fulfil the requirements of s144 of the Equality Act 2010 or s203 of the Employment Rights Act 1996 which prevents parties from being able to contract out of statutory rights save in very specific circumstances. Nevertheless, the fact that the Cessation of Employment document may have been unenforceable in relation to statutory rights does not invalidate any agreement reached between the claimant and the respondent as to the circumstances in which notice pay would be paid.
7. I also bear in mind that any notice pay due would not amount to wages for the purposes of Part II of the ERA (Delaney v Staples (t/a De Montfort Recruitment) 1991 ICR 331 CA) and would therefore fall within a contractual claim rather than an unauthorised deduction of wages claim and it is necessary to apply contractual principles to such a claim.
8. I accept Mr Rubython's unchallenged position that despite the respondent's apparent admission that it owed £1,184.37 to the claimant in its response, this was erroneous because £961.53 of this was only payable if the claimant signed the said document referred to above in consideration for waiving the

claimant's contractual obligation to work her period of contractual notice, which she had refused to do.

9. For these reasons I find that the only amount due to the claimant is the balance of the sum admitted to be due by the respondent which Mr Rubython accepted was owed in relation to outstanding holiday pay, namely the sum of £222.84.

Employment Judge Wyeth

14/1/2022

Sent to the parties on:12/2/2022

N Gotecha

For the Secretary to the Tribunals