



EMPLOYMENT TRIBUNALS

Claimant: Mr. R Hubbard

Respondent: GS Hughes Limited

Heard at: Nottingham via CVP

On: 17 August 2022

Before: Employment Judge Omambala

Representation

Claimant: In person

Respondent: Mr. T Beesley, Nominated Transport Manager

JUDGMENT

1. The Claimant's complaint that there was an unauthorised deduction from wages is upheld.
2. The Respondent unlawfully deducted the sum of £407 in respect of unpaid holiday leave and £118.25 in respect of wages.
3. By consent the Respondent is ordered to pay to the Claimant the gross sum of £525.25 in respect unauthorised deductions from the Claimant's wages.
4. The Claimant's complaint that the Respondent failed to provide him with a written statement of particulars of employment pursuant to section 1 of the Employment Rights Act 1996 ("ERA") is upheld.
5. The Respondent is order to pay the Claimant the sum of £1088 in pursuant to section 38(3) of the Employment Act 2002 ("EA"), that is two weeks' pay at the applicable statutory maximum of £544 per week.
6. The Claimant's complaint of a breach of s.207A Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A") is dismissed upon withdrawal by the Claimant.
7. The Claimant's claim in respect of interest on sums awarded to him is dismissed.

8. The Respondent is therefore ordered to pay the Claimant the sum of £1,613.23 in total.

REASONS

1. The Claimant was employed by the Respondent as a Class 2 HGV tipper driver from 4 October 2021 until 21 January 2022. The Respondent is a family-owned road freight transport business.
2. By a Claim Form dated 8 March 2022 and amended by order of the Employment Tribunal dated 20 June 2022 the Claimant brought claims in respect of:
 - (i) 10.75 hours of unpaid wages at £11 per hour;
 - (ii) 3.7 days of unpaid holiday pay;
 - (iii) 25% uplift for failure to follow ACAS Code on Grievance and Disciplinary Procedures;
 - (iv) 8% interest on outstanding amounts calculated from 21 January 2022;
 - (v) Respondent's alleged failure to provide a written statement of his particulars of employment before his employment commenced.
3. The Claimant appeared in person. The Respondent was represented by Mr. T Beesley, nominated Transport Manager. The Tribunal took periodic breaks during the course of the hearing to ensure that all parties were able to participate effectively.

Issues

4. The parties were able to discuss the issues in dispute at the start of the hearing.
5. On behalf of the Respondent, Mr. Beesley confirmed that the Claimant's claims in respect of unpaid wages and unpaid holiday leave were admitted and the quantum of those claims was agreed.
6. Mr. Hubbard confirmed that he had not raised a grievance during the course of his employment with the Respondent. By consent, his claim in respect of section 207A TULR(C)A was dismissed on withdrawal by him.
7. It was agreed that the question of interest on any award was a question of this Tribunal's jurisdiction.
8. It was agreed that the remaining substantive complaint was in relation to an alleged breach of s.1 ERA. The issues for this Tribunal are:
 - (i) Whether the Respondent gave to the Claimant a written statement of particulars of employment;
 - (ii) Whether the written statement contained the particulars required by s.1(4)
 - (iii) When the written statement of particulars was provided.

Documents and Evidence Heard

9. The Tribunal received a written witness statement dated 3 June 2022 from the Claimant together with a bundle of supporting documents and correspondence. The Tribunal received a written witness statement dated 7 July 2022 from Mr. Glynn Hughes, director of the Respondent together with four exhibits.
10. The Tribunal heard oral evidence from the Claimant and from Mr. Beesley on behalf of the Respondent.
11. The Tribunal had regard to all of the oral and written evidence before it in reaching its decision.

Fact-Finding

12. On 8 July 2022 the Respondent sent a number of documents to the Claimant which included a statement of particulars of employment document dated 4 October 2021 (“exhibit 1”). The Respondent contends that on 4 October 2021 the document was signed by the Claimant and counter—signed by an employee, Sarah Stothard, who works in its office.
13. In correspondence with the Claimant dated 12 July 2022 copied to the Employment Tribunal the Respondent’s Mr. Hughes stated that the Claimant was given a copy of the statement of particulars on the date he signed the document, namely 4 October 2021. This information does not appear in his witness statement.
13. The Claimant denies that he signed this document on 4 October 2021 or at all. He also denies being provided with a copy before it was sent to him on 8 July 2022. He alleges that the Respondent has reproduced his signature from other documents.
14. In a witness statement produced before he was sent the disputed particulars document the Claimant asserted that no written statement of particulars of employment or employment contract was provided to him at the start of his employment. He said that he understood there would be a three-month probationary period, he was given pay slips on the Wednesday of each week and paid on the Friday. He was paid £11 per hour and worked a week in hand.
15. The Claimant also stated that on 10 January 2022 he informed the Respondent that he had completed his probationary period and asked for a written contract of employment. On 13 January 2022 the Claimant was provided with two copies of a contract of employment which he was asked to take home and read. He was asked to sign both copies and return a signed copy of the contract to the Respondent.
16. The Claimant took issue with a number of provisions contained in the proposed contract of employment. He therefore decided that he would not sign the contract of employment. Instead, he emailed the Respondent on 16 January 2022 giving one week’s notice of termination of his employment.

17. The Respondent did not dispute the Claimant's evidence that he was interviewed on 29 September 2021, completed a driving assessment on Friday 1 October 2021, was offered employment and started work on Monday 4 October.
18. Mr. Beesley initially gave evidence to the effect that the Claimant would have been provided with a written statement of particulars when he attended for interview on or about 29 September 2021. He was not able to assert that a statement was provided because he did not give the document to the Claimant or see it being given. The Respondent did not operate a system whereby it could clearly be seen whether documents like statements of particulars have been issued although it did have a checklist in relation to policy documents.
19. Mr. Beesley told the Tribunal that it was his expectation that a statement had been provided because the Respondent's usual practice was to provide a lot of policy and other documents to candidates to sign, or to take away and sign. He said that he could not "get his head around" why the statement of particulars document would have been treated any differently.
20. The Respondent did not call any evidence of the Claimant having been provided with a written statement of particulars of employment on 29 September 2021.
21. When asked to explain why if the Respondent provided him with a written statement of particulars of employment on 29 September 2021 that document was not signed by him until 4 October 2021 Mr. Beesley said that the Claimant may have taken the particulars document home to review on 29 September 2021 and then returned them to sign them in the office on 4 October 2021.
22. The Respondent did not call evidence from Ms. Stothard or produce a witness statement from her. The Respondent did not call any direct evidence of the Claimant having signed a written statement of particulars on 4 October 2021 in its office or of the Claimant having been provided him with a copy of the written statement of particulars he is alleged to have signed by Ms. Stothard.
23. The Respondent has been aware since 12 July 2022 that the Claimant disputes the authenticity of the written statement of particulars of employment.
24. Both parties agree that exhibit 3 to Mr. Hughes' witness statement was the document provided to the Claimant in January 2022 when he requested a written contract of employment following the completion of his probationary period. Mr. Beesley explained that it was the Respondent's practice to issue exhibit 1 to new employees at the start of their employment and then exhibit 3 ("the contract") to employees who successfully completed their probationary period.

Law

- 25.1 Section 1 of the Employment Rights Act 1996 provides so far as relevant:

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

(2)

(b) the statement must be given not later than the beginning of employment.

25.2 Section 38 of the Employment Act 2002 provides so far as relevant:

(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 a case 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,

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.

(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 maximum 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.*

Conclusions

26. The Tribunal is not satisfied that the Respondent gave a written statement of particulars of his employment to the Claimant on or before 4 October 2021.

27. The Claimant gave clear and straightforward evidence in support of his case. The Tribunal noted that his assertion that the Respondent had failed to provide him with a written statement of particulars of his employment was made in a witness statement dated 3 June 2022 and served on the Respondent in compliance with Tribunal case management orders. The evidence was provided to the Respondent before the Claimant was given permission to amend his claim to include an allegation of breach of s.1 ERA. His account of events has been consistent.

28. In light of his careful approach to documentation, demonstrated by his preparation for this hearing, the Tribunal considers that if the Claimant had signed a copy of a statement of particulars, he would have retained a copy of it. The Tribunal contrasts the Claimant's care with the rather haphazard approach to contractual documentation that Mr. Beesley described, at least

prior to this claim being brought.

29. It is for the Respondent to adduce cogent and credible evidence that it has provided the necessary written statement of particulars. There is no direct evidence before the Tribunal that the Respondent provided a written statement of particulars to the Claimant on or before 4 October 2021.
30. The circumstantial and indirect evidence available in the form of exhibit 1 and correspondence between the parties and the Employment Tribunal Service is inconsistent with the oral evidence given by Mr. Beesley. Mr. Beesley was unable to explain those inconsistencies.
31. Having concluded that the Respondent was in breach of its s.1 duty the Tribunal considered the question of appropriate remedy.
32. During the hearing Mr. Beesley criticised the Claimant for pursuing his complaint of a breach of s.1 ERA. He stated that the Respondent had sought to resolve the Claimant's other claims amicably and that the Respondent considered that he was "milking these issues for all they were worth." He described the Respondent as a family run business. He told the Tribunal that its documentation was in the process of being reviewed. He said that the Claimant's case arose from an "unfortunate set of circumstances." He explained that the Claimant's employment with the Respondent had provided him with invaluable experience as a newly qualified driver. Mr. Beesley summarised the Claimant's approach as "very disappointing" to the Respondent.
33. The Tribunal has had regard to the nature of the Respondent's business. Since the Respondent did not before this Tribunal admit that it had breached its duty the Tribunal was not in a position to fully explore the circumstances of the breach.
34. The Claimant was entitled to pursue his legal entitlements as and when he became aware of them. He has done so in good faith and with courtesy and reasonableness. His conduct cannot properly be criticised.
35. The Tribunal considers that an additional award of two weeks' pay capped at the statutory maximum week's pay then in force is a proportionate, just and equitable award in all the circumstances of this case.
36. The Tribunal does not have jurisdiction to award interest payments on compensation awarded under the ERA or EA and so the Claimant's claim in this regard must be dismissed.

Employment Judge Omambala QC

Date 17 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

10.7 Judgment with reasons – rule 62

March 2017