



EMPLOYMENT TRIBUNALS

Claimant: Mr S Gwynne

Respondent: Retro Corner Custom Limited

Heard at: Leeds **On:** 8 March 2022

Before: Employment Judge Jaleel

Representation

Claimant: In person

Respondent: Mr Mosley (Director)

RESERVED JUDGMENT

1. The Claimant's complaint of unauthorised deduction from wages is well-founded and succeeds.
2. The Respondent is ordered to pay the gross sum of £369.24 to the Claimant.

REASONS

Introduction

1. This was a complaint of unauthorised wages brought by the Claimant, Mr Gwynne, against his former employer, Retro Corner Custom Limited. The Claimant represented himself and the Respondent was represented by its Director, Mr Mosley.
2. The Tribunal had before it the pleadings and a short statement and email messages sent in by the Claimant.
3. During the Hearing the Claimant also provided the Tribunal with further emails dated July 2020 which he believed were relevant to the matter. The

Claimant stated that he had in fact sent a copy of these messages to the Tribunal previously.

4. Mr Mosley advised that they had not been provided a copy of the statement and email messages referred to. Mr Mosley reiterated that he had been seeking evidence of the claim throughout the process.
5. The Tribunal ensured that Mr Mosley was sent a copy of the short statement and emails. Mr Mosley was able to consider the documents and these were added to the hearing bundle without objection. The Tribunal found that neither party was prejudiced.
6. Having identified the issues, the Tribunal heard from the Claimant who gave evidence on his own behalf. The Tribunal then heard from Mr Mosley (Director) for the Respondent.

Issues

7. The Claimant's complaint is of unauthorised deduction from wages. He contends that he worked for the Respondent for 4 days from 5 – 8 July 2021. In his claim form the Claimant contended that he had worked a total of 45 hours but by the date of the Hearing he clarified that he had worked 44 hours. He alleged that he left his job due to the number of hours he was working.
8. The Respondent denies employing the Claimant. In its ET3 response form it states that it has no record of employing the Claimant. The Respondent has not made payment of any wages to the Claimant.
9. At the outset of the Hearing the Tribunal confirmed the basis of the Claimant's claim and the Respondent's defence. The Tribunal identified the issues to be determined as follows:
 - a) Was the Claimant employed by the Respondent between 5 – 8 July 2021?
 - b) If so, how much is the claimant owed?

Facts

10. Having considered all relevant evidence, the Tribunal makes the factual findings set out below.
11. The Respondent manufactures and delivers furniture.
12. There was an exchange of emails in May 2021 which confirmed that the Claimant had attended an interview with Mr Mosley for the position of National Delivery Driver/Engineer. The email dated 13 May 2021 confirms that Mr Mosley asked the Claimant to attend a further second interview with the Operations Director. The emails are themselves titled:

RE: National Delivery Driver/Engineer – Stuart Gwynne applied on Indeed

13. The Claimant was unsuccessful in his second interview.
14. The email dated 1 July 2021 confirms the Claimant was contacted by Mr Mosley to see if he was still looking for work as things had not worked out with the previous candidate.
15. On the same day Mr Mosley sent the Claimant a subsequent email which stated:

**“Great, would you be ok to pop in tomorrow morning to talk through everything?
Start Monday?”**
16. There are also further emails of the same date confirming arrangements to meet as per Mr Mosley’s request.
17. Mr Mosley stated that he had received emails from the Claimant up until 1 July 2021. Mr Mosley in his evidence accepted that the email dated 1 July 2021 suggests that the Claimant was offered a job with the Respondent and he was due to start on the Monday, 5 July 2021. Mr Mosley also stated that the Respondent had advertised for a permanent salaried role and the salary figure of £24,000 ‘sounded about right’. He also confirmed use of the email address that the messages were sent to as being an active account.
18. In his evidence the Claimant stated that on commencing his employment he was picked up and went out with a colleague called Dave whose surname he was unable to remember. The Tribunal accepted that that there was no clocking-in machine for him to record his times. Mr Mosley confirmed that salaried employees would not need to clock in but hours were tracked in the company vans.
19. The Claimant confirmed his routine on the four days he worked for the Respondent, one of which involved calling in at Mr Mosley’s house where he assembled furniture. In his evidence the Claimant stated that his hours worked were as follows:
 - I. 5 July 2021 Monday – 18.5 hours (2.30am – 9pm)
 - II. 6 July 2021 Tuesday – 5 hours (11am – 4pm)
 - III. 7 July 2021 Wednesday – 16.5 hours (3am – 7.30pm)
 - IV. 8 July 2021 Thursday – 4 hours (11am – 3pm)
20. The Claimant stated that he was not provided with a contract of employment or company handbook.

21. The Tribunal did not accept that Mr Mosley only received emails from the Claimant up until 1 July 2021; Mr Mosley confirmed his email address which matched the one used by the Claimant. The Tribunal found that Mr Mosley received all the emails sent to him from the Claimant.
22. The Tribunal found the Claimant's evidence to be clear and consistent with the written evidence. The Tribunal preferred it to Mr Mosley's evidence, which was inconsistent with the emails. The Tribunal also took account of the email dated 12 July 2021 from the Claimant to Mr Mosley whereby he confirmed he was leaving his role (as set out below).
23. The Tribunal accepted that the Claimant had applied for a role for National delivery driver/engineer with the Respondent via 'Indeed' in May 2021 and the salary was advertised as £24,000. Whilst he was unsuccessful in his initial application/interview the Tribunal found that the Claimant was subsequently employed by the Respondent and had worked 44 hours between 5 – 8 July 2021.
24. The Tribunal found that the Claimant left his role due to his dissatisfaction with the number of hours he was working. This is backed up by his email to Mr Mosley on 12 July 2021 where he stated:

Hi Matthew I decided not to continue with the job because of the crazy working hours I did 18 hours on Monday without even a break and it would have been even longer if I had to collect the van and drop it off its not only illegal to drive those hours its dangerous I would have been driving 16 hours if I had been driving which again is crazy and I worked out I would have been 50 to 60 hours a week which works out less than the minimum wage but anyway hope you can sort my weeks wage out which I presume will be the end of the month

Stuart

25. The Tribunal found that the Claimant was employed by the Respondent on salary of £24,000 per annum. The Claimant worked 44 hours between 5-8 July 2021 and the Respondent failed to make payment of any wages.
26. Given the Tribunal's findings the Respondent owes the following sums to the Claimant:

4 days @ £92.31 = £369.24 gross

The Law

27. The right not to suffer an unauthorised deduction is contained in section 13(1) Employment Rights Act 1996 (ERA):

“An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the 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.”

28. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.

29. Section 13(3) ERA provides: “Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”

30. A deduction is a complete or partial failure to pay what was properly payable on a particular occasion.

Conclusions

Was the Claimant employed by the Respondent between 5 – 8 July 2021?

75. As explained in the findings of fact above, the Tribunal found that the Claimant was employed by the Respondent and had worked 44 hours between 5 – 8 July 2021.

Is the Claimant owed wages?

76. As explained in the findings of fact above, the Claimant earned £369.24 for 4 days' work, and was not paid for it. That is a failure to pay him a sum that was properly payable, and his claim of unauthorised deduction from wages therefore succeeds.

Employment Judge Jaleel

Date 09 May 2022