



EMPLOYMENT TRIBUNALS

Claimant: Mr D Williams

Respondent: Mr A Lowther trading as Fire-Ex

Heard at: In Cardiff by video

On: 11 February 2022

Before: Employment Judge C Butcher

Appearances

Claimant: Mr Williams

Respondent: Mr Lowther

JUDGMENT

The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 25/3/20 -11/9/20.

The Respondent is ordered to pay to the Claimant the sum of £7013.35 being the total gross sum deducted.

REASONS

1. The Claimant was seeking payment of wages from the Respondent due from 25th of March 2020 until 11th September 2020. The Respondent accepts that the Claimant was not paid but due to the Respondent's difficulties in enrolling on the government furlough scheme was unable to pay him.

2. It is accepted by the Respondent that the Claimant was an employee of the Respondent as defined by s230(1) Employment Rights Act 1996 and is therefore entitled to bring a claim for unauthorised deduction from wages.

3. An unauthorised deduction of wages is defined at s13(1) Employment Rights Act which states that an employer shall not make a deduction from the wages of a worker employed by him unless:

(a) a 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.

4. The issues before the Tribunal were:

(i) What was the contractual agreement between the parties as to entitlement to pay and whether there was any agreement vary the contract, and

(ii) Whether the Respondent made an unauthorised deduction from the Claimant's wages by not paying him wages and if so, by what amount.

5. I heard evidence from both the Claimant, Mr. Williams and the Respondent, Mr Lowther. The Respondent had provided letters to the tribunal and screenshots of various WhatsApp messages between the parties. I also received a copy of the Claimant's contract of employment dated the 12/9/19.

6. The Claimant began working for the Respondent on 12/9/16 as an apprentice in the Respondent's electrical business, during which time he received training from the Respondent. His last day of working for the Respondent was 24/3/20 following the national lockdown arising from the COVID pandemic. The parties understood that the Claimant would be placed on the furlough scheme. The Respondent informed the Claimant that he would pay him once the Respondent had received funds from the furlough scheme.

7. The Respondent encountered difficulties with accessing the scheme and I have seen various messages between the parties in which the Respondent states he is in contact with HMRC and Sage Payroll.

8. As a result of the difficulties, the Respondent did not register for the furlough scheme in the required time period and was therefore ineligible. The Respondent offered to make the claimant redundant retrospectively and pay the Claimant a redundancy payment of £375 from 24/3/20. The Claimant received his final wage payment on the 24/3/20. He began a new job on 14/9/21.

9. Despite messages between the parties no agreement regarding payment was reached and the Claimant issued a claim for the sum of £7013.35, being unpaid wages for the period between 25/3/20 – 11/9/20.

Findings

10. I find that although there was no formal agreement to apply for the furlough scheme, both parties understood that the Claimant would be placed on the scheme from 25/3/20. The Claimant had a reasonable expectation that he would receive payment through the scheme. When the Respondent did not apply to the furlough scheme within the required time period, he suggested he back date redundancy and pay a sum to the Claimant which was not accepted.

11. I accept unchallenged evidence that the Claimant has not received any payment since 25/3/21, even though he remained ready and available for work in accordance with the terms of his contract. I find that irrespective of the operation of the furlough scheme the Respondent was contractually obliged to pay the Claimant. It was not for the Respondent to withhold payment to the Claimant in anticipation of receiving funds from the furlough scheme.

12. I find that the whilst the Respondent offered to make the Claimant redundant, this suggestion was made some time after the 24/3/21 and was not accepted by the Claimant in any event. The Claimant remained an employee of the Respondent until 11/9/21. There was no prior written agreement on the part of the Claimant that he should not be paid. The Respondent should have paid the Claimant the wages due between 25/3/21 – 11/9/21 and he did not do so.

13. I therefore find that the Respondent made an unauthorised deduction from wages for the period between 25/3/21-11/9/21 and should pay the Claimant the gross sum of £7013.35.

Employment Judge **C Butcher**

Date - 11th February 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON 16 February 2022

FOR THE TRIBUNAL OFFICE Mr N Roche