



EMPLOYMENT TRIBUNALS

Claimant: Mr J Liddell

Respondent: Billyboard Marketing Limited

HELD AT: Cardiff

ON: 20 June 2022

BEFORE: Employment Judge W Brady

REPRESENTATION:

Claimant: Mrs B Liddell (Claimant's mother)

Respondent: Mr Basil Tucker

JUDGMENT having been sent to the parties on 21 June 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issues

1. The List of Issues was agreed at the start of the hearing as follows:
 - (1) Was the claim presented in time? The claim was submitted on 13 March 2022, which was within the three-month time limit and therefore in time.
 - (2) Who can claim? The claimant was a worker and was employed as an apprentice.
 - (3) Is the claim in respect of wages?
 - (4) Were the wages properly payable?

- (5) Has the employer made a deduction?
- (6) If so, was the deduction authorised?
- (7) Was there any financial loss attributable to the non-payment?

The Facts

2. Mr Liddell was employed by the respondent from 27 September 2021 until 19 January 2022. He was employed as an apprentice on the hourly rate of £4.30 per hour. He was 18 years old. Prior to this employment he had been studying for his A Levels and this was his first appointment as an apprentice. Mr Liddell worked 37.5 hours per week at the apprentice work rate of £4.30 per hour.

3. The respondent accepted in its evidence that Mr Liddell was paid at that hourly rate and that the employment commenced on 27 September 2021. It accepts that Mr Liddell was employed as an apprentice and is therefore a worker. The respondent took no issue with the amount of wages claimed by the claimant and therefore I find that the wages were properly payable. The remaining issue in this case was whether the deductions were authorised.

4. Mr Liddell resigned on 19 January 2022 and he was then summarily dismissed. Mr Liddell was not provided with a payslip in January. The payslip was submitted to HMRC by the respondent company on 19 May 2022. The payslip lists a number of deductions that were taken from the claimant's pay, leaving him with a balance of nil. The deductions were as follows:

- (1) Lateness - £43.
- (2) Goods purchased - £603.83.
- (3) Waste through negligence – zero.
- (4) Absence through sickness - £129.

5. I will deal with each of these in turn.

Lateness

6. The respondent company had stated that Mr Liddell was repeatedly late for work. Although neither of the Mr Tuckers were present at the premises at the time, Mr Richard Tucker said that there was CCTV which covered the premises. That has not been produced. There is no record of Mr Liddell ever being warned about his lateness. No text messages between the two Mr Tuckers had been produced.

Goods Purchased

7. The respondent company has produced a list of goods that they say was purchased by Mr Liddell in the course of his employment. Some of the items on the list are disputed but some are accepted, albeit the claimant says that they have been over-priced in the list. Mr Basil Tucker said that he saw Mr Liddell wearing one of the

items into work but did not invoice him for it. Mr Liddell says that he had been told that the items were a gift or a perk. Mr Basil Tucker was aware that Mr Liddell had had those items. Mr Tucker had not invoiced Mr Liddell for those items. Mr Tucker said that this is because Mr Liddell did not ask for them to be invoiced.

8. Mr Liddell said that he had been told he could receive them as gifts. He was a new apprentice and was not completely au fait with how the system worked. He made no attempt to hide the goods and wore the hoodie to work. He was often left unsupervised and his employers were aware that he had the goods but that he had not been invoiced for them. They have failed to show that these items were intended purchases or that Mr Liddell owed them any money in respect of these goods. I have not seen any evidence that these goods were sold on as the respondent has claimed.

Waste through negligence

9. No amount has been deducted due to negligence but the ET3 states that some materials were damaged because of the claimant's negligence. I have considered the fact that the claimant was a new apprentice who had been in his employment for just under four months. He was often left unsupervised while learning to use new machinery. I have not seen any evidence that he was negligent.

Absence through sickness - £129

10. The claimant accepts that he did not work on 14 January and he has not claimed any wages for that day.

The Law

10. Section 13(1) of the Employment Rights Act states that:

- (1) 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.

Conclusion

11. I do not find that there was repeated lateness. I accept the claimant's account that he was not spoken to about his lateness, and this illustrates that it was not an issue while he was working for the respondent company. I do not find that this was a lawful deduction of wages under the Employment Rights Act.

12. I accept the claimant's account in relation to the goods that he had in his possession. A schedule of goods was produced by the respondent company during the hearing. I note that despite the fact that the respondent company was well aware that the claimant had goods in his possession, no request for payment was ever made, either verbally or in writing by way of an invoice. This adds credibility to the claimant's

evidence that he was told to keep the items as gifts and as sample products. I do not find that this was a lawful deduction of wages under the Employment Rights Act.

13. The claimant was a newly employed apprentice. He was often left unsupervised. I do not find any evidence that he damaged goods or wasted items due to his negligence. I do not find that this was a lawful deduction of wages under the Employment Rights Act.

14. In this case, the respondent company argued that condition 5 of the contract of employment permitted the respondent to deduct wages from the claimant's final payslip. Condition 5 of the contract reads, "The company reserves the right in its absolute discretion to deduct from your salary any sums which you may owe the Company, including, without limitation, any overpayments of salary, expenses, and or loans made to you by the Company or losses suffered by the Company as a result of your negligence or breach of the Company's rules or the terms of this contract of employment.". Where the deduction is authorised by a relevant provision in the contract the Tribunal must go on to consider whether the deduction made is justified. For the reasons I have given above, I do not find that the deductions made were authorised in this case.

15. The respondent is therefore ordered to pay the claimant £745.28 gross.

Employment Judge W Brady

Date 15 August 2022

REASONS SENT TO THE PARTIES ON 19 August 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

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