



EMPLOYMENT TRIBUNALS

Claimant: Ms S McCormack

Respondent: Epicurean Events Ltd

Heard at: London Central

On: 16 August 2022

Before: Tribunal Judge Plowright acting as an Employment Judge

Representation

For the Claimant: In person

For the Respondent: Mr W Khan, director of the respondent company

JUDGMENT

The Judgment of the tribunal is as follows:

- 1. The respondent's application to extend time for the presentation of a response to the claim is allowed.**
- 2. The respondent has made an unauthorised deduction from the claimant's wages (arrears of pay) and is ordered to pay the claimant the gross sum of £1577.99.**
- 3. The tribunal has no jurisdiction to deal with a claim for compensation for stress caused to the claimant as a result of the failure of the respondent to pay her wages and the claim is dismissed.**

REASONS

Claims and Issues

1. The claimant worked as an Event Assistant for the respondent, Epicurean Events Limited, which is a small business. The claimant has brought a claim for unauthorised deduction of wages in that she was not paid all the wages to which she was entitled. She has also brought a claim for compensation for the stress that she incurred as a result of not being paid the wages that she was owed.
2. The issues in the case are as follows:
 - 2.1 Did the respondent fail to pay the claimant wages that were lawfully owed to her?
 - 2.2 If so, how much is the claimant owed?
 - 2.3 Is the claimant entitled to compensation for stress?

Procedure/Procedure, documents and evidence heard

3. The tribunal heard evidence from the claimant and from Mr W Khan on behalf of the respondent.
4. In terms of documentation, I had before me the ET1, a draft ET3, email correspondence between the claimant and the respondent, a payslip for July 2021, a payslip for August 2021 and a P45.
5. At the start of the hearing the respondent applied for an extension of time to present a Response Form. The claimant did not object to that application. The Claim Form had been sent to the respondent on 04 May 2022, giving the date of 01 June 2022 for a response. A draft Response was sent to the tribunal on 10 June 2022. An email accompanied that Response in which the respondent explained that they had only received the Claim Form in the post that week and requested an extension of time owing to receiving the Claim Form late. Having considered all of the factors, and applying Kwiksave Stores v Swain, I decided to agree the extension of time. I accept that this was a good reason for submitting the response late and no prejudice was caused to the claimant as a result of it being sent in ten days late. In the circumstances, and dealing with the case fairly and justly, I allowed the respondent's application for an extension of time to present a Response.

The Facts

6. There is no dispute that the claimant was an employee of the respondent. She commenced work for the respondent on 13 July 2021. It was also agreed that the claimant was paid a salary of £22,000 per annum.
7. On 20 July 2021, the claimant was given an advance payment of £400.
8. On 23 July 2021, the claimant contracted Covid and then went on sick leave.

9. There was a dispute between the parties about whether the claimant returned to work on Friday 30 July 2021 or on Monday 02 August 2021. The claimant stated in oral evidence that she had completed her five days isolation by Friday 30 July 2021 and as she had only just started working for the respondent, she wanted to get back to work as soon as possible and so started work again, remotely, on 30 July 2021. Mr Khan believed that it was more likely that she started work on Monday 02 August 2021 and thought that this was more consistent with the requirement of a five day isolation period. At the time, there was a five day isolation period following a positive Covid test. That five day isolation period would have been completed by 29 July 2021, which is consistent with the claimant's evidence that she started work again on 30 July 2021. Looking at the evidence overall, I find that the claimant's evidence about her return to work is more reliable than Mr Khan's recollection and I find that she did start work again, remotely, on Friday 30 July 2021.
10. The claimant then claimed that she worked all of August from 02 August 2021 until 18 August 2021 when her employment was terminated, a period of 13 days. Mr Khan disputed this because he stated in oral evidence that the payslip for August 2021 suggested that she had seven days off sick in August 2021. The two payslips that have been issued for July 2021 and August 2021 state that the claimant worked a total of fifteen days and had ten days off sick in her period of employment. However, Mr Khan was unable to clearly explain how the ten days off sick were accounted for. He stated that after the claimant's time off from Covid, she may have been off sick for a second time. The claimant's oral evidence was clear about the time she worked for the respondent during August 2021 and I find that her recollection of working throughout August 2021 is more reliable than Mr Khan's recollection .

The Law

11. 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 them 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 her agreement or consent to the making of the deduction.
12. 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.
13. The Employment Rights Act 1996 does not provide for compensation for stress caused to a claimant as a result of the failure of a respondent to pay wages.

Conclusions

14. It was not disputed by the respondent that the claimant was owed arrears of pay but the parties did not agree about how much she was owed.
15. The claimant was employed by the respondent between 13 July 2021 and 18 August 2021. She worked 9 days in July 2021 and had 5 days off sick. In August 2021, she worked 13 days. In total she worked 22 days and had 5 days off sick.

16. It is agreed between the parties that the daily rate for her employment was £84.62 which amounts to a total of £1861.64 for 22 days. It was also agreed between the parties that Statutory Sick Pay would be paid at £19.27 per day which amounts to a total of £96.35 for five days of sick leave. That is a total amount of £1957.99 (£1861.64 + £96.35). The claimant was paid £400 in advance and I reduce that from the figure of £1957.99 which gives a final amount of £1577.99.
17. The tribunal has no jurisdiction to deal with a claim for compensation for stress caused to the claimant as a result of the failure of the respondent to pay her wages.
18. The total award I make is therefore £1577.99 for arrears of wages.

Date: 17/08/22

Tribunal Judge J E Plowright acting as an Employment Judge

Sent to the parties on:

18/08/2022

For the Tribunal: