



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Ballyntine

**Respondent:** Willows Support Services Limited

**Heard at:** By CVP at Midlands West Employment Tribunal

**On:** 14 December 2021

**Before:** Employment Judge Platt

## Representation

Claimant: Ms Sonia Ballyntine, in person

Respondent: Ms Sarish Khan, Respondent's Quality and Compliance Lead

**JUDGMENT** having been sent to the parties on 16 December 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Preliminary Matters

1. A Strike Out Warning had been issued by Legal Officer Metcalf on 7 December 2021 on the application of the Respondent on the basis that the Claimant had not complied with the Tribunal's Orders dated 30 July 2021, 13, 14 and 27 August 2021 and 3, 10 and 24 September 2021 and that the Claim had not been actively pursued. The Respondent confirmed at the outset of the Hearing that the Strike Out application was not being pursued.

## Claims and issues

2. The Claimant claimed unlawful deductions from wages under section 13 of the Employment Rights Act 1996. The Claimant worked as a Support Worker and claimed that she worked hours in September, October and November 2020 for which she was not paid.
3. The parties agreed that monies the Claimant was claiming for September 2020 as set out in her ET1 Form (i.e. a shortfall of 18 hours and 4 sleep-ins) were paid to the Claimant in her October 2020 pay as shown on the pay slip

dated 31 October 2020 which sets out that back pay of £320.02 was paid. The Tribunal did therefore not need to determine this issue.

4. The issue for the Tribunal to determine was whether unlawful deductions had been made from the Claimant's wages in respect of October 2020 and November 2020 pay. In particular, there was a dispute about the number of hours the Claimant had worked in October 2020 and November 2020 and therefore whether what she had been paid was correct.
5. The Claimant's position as set out in her ET1 Form was that she was owed pay for 2 hours and 2 sleep-ins from October (2 x £9.01 plus £80 = £98.02) and pay for 78 hours and 3 sleep-ins from November (78 x £9.01 plus £120 = £822.78).

### **Procedure**

6. The Claimant had difficulty joining the Hearing by CVP. The Claimant was able to join the Hearing by telephone. The Respondent had no difficulties joining the Hearing by CVP. Both parties stated their preference to proceed with the Hearing with the Claimant participating by telephone and the Respondent by CVP. On consideration of the overriding objective (including that the previous hearing on 15 July 2021 had been postponed due to the death of the Claimant's father), the Hearing proceeded.
7. The Respondent had prepared a bundle of documents which included the pleadings and a further 23 pages. The Claimant had not provided documents to the Respondent to go into the bundle. The Claimant had sent some documents to the Tribunal by email on 13 December 2021. Much of this documentation related to the application for Strike Out which the Claimant had been ordered to respond to by 13 December 2021. Some attachments appeared to be missing and were provided to the Tribunal at the start of the Hearing. The Tribunal took time to read those documents. The Respondent had sent some documents in response to the Claimant's email of 13 December 2021. Some further email correspondence was received by the Tribunal on the morning of the Hearing.
8. The Claimant provided three documents which she stated were timesheets of the hours she worked in September, October and November 2020.
9. The Respondent relied on the evidence in the bundle, in particular, the summary report of the investigation it had conducted into the Claimant's wages (which had been sent to the Claimant on 7 July 2021) and emails dated 28 May 2020 and 4 September 2020 referring to the introduction of an App to record time and attendance at the relevant times.
10. The Case Management Orders made by Employment Judge Connolly on 15 July 2021 ordered the Claimant to prepare a witness statement setting out all the evidence in relation to her claim, including why she believed she was entitled to the amounts claimed, how she calculated the amounts and her response to the summary report that was sent to her on 7 July 2021. The Claimant had not prepared a witness statement but gave oral evidence at the hearing covering these points.

11. Both parties made oral submissions outlining their respective positions.

### **Findings of fact**

12. It was agreed between the parties that the correct rate pay for each hour worked by the Claimant was £9.01 and that sleep-ins were paid at a rate of £40. This was accepted by the Tribunal.
13. The Claimant provided three timesheets (only two of which are relevant to the claims for October and November 2020 pay). One indicated that the Claimant worked 187 hours and did 10 sleep-ins from 21 September 2020 – 20 October 2020. This had a typed date of 18 October 2020 and the Claimant's name was typed at the bottom. There was no signature from the Claimant or her manager. No documentary evidence was presented that showed the timesheet had been submitted to the Claimant's manager or that she was authorised to use timesheets to record her hours. The Claimant's oral evidence was that these were the hours that she worked and that she did submit the timesheets to her manager.
14. The second timesheet indicated that the Claimant worked 275 hours plus 20 sleep-ins during 21 October – 20 November 2020 and had a typed date of 22 November 2020. There was no signature from the Claimant or her manager. No documentary evidence was presented that showed the timesheet was submitted at the time or was approved by her manager. The Claimant's oral evidence was that these were the hours that she worked and that she did submit the timesheets to her manager.
15. The Respondent's position was that it was no longer using timesheets in its business to record time and attendance at the relevant times. The Respondent explained that a new system was introduced in response to the COVID-19 pandemic and to improve the accuracy of recording hours. Staff were required to use an App called Blip from 4 September 2020 according to an email of the same date sent by the Respondent's HR Manager. The Claimant gave oral evidence that she did not use Blip at the time (having objected to being required to download it on to her personal phone as set out in an email dated 7 September 2020) and continued to use timesheets to claim for her hours at the relevant times. She stated that this was agreed with her manager. No documentary evidence of this was provided to the Tribunal.
16. The Respondent had a pay query process which staff could use to raise queries about their pay. The Claimant had raised pay queries with the Respondent using their process about her pay for September 2020 and October 2020 but did not raise one about November 2020. She stated in her oral evidence that she decided not to do so. However, she did send two emails to the Respondent on 5 and 7 December 2020 regarding her November pay but did not provide supporting documentation of the hours she claimed to have worked. Her evidence was that she had provided supporting documentation in relation to October 2020. This was not provided to the Tribunal.
17. The Respondent conducted an investigation into the Claimant's pay covering September – November 2020 and shared the summary report of that investigation with the Claimant on 7 July 2021. The Claimant did not provide a

response to the summary report further to the Tribunal's Order made on 15 July 2021. The Respondent, after conducting an investigation into the Claimant's pay, found that the Claimant was owed some wages from September 2020, which the Claimant had not in fact claimed, and from November 2020.

18. The Respondent's position was that the investigation into the Claimant's pay was based on rotas for staff held on the Respondent's financial systems submitted by line managers. The Respondent has used the information on the financial system to produce the report and Ms Khan stated that she had checked the figures on the system herself against the report. The Respondent's position was that where there was no data from the App it had used the rotas to calculate hours and pay. The Claimant's position is that she worked a lot of hours and that she was truthful in her assessment of the hours on the timesheets. She stated that these were produced at the time, were accurate and had been submitted. The Tribunal accepted that staff had been asked to use the App and if they had not done so the hours recorded on the rotas were used to calculate pay. In the absence of data on the App the Tribunal accepted the use of rotas as a reasonable method of calculating the hours worked.
19. The summary report produced by the Respondent based on the rotas identified that the Claimant was owed money for hours she did not in fact claim for September 2020. It showed an overpayment in October 2020 (in respect of one day's annual leave) and an underpayment in November 2020 due to an error with the rate of pay. It concluded that the Claimant was owed £392.47.

## **Law**

20. The relevant law is Section 13 of the Employment Rights Act 1996 which prohibits unlawful deductions from wages. Section 13 (3) of the Employment Rights Act 1996 sets out that there will be an unlawful deduction if an employer deducts an amount which is properly payable.

## **Conclusions**

21. The Tribunal was satisfied on the evidence before it that the Respondent conducted a reasonable investigation into the hours the Claimant worked in October and November 2020. It relied on rotas submitted by managers in the absence of data from the App which had been introduced in September 2020.
22. The Tribunal could not conclude based on the evidence before it that the Claimant had worked the hours claimed in October and November 2020. The timesheets were not signed by the Claimant or her manager. The Claimant had not provided documentary evidence that they had been approved by her line manager or submitted to her line manager at the time. It was not apparent that they were an accurate record of the hours worked.
23. The Claimant had not demonstrated that she worked the hours claimed in October 2020 and November 2020 and therefore that the amounts claimed were properly payable under section 13 of the Employment Rights Act 1996.

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24. The Respondent accepted as a result of its investigation that it made unlawful deductions from the Claimant's wages in the total sum of £392.47. The Respondent was therefore ordered to pay to the Claimant the gross sum (subject to deductions for tax and national insurance) of £392.47, in respect of the amount unlawfully deducted.
25. The calculation is as follows and as explained below: £461.67 - £72.08 + £2.88 = £392.47
26. The Respondent paid the amount claimed by the Claimant for September 2020, a sum of £320.02, as shown on the pay slip dated 31 October 2020. This sum had been unlawfully deducted from the Claimant but the parties agreed this had been paid by the Respondent.
27. The Respondent accepted that the Claimant was owed a further payment in the sum of £461.67 (being the remaining balance of 69 hours and four sleep-ins the Respondent had identified as owing to the Claimant for September 2020, i.e. £781.69 - £320.02).
28. No unlawful deductions were made from Claimant's wages in October 2020, An overpayment was paid in respect of eight hours holiday (£72.08).
29. An unlawful deduction of £2.88 was made in November 2020 when the incorrect rate of pay (£8.89 per hour) was used.

**Employment Judge Platt**

Date: 10 January 2022