



EMPLOYMENT TRIBUNALS

Claimant: Mr K Wood

Respondents: Improve My House Ltd

Heard at: Leeds (by CVP) **On:** 26 April 2022

Before: Employment Judge Parkin (sitting alone)

Representation

Claimant: In person

Respondent: No response presented; no attendance or representation

JUDGMENT

The Judgment of the Tribunal is that:

- 1) The proper identity of the claimant's former employer is Improve My House Ltd which is substituted as respondent; and
- 2) The respondent made unlawful deductions from the wages of the claimant in the sum of £958 gross and is ordered to pay him that sum.

REASONS

1. The claimant claimed unlawful deduction from his wages in his ET1 claim form presented on 1 February 2022. He had engaged in Early Conciliation from 8 December 2021 to 18 January 2022, naming his employer and prospective respondent as Improve My House. His claim form set out that he had worked as a spray polisher between 1 October and 12 October 2021 before he decided not to continue with the role and he named Darren Kay as respondent employer. After initial rejection, the claim was accepted and served against Improve My House. The claim was for 108 hours at the rate of £13.50 an hour, but the ET1 was equivocal as to whether £500 had been paid by the respondent.

2. No response was presented and consideration was given to issuing a Rule 21 Judgment. Whilst the claimant gave further detail by email on 19 April 2022, it was directed that the hearing proceed.

3. At the hearing, the claimant gave oral evidence on affirmation but did not produce any documentary evidence. He was clear and straightforward, with a

good memory of event (save for start and finish dates) and I accepted his evidence and that the error as to dates was an innocent mistake. He made clear he wished to pursue only the claim for the balance of his wages. From his oral evidence, I made the following findings of fact on the balance of probabilities.

4. The claimant was taken on as an employed spray polisher by Darren Kay who ran the business Improve My House. Whilst he did not receive a contract of employment or statement of main particulars, the claimant was clear that Mr Kay was the director of and ran the limited company, Improve My House Ltd, and this was his employer. A Companies House check confirmed this was an active company and Mr Kay was the sole named director.

5. The claimant never received a payslip since he was never paid whilst in employment. The business was doing up second-hand furniture which was then sold in Mr Kay's friend's shop. Mr Kay lived in Harrogate at the company registered office, but the claimant and colleagues worked spraying the furniture in premises at Otley.

6. The dates of employment on the claim form were given wrongly by the claimant, who actually worked only for two weeks from 1 to 12 November 2021 before deciding he did not wish to continue working for his new employer. He had worked 108 hours at the agreed hourly rate of £13.50; he was promised payment each month on the 5th for the preceding month and a normal week would have been 40 hours. No payment was forthcoming on 5 December 2021, whereupon the claimant and members of his family chased the outstanding payment since he was financially embarrassed. Under pressure, the claimant said he would accept £500 (which was paid) instead of all his outstanding wages, but immediately regretted this and sought payment of the balance. No further payment has ever been made.

7. The Law

This is a straightforward claim of unlawful deduction from (i.e non-payment or under-payment of) wages within Part II of the Employment Rights Act 1996, in particular sections 13 and 23. Of course, the identity of the claimant's employer needed to be resolved as part of the decision-making and I also considered whether there was any valid or binding varied agreement such that the claimant was only to accept £500 in payment. The power to substitute a different entity as respondent lies under Rule 34 of the Employment Tribunals Rules of Procedure 2013.

8. Conclusion

In circumstances where the ACAS Certificate named Improve My House and the first named respondent Mr Kay is the director and driving force of the limited company Improve My House Ltd, it is appropriate to declare that the proper employer and respondent to these proceedings is Improve My House Ltd. This reflects the true position and the claimant's uncertainty about the actual identity results from the lack of statement of particulars or contract of employment or payslip for him to work with. I make that substitution under Rule 34.

9. The claimant readily established that he worked 108 hours at the hourly rate of £13.50 and that he was not paid anything initially on 5 December 2021, putting him in great financial difficulty when he should have been paid £1458 gross. I do not accept that he willingly entered any binding variation of his contract of employment and the monies due under it, such as to erase the respondent's debt on payment of £500 (just over 1/3rd of the gross sum owed). I conclude that the balance of £958 is still outstanding and give judgment in favour of the claimant in that sum.

Employment Judge Parkin
Date: 26 April 2022

Judgment & Reasons Sent To The Parties On
Date: 4 May 2022

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