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EMPLOYMENT TRIBUNALS

Claimant: Mr S Haqhyar
Respondent: DAR EIMAN Ltd
Heard at: East London Hearing Centre
On: 5 May 2021
Before: Employment Judge Illing

Representation

Claimant: Mr S Haqhyar in person
Respondent: Did not attend

JUDGMENT

The judgment of the Employment Tribunal is that: -

1. The Claimant was a worker of the Respondent.
2. The respondent made unauthorised deductions from the wages of the Claimant such sum payable to be determined at a remedy hearing.
3. The respondent is ordered to pay to the claimant additional compensation for financial loss attributable to the unauthorised deductions of wages, such sum payable to be determined at a remedy hearing.
4. The respondent is ordered to pay the claimant additional compensation pursuant to s.38 Employment Act 2002 for failure to provide the claimant with a written statement of employment particulars. Such sum payable to be determined at a remedy hearing.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was A: audio only. A face-to-face hearing was not held because it was not practicable and all case management issues could be determined in a remote hearing.

Procedural history

1. The respondent has failed to respond and was only permitted to participate in so far as I permitted. The respondent also failed to attend the telephone hearing.
2. No documents have been filed contrary to the Orders of 2 November 2021.

Claims and Issues

3. The Claimant has claimed arrears of pay and other financial losses as a consequence of the non-payment of wages.
4. The Respondent is a limited company and has failed to respond. The Respondent did not attend the telephone hearing.

The hearing

5. There were no documents produced.
6. I heard evidence from the Claimant.

Findings of fact

7. The Respondent is a limited company and its registered office is 436 High Road Leyton, London, E17 3LP. This is the address given in the ET1 and is the address used for the correspondence from the Tribunal.
8. The Claimant commenced employment on 4 June 2021 and ended his employment on 6 August 2021. This was not disputed by the Respondent as the Respondent did not respond to the claim nor did they attend the Hearing.
9. From the evidence of the Claimant, it is accepted by me that he was employed by the Respondent at the Respondent's registered office address and that he obtained the job role through the DWP and was funded at the Respondent's office under the Kickstart scheme.
10. The Claimant was engaged to work 25 hours per week at the minimum wage. I accept that the Claimant was required to provide this work personally and that he was paid by the Respondent.
11. It is accepted by me that the Claimant had not been provided with a contract of employment or written statement of particulars. I also find that the Claimant had not been provided with pay slips or other break down of his pay.

12. The evidence of the Claimant was undisputed by the Respondent.
13. The Claimant notified Acas under the early conciliation process of a potential claim on 4 October 2021 and the Acas Early Conciliation Certificate was issued on 7 October 2021. The claim was presented on 12 October 2021.

The law

Employment and Worker Status

14. A “worker” is defined by section 230(3) ERA as being:
“an individual who has entered into or works under (or, where the employment has ceased, worked under) -
 - (a) *a contract of employment, or*
 - (b) *any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.”*

Unlawful deduction of wages

15. The right not to suffer an unauthorised deduction is contained in section 13(1) of the 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.” 2. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Section 13(1)

Financial Loss

16. Where a Tribunal makes a declaration that there has been an unauthorised deduction of wages, it may order the employer to pay to the worker, in addition to the amount deducted, such amount as the Tribunal considers appropriate in the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the unlawful deduction: section 24(2) ERA.

Section 38 Employment Act 2002

17. Where a Tribunal finds in favour of a worker in a complaint of unlawful deductions of wages, and the Tribunal finds that the employer has failed to provide the worker with a written statement of employment particulars, the Tribunal must award the employee an additional two weeks’ pay unless there are exceptional circumstances which would make that unjust or inequitable and may, if it considers it just and equitable in all of the circumstances order the employer to pay an additional four weeks’ pay.

Submissions

18. The Claimant provided oral evidence that he had been engaged by the Respondent through the Kickstart scheme. The Claimant explained that he had obtained the role through the Job Centre. He submitted that he had not received a contract of employment or payslips but had been paid directly by the Respondent for carrying out work at the Respondents registered office.
19. For the Respondent, the Respondent did not respond to the claim nor did they attend the telephone hearing to dispute the Claimant's allegations.

Conclusions

20. The Claimant can only claim unauthorised deductions form wages if he was an employee or worker.
21. All employees are workers, but not all workers are employees. The Claimant was engaged by the Respondent from 4 June 2021 to 6 August 2021. He was engaged for 25-hours a week at the hourly rate of the minimum wage.
22. From the evidence of the Claimant, I am satisfied that there was an implied contract with the Respondent for him to carry out work, personally, at the Respondent's registered office address.
23. With regard to whether the deduction to the Claimant's wages was authorised, whether by statutory provision, contractual provision or by express agreement, I am satisfied that it was not authorised.
24. Having regard to all of the circumstances, I conclude that the Claimant was a worker of the Respondent. As a worker, the Claimant is entitled to pursue his claim of unlawful deduction of wages and financial loss.
25. I find that the Claimant did work for the Respondent up to and including 6 August 2021 and that his employment came to an end on that date following his resignation without notice. The last payment of wages was payable to the Claimant following this date. The Claimant notified Acas as required for Early Conciliation on 4 October 2021 and the Early Conciliation Certificate was issued on 7 October 2021. The claim of unlawful deduction of wages was issued on 12 October 2021 and I conclude that this claim was presented in time.
26. The Claimant has succeeded in his claim for unlawful deduction of wages. An award of additional pay under s.38 Employment Act 2002 for failure to provide a written statement of particulars is, therefore possible.
27. I have concluded that the Claimant was a worker of the Respondent. He was therefore entitled under s.1 ERA to be provided with a written statement of particulars not later than the beginning of the employment, i.e. by 4 June 2021.

Remedy

28. The Claimant was unable to provide details of exact loss due to the lack of documentation from the Respondent including employment contract, written statement of particulars or pay slips.

29. The claim is to be listed for a remedy hearing in order to determine the sums to be paid.

____C Illing_____
Employment Judge Illing

Date: 5 May 2022