



EMPLOYMENT TRIBUNALS

Claimant: Mr J Jackson

Respondent: Oakley Road Tyres Ltd

Heard at: East London Hearing Centre (by telephone)

On: 23 May 2022

Before: Tribunal Judge Overton acting as an Employment Judge

Representation

Claimant: In person

Respondent: Mr Hoyle, Litigation Consultant, Croner

RESERVED JUDGMENT

1. The Claimant's claim for unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 is well-founded. The Respondent failed to pay the full wages that were owing to the Claimant. The Respondent is to pay the Claimant the net amount of £47.48.

2. The Claimant's claim that the Respondent failed to provide itemised pay statements contrary to section 8 of the Employment Rights Act 1996 is well-founded. The Respondent is to pay to the Claimant the amount of £153.64 in unnoticed deductions.

3. The Claimant's claim for failure to provide a written statement of particulars of employment contrary to section 1 of the Employment Rights Act 1996 is well-founded. The Respondent is to pay the Claimant £1,600 in respect of this breach.

REASONS

1. The Tribunal apologises for the delay in issuing this judgment.

Issues:

2. Mr Jackson submitted a claim form which was received on 9th November 2021. This claim form raised a complaint of unauthorised deductions from wages and claims for compensation for a failure of the Respondent to provide written terms and conditions of employment and itemised pay statements.
3. Mr Jackson's claim form identified Eastern Tyres as one Respondent and Oakley Road Tyres as an alternative respondent.
4. No response to the claim was submitted by either Respondent and therefore, under rule 21 of the Employment Tribunals Rules of Procedure 2013 the Respondents were only permitted to take part in proceedings to the extent permitted by the Tribunal Judge.
5. Mr Hoyle, representing the second Respondent, confirmed that his client, Oakley Road Tyres Ltd, was the correct Respondent. He referred to the P45 and the payslips in the bundle, which identified Oakley Road Tyres Ltd as the employer.
6. Following a search of Companies House by the Tribunal Judge, it was apparent that Eastern Tyres Ltd had been dissolved in November 2016 and that Oakley Road Tyres Ltd was still an active company at the time of the hearing.
7. The Tribunal accepted that Oakley Road Tyres Ltd is the correct Respondent and amends the ET1 accordingly as per rule 34 of the Employment Tribunal Rules of Procedure 2013.
8. Although the ACAS certificate recorded a different spelling of Oakley Road Tyres Limited, the claim was accepted and the identity of the Respondent was clear despite the misspelling.
9. Mr Hoyle for the Respondent also confirmed that Oakley Road Tyres Ltd did not seek to lodge a response to the claim. The Respondent accepted that money was owed to the Claimant although there was no agreement as to the amount owing.
10. The Claimant did not quantify his loss. The Respondent assessed the loss as £47.48 in total.
11. Part way through his evidence, the Claimant raised for the first time that he believed his dismissal had been illness discrimination. The Tribunal understood this to be a reference to a claim of disability discrimination.
12. The Respondent's representative suggested that the Tribunal should decline reaching a judgment on the issues before it today, pending the Claimant making an application to amend his claim to include a claim of disability discrimination and to which the Respondent would seek to make a response. The Tribunal reserved judgment.
13. The Tribunal has now decided that as evidence had been taken on the issues raised in the Claimant's claim form, it is in the interests of justice and within the overriding objective for the Tribunal to reach judgment on those matters.

Evidence:

14. Mr Jackson gave evidence under oath on his own behalf. He adopted his particulars of claim as recorded in the ET1 as his evidence in chief. The Tribunal had mind to rule 21 of the Employment Tribunal Rules of Procedure 2013 and the Respondent's representative was permitted to ask questions of the Claimant to assist the Tribunal in identifying the correct amounts owing to the Claimant. The Tribunal was referred to a bundle of documents of 24 pages provided by the Respondent.

Findings of fact:

15. The Tribunal found the following facts from the evidence.

16. Mr Jackson commenced work for Oakley Road Tyres Ltd on 2 August 2021. He worked Monday to Friday and was paid every Friday in arrears for the week just worked. He was paid £10 per hour and worked 8 hours a day. He received £400 gross each week which was reduced to around £330 net after deductions.

17. His last day of employment was Wednesday 25th August. He did not work on 25th August, having called in sick that morning. Mr Jackson expected to be paid for Monday 23rd, Tuesday 24th and Wednesday 25th on Friday 27th August. Although Mr Jackson's ET1 records his last day as being 23rd August, I accept that this was an error and that Mr Jackson's last day of employment was 25th August. This was confirmed by the P45 which had been included in the hearing bundle by the Respondent and Mr Hoyle confirmed that this date was agreed by Oakley Road Tyres Ltd.

18. Mr Jackson received no payment on Friday 27th August but on 13th September 2021 Mr Jackson received a net payment of £180 from Oakley Road Tyres Ltd.

19. Mr Jackson did not receive payslips during his employment nor did he receive a written statement of main terms and conditions of employment or a P45 upon the termination of his employment.

20. Based on the payslips provided by the Respondent and the Claimant's banking records, it was apparent that the Claimant was underpaid the net amount of £1.28 on 13th August 2021 and that on 18th September the Claimant was underpaid by the net amount of £46.20 (which payment should have been made on 27th August 2021).

21. Although Mr Jackson did not receive a written statement of the main terms and conditions of employment he confirmed that his experience of the car and tyre industry was that the terms and conditions he would have received, would have reflected the legal minimum.

22. As Mr Jackson called in sick on the morning of 25th August 2021, the Statutory Sick Pay scheme would have applied and Mr Jackson would not have been entitled to be paid for his first day of sick leave.

23. No further payments are owing to Mr Jackson. Although he was disadvantaged because his Universal Credit payment was calculated based on a final payment that was £12.60 higher than was actually received, Mr Jackson did not bring any evidence of related financial loss beyond the loss of the monies that were actually owing to him.

Law and conclusions:

24. Section 13 of the Employment Rights Act 1996 states:

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.*

...

(3) 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

...

25. Section 1 of the Employment Rights Act 1996 states:

(1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.

26. Section 8 of the Employment Rights Act 1996 states:

(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of—

- (a) the gross amount of the wages or salary,*
- (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*

- (c) *the net amount of wages or salary payable,*
- (d) *where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and*
- (e) *where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—*
 - (i) *a single aggregate figure, or*
 - (ii) *separate figures for different types of work or different rates of pay.*

27. Section 12 of the Employment Rights Act 1996 states:

(3) *Where on a reference under section 11 an [F1employment tribunal] finds—*

- (a) *that an employer has failed to give [F4a worker] any pay statement in accordance with section 8, or*
- (b) *that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9,*

the tribunal shall make a declaration to that effect.

(4) *Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.*

(5) *For the purposes of subsection (4) a deduction is an unnotified deduction if it is made without the employer giving the worker , in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by section 8 or 9.*

28. Section 26 of the Employment Rights Act 1996 states:

Section 23 does not affect the jurisdiction of an employment tribunal to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an employment tribunal to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

29. Section 38 of the Employment Act 2002 states:

(1) *This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.*

...

- (3) *If in the case of proceedings to which this section applies—*
- (a) *the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and*
 - (b) *when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by an worker) under section 41B or 41C of that Act,*

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

- (4) *In subsections (2) and (3)—*
- (a) *references to the minimum amount are to an amount equal to two weeks' pay, and*
 - (b) *references to the higher amount are to an amount equal to four weeks' pay.*

(5) *The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.*

- (6) *The amount of a week's pay of an a worker shall—*
- (a) *be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and*
 - (b) *not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).*

...

30. The Tribunal will consider what was properly due to the Claimant during his employment for the purposes of section 13 (3) ERA.

31. The Respondent concedes that the Claimant is owed **£1.28** and **£46.20** for the payments due on 20th August and 27th August 2021 respectively. The Claimant did not indicate any disagreement with the hours of work listed in the payslip of 20th August 2021 or the calculations of wages owing that week. The Claimant was paid £1.28 less than the net figure stated on the payslip of 20th August 2021 and therefore that amount is owing to the Claimant.

32. The Claimant did not agree the hours listed in the payslip dated 27th August 2021. The Claimant believed he had been paid for only 2 days when he should have been paid for 3 days. The payslip indicated that the Claimant was to be paid for 2 days and 2 hours and the Respondent acknowledged that the Claimant had suffered a deduction and not been paid the amount stated on the payslip. It was the Respondent's position that the amount stated on the payslip of 27th August 2021 was the amount properly payable to the Claimant.

33. The Tribunal finds that the Claimant was not entitled to his full day's wages on 25th August 2021 as he had called in sick and would not have been paid for that day under normal circumstances. The Claimant should have received the stated £226.20 and as he had received £180.00 of that amount, he is owed the remaining £46.20.

34. The Tribunal finds that the Claimant did not receive a written statement of terms and conditions of employment and that he did not receive payslips during his employment.

35. Under section 1 of the Employment Rights Act 1996 as amended, the Claimant was entitled to receive a written statement of particulars of employment by the beginning of his employment. Under section 8 of the Employment Rights Act 1996 the Claimant was entitled to receive an itemised pay statement at or before the time of payment.

36. The Tribunal makes a declaration that throughout the Claimant's employment, the Respondent failed to give the Claimant the itemised pay statements he was entitled to under section 8 and therefore unnotified deductions were made from the Claimant's earnings.

37. Under section 12 of the Employment Rights Act 1996 the Tribunal may order the Respondent to pay the Claimant a sum not exceeding the aggregate of the unnotified deductions made in the 13 weeks preceding the claim.

38. The Tribunal concludes that the Respondent must make payment to the Claimant of the sum of **£153.64** which is the aggregate of the unnotified tax, national insurance and pension contribution deductions made from the payments of 13 and 20 August 2021.

39. Because of section 26 of the Employment Rights Act 1996, the claimant cannot receive the same deducted sum twice in compensation. As the deductions made from the Claimant's final payment have been compensated under section 23 (unauthorised deductions from wages), they are not included in the compensation for unnotified deductions under section 12. The Claimant's final payment did not include any tax, national insurance or pension contributions deductions, instead the final payment included a tax and pension contributions rebate.

40. When these proceedings were begun, the respondent was in breach of its duty to give the claimant a written statement of employment particulars. As the Claimant has succeeded in his relevant claims, it is appropriate that an award is made to the Claimant for this failure (section 38 of the Employment Act 2002). The Claimant gave evidence that he had repeatedly asked for a written contract of employment and had never received anything in writing or an explanation as to why he wasn't being provided with a statement of employment particulars. Therefore, it is just and equitable that the Claimant should be awarded 4 weeks' pay, subject to the maximum (section 277 Employment Rights Act 1996). The Respondent is therefore ordered to pay the Claimant the sum of **£1600** in respect of the failure to provide the Claimant with a written statement of particulars of employment.

41. The Tribunal did not hear oral evidence on whether the Claimant had complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures by raising a grievance. It was not alleged by the Claimant that the Respondent was in breach of the Code of Practice. In the event that the Claimant had failed to comply with the ACAS Code I find that it was not unreasonable in the circumstances, given the sudden ending of the employment and the Claimant's feelings of intimidation by the brother of his employer. It would not be just and equitable to decrease the award payable to the Claimant for any failure to comply with the ACAS Code.

42. In his oral evidence the Claimant made reference to the Respondent's failure to give him notice of his dismissal. A claim for notice pay had not been made in the claim form and the Claimant had not been employed for the minimum period of one month in order to qualify for the statutory minimum notice (section 86 of the Employment Rights Act 1996).

43. In total, the Respondent is to pay to the Claimant the aggregate of: £1.28, £46.20, £153.64 and £1600 which comes to £1,801.12.

Tribunal Judge Overton acting as
an Employment Judge
Date: 9 August 2022