



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 Case No: 4103584/2018 Held in Glasgow on 8 June 2018

Employment Judge Shona MacLean

10 Mr MS Anwar

Claimant
Represented by:
Mr D Jaap
Solicitor

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Woodside Calder Ltd t/a Anderson Rizwan

Respondent
Represented by:
Mr C Edwards
Advocate

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that (1) the Tribunal does not have jurisdiction under section 23 of the Employment Rights Act 1996 to hear the claimant's complaint of unauthorised deduction of wages in respect of deductions
25 from wages between January 2016 and June 2016; (2) the claimant suffered unlawful deductions from wages, contrary to the provisions of section 13 of the Employment Rights Act 1996 in the sum of Ten Thousand, Three Hundred and Ninety Nine Pounds and Eighty Four Pence (£10,399.84); (3) by reason of the matters aforesaid, the respondent is ordered to pay to the claimant the sum of Ten
30 Thousand, Three Hundred and Ninety Nine Pounds and Eighty Four Pence (£10,399.84).

E.T. Z4 (WR)

REASONS

Introduction

1. In the claim form presented to the Tribunal's office on 24 March 2018 the
5 claimant complains that the respondent made an unauthorised deduction
from his salary. He was seeking payment of £29,404.11.
2. The respondent sent a response to the Tribunal's office on 25 April 2018
denying that the claimant was due to receive a total gross salary of £53,000
over two years of his training contract. The respondent said that an agreement
10 was reached and that the claimant would only be paid a gross salary of
£23,000 in the second year of his traineeship. The respondent confirmed that
the claimant had been paid £21,200 since he began employment on or around
11 January 2016. The respondent admitted that the claimant was due
outstanding wages of £13,850.
- 15 3. At the start of the hearing the representatives confirmed that the claim of
unlawful deduction of wages was restricted to the payment due to the claimant
under the training contract.
4. The respondent accepted that the training contract ended on 10 January 2018
and the unpaid wages up to that date was £18,784.84. The respondent was
20 willing to consent to a judgment for £10,399.84. The respondent said that the
Tribunal had no jurisdiction to make an award in respect of the balance of
£8,385 as it was time barred.
5. The claimant gave evidence on his own account. Rizwan Liaquat, Director
gave evidence for the respondent. The claimant produced a set of
25 productions. No productions were lodged by the respondent.
6. The Tribunal found the following essential facts to have been established or
agreed.

Findings in Fact

7. The respondent is a company limited by guarantee. It trades as solicitors from premises at 20-23 Woodside Place, Glasgow, G3 7QF.
8. The claimant entered into a training contract with the respondent dated 23 May 2016. The training contract began on 11 January 2016 and was to last for two years.
9. Under clause 3.2 of the training contract the respondent was to pay to the claimant £20,000 gross per annum during the first year of the training contract and £33,000 gross per annum during the second year of the training contract.
10. The claimant was to receive £1,397 net per month in year one (January 2016 to December 2016) and £2,149 per month net year two from January 2017.
11. Between January 2016 and June 2016, the respondent did not make any monthly payments to the claimant. The claimant did not complain to the respondent about this. The claimant has other business interests providing him with an income. At the end of June 2016, the respondent had made a series of deductions totaling £8,385.
12. In July 2016 the claimant received a payment from the respondent of £1,397.50 which was the wages due to him that month. The claimant thought that this was a payment to account of his outstanding salary of £8,385.
13. The respondent made the following monthly payments: August - £1,397.50; September - £1,397.50; October - £1,397.50; November - £1,397.50; December - £1,397.50; January - £1,397.50; February - £1,397.50; March - £1,397.50; April - £1,406.86; May - £1,406.86; June - £1,406.86; July - £1,406.86; August - £1,406.86; September - £1,406.86; October - £1,406.86. The claimant thought that these payments were for outstanding salary. The respondent did not issue payslips and the claimant did not request any.
14. No payment was received in November 2017. The claimant received a payment of £500 in December 2017.

15. After the claimant's training contract terminated he requested pay slips. The claimant received a payslip dated 5 December 2017 for a pay of £1,406.86.

Witnesses and Observations on Evidence

16. In the Tribunal's view the claimant gave his evidence in an honest, straightforward manner. He conceded that between January 2016 and June 2016 he did not raise any issue with the respondent about non-payment of his wages and during his employment he did not ask for payslips.
17. The Tribunal's impression was that Mr Liaquat was a reluctant witness whose evidence appeared inconsistent and unreliable.
18. There was conflicting evidence about a conversation in December 2016 when Mr Liaquat said that the claimant believed that he would be paid a gross salary of £23,000 in the second year of his traineeship. The claimant denied that this was agreed and said that had the conversation taken place he would have certainly recalled a discussion about his salary being reduced by £10,000. The Tribunal considered that the claimant's evidence was more plausible on this issue.

Submissions

19. Mr Japp referred the Tribunal to section 23(2) of the Employment Rights Act 1996 (the ERA). However, he said that the facts in this case were crucial. If the Tribunal accepted the claimant's evidence as credible and reliable then from 2016 onwards the payments he received were a rolling deduction paying the arrears that had accumulated. The only documentation is the schedule of loss which Mr Japp prepared.
20. Mr Edwards also referred to section 23 of the ERA. He said that the onus was on the claimant. He referred the Tribunal to *Bear Scotland Limited v Hertel (UK) Limited and another UKEAT/161/14*. Mr Edwards said that the tribunal had no jurisdiction to make an award in respect of £8,385 as it was time barred.

Deliberations

21. The Tribunal considered its findings. There was no dispute that the claimant was to be paid monthly. He was entitled to a payment in January 2016 which he did not receive. This was an unlawful deduction of wages and he would have been entitled to raise a claim. This continued in February, March, April, May and June 2016. The claimant was aware that he was entitled to receive monthly payments and had not done so. He was also entitled to raise a claim in respect of a series of unlawful deductions by the respondent and did not do so.
22. In July 2016 he was entitled to a payment of £1,397.50 which he received. While the Tribunal found that the claimant that thought that this was a payment to account of his outstanding salary of £8,385 there was no explanation why he made that assumption. He was expecting to receive a salary of £1,397.50 in July 2016 which he received. There was no evidence of any discussion about why the respondent made unlawful deductions of wages up to June 2016 and how or when that would be repaid.
23. As the claimant received payments of £1,397.50 as they became due between July 2016 and December 2016 the Tribunal considered that there were no unlawful deductions from the claimant's wages in this period.
24. While the claimant continued to receive monthly payments from January 2017 he was entitled to a higher monthly rate which he did not receive. The Tribunal considered that this was the start of another series of deductions to which the respondent consents to a judgment of £10,399.84.
25. The Tribunal does not have jurisdiction to consider a complaint that there has been a deduction from wages unless it is brought within three months of the deduction or the last in the series of deductions being made. The reason for the time limit is to ensure that claims are brought promptly. There was no submission to the Tribunal that it was not reasonably practicable for the complaint to be presented with that three-month period.

26. In the Tribunal's view there is a gap of more than three months between the first series of deductions and the second series of deductions. The Tribunal therefore concluded that it did not have jurisdiction to consider the complaint in respect of the deductions made in January 2016, February 2016, March 2016, April 2016, May 2016 and June 2016.
27. The Tribunal did however consider that it was appropriate to issue a judgment for the respondent to pay the claimant £10,399.84 which the respondent accepts as being due.

Employment Judge: S Maclean
Date of Judgment: 04 July 2018
Entered in register: 06 July 2018
and copied to parties