



EMPLOYMENT TRIBUNALS

Claimant: Mr I Hussain

Respondent: Sleep Revolution Ltd (in voluntary liquidation)

Heard at: West Midlands **On:** 4th March 2022

Before: Employment Judge Steward

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT

- a. The decision of the tribunal is the claim for unlawful deduction of wages and holiday pay fails.

REASONS

1. The claimant worked for the Respondent from January 2017 until 17th July 2020. The claimant, in his ET1, states he worked 81 hours per week over this period and was paid at the rate of £2.47p/h. It was difficult from the paperwork to understand exactly what the unlawful deduction was? The claimant left his employment on the 17th July 2020. He claims he is owed the sum of £87,745.94 but again from the ET1 it was impossible to understand where that figure came from? The claim was presented to the tribunal on the 23.11.20. The ACAS process began on the 17.9.20 and the certificate was issued on the 17.10.20.
2. The Respondent is in voluntary liquidation and did not attend the hearing but did file an ET3 and grounds of resistance. The Respondent says there was no unlawful deduction from wages and no holiday pay owed. They state the claimant was paid the national minimum wage for a contracted 25 hours per week. The Respondent contends that the claim has been presented outside the time limit for ACAS and the tribunal pursuant to S.23(2) of the ERA 1996.

3. I had the benefit of reading the file of documents. No bundle had ever been presented to the tribunal. The documents in the file consisted of the ET1, ET3 and the grounds of resistance. No documentary evidence has ever been provided by the claimant to substantiate the claim. I heard brief evidence from the claimant.

The Law

4. Under the Employment Rights Act 1996 an employee has the right not to suffer unlawful deductions from wages as per S13(1). The time limit is 3 months beginning with the date of payment of wages from which the deduction is made S.23(2)(a) ERA 1996 with an extension for early conciliation.

Findings of Fact

5. It was not disputed that the claimant worked for the respondent over this period. When questioned the claimant stated that he was paid the national minimum wage for 25 hours contracted work each week over the period. The claimant stated that the figure he had arrived at was in fact voluntary overtime. He had simply added up the total hours work and divided them by the national minimum wage.
6. The claimant also confirmed he sent the ET1 to ACAS by mistake who returned it to him. He then sent it to the tribunal. It was received on the 23rd November 2020. The ACAS conciliation period ended on the 17.10.20 which meant the period of extension was the 17.11.20. The claimant could not really say when the last payment which had a deduction was made. He left his employment on the 17.7.20

Conclusions

22. After considering the bundle of documents, emails, and oral evidence I have come to the conclusion that the respondents did not make any unlawful deductions from the claimants wages, owed holiday pay and that the claim was indeed out of time.
- i. The claim was received by the tribunal on the 23.11.20. The latest date it could be received was the 17.11.20. The claim is therefore out of time.
 - ii. Its unclear when the last 'deduction' was made but could not have been any later than the 17.7.20 which means the claim has been presented more than 3 months after the last deduction.
 - iii. Im not satisfied that any unlawful deductions have actually been made? The claimant admitted to me that he was paid 25 hours per week National Minimum wage over the period of January 2017 until he left on the 17th July 2020. He seemed to want to claim for overtime worked but not contracted? It does not appear any deductions have been made. No documentary evidence has ever been presented by the claimant. I was unclear what his claim was. It seemed to be for overtime voluntarily done but not paid for?
 - iv. There was no evidence before the court regarding holiday pay.

- v. I found the claimants case confusing. The claimant even said in evidence that **'he knew he would not win but wanted to try it on anyway'** That comment made me question the basis of the claim and the motive. The claimant seemed to have a grudge against the respondent who he saw as untrustworthy.
- vi. In all the circumstances both claims must fail.

Employment Judge **Steward**
4 March 2022

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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