



EMPLOYMENT TRIBUNALS

Claimants: Peter Hunter
Rebecca Turner

Respondent: NQA Foodbank C.I.C.

Heard at: Newcastle Employment Tribunal (remotely by CVP)

On: 07 September 2022

Before: Employment Judge Sweeney

Representation:
Claimants: In person
Respondent: No attendance

JUDGMENT

1. The claimants' claims of unlawful deductions are well-founded and succeed.
2. The Respondent is ordered to pay to the Claimants the following gross sums:

In the case of Peter Hunter, £2,926

In the case of Rebecca Turner, £2,132

REASONS

Background

1. These claims are for unlawful deduction of wages under section 23 Employment Rights Act 1996. The Claimants presented a Claim Form on **04 May 2022**, which although initially rejected, was subsequently deemed to have been presented on **06 May 2022**.
2. The Claim Form was served on **20 May 2022** with a Response date of **17 June 2022**. A hearing date was also fixed for **18 July 2022**. On **06 July 2022**, the Claimants confirmed the correct name of their former employer was NQA Foodbank C.I.C. The Claim Form was amended to name the Respondent as NQA Foodbank C.I.C. and was re-served on **13 July 2022** with a response date of **10 August 2022**. The hearing on **18 July 2022** was postponed and re-listed for today. No response was returned by the Respondent.
3. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 no response has been presented and no application for a reconsideration is outstanding, an employment Judge shall decide whether on the available material, a determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone.
4. It was considered that the hearing listed for **07 September 2022** should proceed so that the Claimants could give evidence on the amounts claimed and how they were calculated.
5. At today's hearing, both Claimants gave sworn evidence and were asked a number of questions by me.
6. Having heard the evidence, I was able to make the following findings of fact.

Facts

7. The Claimants commenced employment with the Respondent on **17 December 2021**, Mr Hunter, as a Café assistant, and Mrs Turner as front of house and cleaner. There was no written contract of employment in place. However, terms were agreed between the Claimants and Mr Morgan on behalf of the Respondent. It was agreed that they would both work 25 hours a week in their roles. Mr Hunter's hourly rate was agreed at £8.36. Ms Turner's was agreed at £6.56. Those were the applicable NMW rates for their respective ages during the period of their employment. It was agreed that they would be paid monthly with the first payment being made at the end of December 2021 and every month thereafter.
8. The first pay date was, therefore, on **31 December 2021**. The Claimants worked the agreed hours. However, the Respondent failed to pay the claimants any wages on that

occasion. The amount that was properly payable to each was £418 (in Mr Hunter's case) and £328 (in Mrs Turner's case) based on 25 hours x 2 weeks.

9. The Claimants continued to work those hours until **25 March 2022**, when their employment was terminated due to the closure of their place of work. At the end of each month, they were due to be paid the amounts set out below:
- a. **31 January 2022:** £836 (Mr Hunter) and £656 (Mrs Turner)
 - b. **28 February 2022:** £836 (Mr Hunter) and £656 (Mrs Turner)
 - c. **31 March 2022:** £836 (Mr Hunter) and £656 (Mrs Turner)

10. However, no payments were made on those dates. Mrs Turner was paid the equivalent of one week's pay on **14 February 2022** but nothing more during the whole of her employment, and even then, the Respondent did not reference the payment as relating to any period of time.

11. By the termination date, they were due a total of

- a. £2,926 (14 weeks at 25 hours a week x £8.36) in Mr Hunter's case.
- b. £2,132 (13 weeks at 25 hours a week x £6.56) in Mrs Turner's case.

12. Those amounts remained unpaid as at the date of this hearing.

Relevant law

13. Section 13 ERA 1996 provides 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.*

(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.

14. Section 23 ERA provides:

(2) Subject to subsection (4), an [F1 employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

- (a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
- (b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*
- (3) *Where a complaint is brought under this section in respect of—*
 - (a) *a series of deductions or payments, or*
 - (b) *a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*
the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

15. Therefore, the tribunal shall not consider a complaint under section 23 unless presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made or if the complaint is in relation to a series of deductions, the last deduction or payment in the series.

16. It is for the claimants to establish that they have worked the hours they claim to have worked, that they were entitled to be paid the hourly rate claimed (that the amounts payable were properly payable) and that they were not paid.

17. It is for the employer to show that any deduction (or failure to pay) is authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or (where appropriate) that the worker has previously signified in writing his agreement or consent to the making of the deduction.

Conclusions

18. I had no doubt that Mr Hunter and Mrs Turner gave honest evidence. On the evidence available to me, and from my findings of fact, I conclude that:

- a. The amounts claimed were properly payable to the Claimants in the sums and on the dates set out above and all amounts unpaid remained payable as at **31 March 2022** (the final pay date) in respect of their employment which terminated on **25 March 2022**;
- b. There was a series of deductions (failures of pay).
- c. The Respondent was not authorised to make such deductions nor had the claimants signified in writing their consent to deductions.
- d. The complaints have been brought within the relevant statutory time period.

19. Accordingly, I conclude that:

- a. In the case of Mr Hunter, the Respondent unlawfully deducted the sum of **£2,926**,
and
- b. In the case of Mrs Turner, the Respondent unlawfully deducted the sum of **£2,132**

Employment Judge **Sweeney**

Date: 7 September 2022