



EMPLOYMENT TRIBUNALS

Claimant: Mr J Adams

Respondent: A Hand Plumbing Limited

Heard: in private by CVP

On: 17 February 2022

Before: Employment Judge Taylor

Appearances

For the claimant: In person

For the respondent: Mr A Hand

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment and is ordered to pay the claimant the sum of **£379.50 gross** calculated as set out in the reasons below. The claimant is to be responsible for any income tax and National Insurance Contributions thereon.
2. The respondent's deduction of £500 in respect of damage caused to a work van was authorised and justified.

Introduction

3. This case was listed for a hearing by Cloud Video Platform at 10:00am on 17 February 2022 with a time estimate of three hours. Connection problems meant that the claimant lost connection on repeated occasions. I stopped the hearing to enable the claimant to leave and rejoin to ensure that he could see, hear, be seen and heard and participate in the hearing. On this basis a fair hearing took place.

4. I reserved Judgment and give my Judgment and reasons here.

Claims and Issues

Claims

5. The claimant claimed an unauthorised deduction was made from wages in respect of a deduction of £500 towards the cost of repairs to damage to the work van used by the claimant.

6. The claimant also claims pay in respect of accrued but untaken holiday as at the date of termination.

Issues

7. The issues for the Tribunal to consider were discussed and agreed at the outset of the hearing as follows:

Holiday pay

- (i) The rate of pay
- (ii) How much leave the claimant had accrued during his period of employment.
- (iii) How much leave the claimant had taken during his employment.
- (iv) Whether any holiday accrued but untaken was unpaid.

Deduction

- (i) Whether a deduction was made from the claimant's wages.
- (ii) Whether the deduction was authorised by a relevant written contractual provision.
- (iii) Whether a copy of the contract was given to the claimant before a deduction was made.
- (iv) Whether any deduction was justified.

Procedure, Documents and Evidence Heard

8. I heard oral evidence from the claimant and from the respondent.

9. There was no agreed bundle of documents. I have considered the ET1 and ET3, a bundle of documents received from the respondent consisting of 72 pages and a bundle of documents received from the claimant consisting of 35 pages.

Relevant Findings of Fact

10. The claimant was employed by the respondent as a plumbing/drainage engineer from 09 September 2019 until 14 May 2020, therefore for a period of 8 months and 5 days. The claimant received his final pay on 22 May 2020.

11. The claimant's ET1 was received on 29 May 2020 the early conciliation notification was received by ACAS on 06 May 2020 and the Early Conciliation Certificate issued on 28 May 2020, the claim was therefore in time and the Tribunal has jurisdiction to hear it.

12. The rate of pay was £11.00 per hour, the claimant worked 42.5 paid hours per week over 5 days, so 8.5 hours per day. The claimant's gross pay was £467.50 per week.

Holiday accrued

13. The claimant was contractually entitled to 28 days holiday per annum, which included the statutory minimum entitlement of 20 days and 8 public/bank holidays. If the claimant was required to work on a bank/public holiday he would receive a day off in lieu and would be paid the appropriate rate of pay.

14. The claimant's contract did not give him the express or implied contractual right to be paid in lieu of accrued but untaken leave on termination.

15. The claimant accrued 19 days of leave during his employment. This equates to 162 hours of accrued leave.

16. The claimant submitted a holiday entitlement calculator stating that he was entitled to 178.5 hours leave. I do not accept that this is correct as the calculation was based upon someone starting part way through a leave year. The claimant did not start part way through a leave year. The leave year commenced on the date of employment i.e. 09 September 2019, as stipulated in his contract of employment. The claimant's employment did end part way through his leave year.

Holiday agreed as paid

17. The claimant accepts that he was paid for 110.5 hours of holiday as follows:-

- (i) 3 bank holidays on 25 December 2019, 26 December 2019 and 01 January 2020. This is 25.5 hours

- (ii) 23 December 2019, 24 December 2019 and 27 December 2019, 3 days taken as holiday. This is 25.5 hours
- (iii) 59.5 hours in his final pay.

Holiday payment in dispute

18. I have seen holiday requests at EX2 of the respondent's bundle completed by the claimant for the following days to be taken as holiday:-

- (i) 17-19 September 2019 (2 days),
- (ii) 13 November 2019 (1 day),
- (iii) 20 February 2020 (1 day)
- (iv) 21 April 2020-06 May 2020 (12 days)

19. I have also seen at EX3 of the respondent's bundle a master copy holiday record, this document records the following in respect of the holiday requests noted above

- (i) 17-19 September 2019 – unpaid.
- (ii) 13 November 2019 - taken
- (iii) 20 February 2020 - taken
- (iv) 21 April 2020-06 May 2020 – cancelled

20. The claimant's evidence was that he had not taken any of the holiday requested and that his pay slips made no mention of holiday pay and therefore there is no evidence that he had taken holiday. I note that the claimant's pay slips covering dates he accepted that he was on holiday also make no mention of holiday pay.

21. The respondent's position is that the master copy was a correct record and that holiday pay is not noted on pay slips, except for a final pay slip. The usual rate of pay is received and the employee simply does not attend work. During the hearing the respondent produced copies of dispatch sheets which accorded with the master record, either marking the claimant as on holiday or with no jobs listed for him on the holiday days. The master copy holiday record shows the holiday between 21 April 2020-06 May 2020 as cancelled, I find that this holiday was cancelled, this holiday was booked during a time when the claimant was on furlough.

22. I find that the master copy holiday record is a reliable record and therefore find that holiday was taken and paid on 13 November 2019 and on 20 February 2020, a total of

17 hours. I also find that the holiday taken on 17-19 September 2019 was not paid and was therefore taken as unpaid leave rather than holiday.

23. Total holiday hours paid are therefore 127.5 hours, namely the 110.5 agreed hours and the 17 hours referred to above.

24. I find that the claimant's contract allows for the 8 days of holiday, recorded as in respect of public or bank holidays, to be taken on days other than public or bank holidays. The contract provides for this and states in these circumstances an employee will be paid and receive a day in lieu.

25. The respondent gave evidence that the only payment made to the claimant whilst on furlough was 80% of his usual pay. It seems that no consideration was given to bank holidays. I have seen reference in the respondent's bundle to overpayment on 30 April 2020 and I have seen correspondence in the applicant's bundle dated 17 April 2020 stating " I can confirm that your furlough pay should be processed on 20 April 2020. We apologise that we have not been able to pay you whilst you have been furloughed."

26. It is unclear whether there was an overpayment on 30 April 2020 or whether the payment took account of owed furlough income. I accept the respondent's evidence that the only payments made to the claimant during furlough were 80% of usual pay.

27. The claimant was not obliged to take bank holidays as holiday whilst on furlough and the respondent did not insist on this, nor did the respondent make up the claimant's pay to his usual rate as is required for holiday taken during furlough. I therefore find that no holidays were taken or paid whilst the claimant was on furlough and therefore the claimant was not paid for 34.5 hours of holiday pay due to him.

28. This figure is made up of the 162 hours of accrued holiday less the 127.5 hours of holiday taken.

Deduction in respect of damage to the van

29. The claimant's contract, which he accepted in evidence he was given a copy of, provided as follows:-

"If the vehicle is damaged due to your negligence you will pay for the repairs or any excess from an insurance claim. The maximum charge to you will be £500. This will be paid to us in one lump sum or deducted from your pay at the discretion of a Director."

30. In evidence the claimant had difficulty recalling how the van was damaged and ultimately stated that he had gone home for some food, the van was parked on the street where he lives, when he came out after eating there was a mark and a dent on the van.

31. The respondent provided pictures of the damage to the van. There are two areas of damage, a small scrape/indent and a long scratch and dent to the rear the van. The respondent gave evidence that, when the claimant reported the damage, he stated that he had hit a parked council vehicle when driving around a corner. The respondent stated that the van was repaired privately as the insurance excess was £2,500 and that he did not know the cost of repair of the van, but from experience it would be in the region of £1,500.

32. In the bundle of documents received from the claimant he stated the he was not given any warning before the funds were deducted from his pay.

33. I preferred the evidence of the respondent on this point and consider that by driving into a parked vehicle and causing damage to the van the claimant was negligent, bringing the contractual provision for deduction of sums up to £500 into effect.

Relevant Law

Unauthorised Deductions

34. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.

“relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

35. Once it is established that there is a statutory or contractual provision or a written agreement authorising the type of deduction in question — and what the scope of that authorisation is — a tribunal may then go on to consider whether the actual deduction is in fact justified

36. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

Holiday Pay

37. The Working Time Regulations 1998 provide workers with a statutorily guaranteed right to paid holiday. Subject to certain exclusions all workers are entitled to 5.6 weeks' paid holiday in each leave year beginning on or after 1 April 2009 — comprising four weeks' basic annual leave under Reg 13(1) and 1.6 weeks' additional annual leave under Reg 13A(2). The entitlement to 5.6 weeks' leave is subject to a cap of 28 days. Reg 13(1).

Compensation related to entitlement to leave is set out in regulation 14 14.—

(1) This regulation applies where—

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be— (a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula— where— A is the period of leave to which the worker is entitled under regulation 13(1); B is the proportion of the worker's leave year which expired before the termination date, and C is the period of leave taken by the worker between the start of the leave year and the termination date.

Conclusions

38. Applying the relevant law to the findings I conclude as follows:

Holiday Pay

The respondent made an unauthorised deduction from wages by not paying the claimant in lieu of all of his accrued but untaken leave on termination of his employment. 34.5 hours were not paid. At a gross hourly rate of £11, the gross sum due is £379.50.

Deduction for damage to the van

The respondent was entitled by way of a relevant provision of the claimant's contract to deduct the sum of £500 in respect of the damage caused to the van. The respondent provided the claimant with a copy of the contract prior to making the deductions. This deduction was not unauthorised and was justified.

Employment Judge Taylor

18 February 2022

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.