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EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Respondents

(1) Mr C Millward
(2) Mr N Millward

AND

Castleman EV Ltd (1)
Castleman Accident and Repair
Services Ltd (2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT SOUTHAMPTON
(by video)

ON

26 October 2022

EMPLOYMENT JUDGE GRAY

Representation

For the Claimants: Mrs Millward (C1's wife and C2's mother)

For the Respondents: Did not attend and was not represented

JUDGMENT

UPON the Respondents failing to attend or be represented at this hearing,

AND UPON first considering the information available, the tribunal proceeded to hear the claim in the absence of the Respondents under Rule 47 of the Employment Tribunal Rules of Procedure 2013.

The judgment of the tribunal is that:

The First Claimant (Mr C Millward)

1. The First Respondent made unauthorised deductions from the Claimant's wages and is ordered to pay him the gross sum of **£2,913.82**, comprising the following elements;

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(i) £177.82; underpayment for the month of December 2020;

(ii) £1,680; wages for the entire month of January 2021 (£14/hr x 120 hrs);

(iii) £1,056; underpayments of £2/hr for the months of October, November and December 2020 when the Claimant was moved to a different site and paid at £2/hr less than the rate accepted in his offer letter.

2. The Claimant was dismissed in breach of contract in respect of notice and the First Respondent is ordered to pay damages to him in the net sum of **£435.50** representing one week's pay.

3. The First Respondent has failed to pay the Claimant's holiday entitlement and is ordered to pay him the sum of **£1,220.80** representing 95.2 hours.

4. At the date that proceedings were begun, the First Respondent was in breach of its duty under section 1 of the Employment Rights Act 1996 in that it failed to provide the Claimant with written particulars of his employment. It is just and equitable to award the Claimant the further sum of **£1,680.00**, representing four weeks' pay under section 38 of the Employment Act 2002.

5. The Claimant was unfairly dismissed under s. 104 of the Employment Rights Act 1996 but is not entitled to any separate award in that respect.

6. The Claimant was not provided with itemised pay statements in accordance with section 8 of the Employment Rights Act 1996 but no separate award is made in that respect.

Second Claimant (Mr N Millward)

7. The First Respondent made an unauthorised deductions from the Claimant's wages and is ordered to pay him the gross sum of **£914.80**, comprising the following elements;

(i) £277.80; underpayment for the month of December 2020;

(ii) £509.60; furlough payment for the period between 18 December and 18 January 2021 (£4.55/hr x 35 x 80%);

(iii) £127.40; further furlough payment for the period 18th to 23rd of January 2021.

8. The Claimant was unfairly dismissed under s. 104 of the Employment Rights Act 1996 but is not entitled to any separate award in that respect.

9. The Claimant was not provided with itemised pay statements in accordance with section 8 of the Employment Rights Act 1996 but no separate award is made in that respect.

REASONS

The claims

1. By a Claim Form dated 23 April 2021, the Claimants brought the following complaints;
 - a. Unfair dismissal (automatically unfair under s. 104 for having asserted a statutory right);
 - b. Unlawful deductions from wages;
 - c. Unpaid holiday pay;
 - d. Breach of contract relating to notice;
 - e. Failing to provide pay slips and/or written terms and conditions of employment.
2. A second claim was issued on 12 May 2021 with the Second Claimant as the lead Claimant, but in substantially the same form. It was clarified at the hearing before Employment Judge Livesey on the 13 January 2022, that the Second Claimant was not pursuing claims in relation to notice, a failure to provide contract of employment and/or unpaid holiday pay.

Background and the Respondents' involvement

3. Responses were filed by the First Respondent which asserted that the First Claimant worked for them for 2 weeks in a trial period from 7 September 2020 to 18 September 2020 and he was paid in full and then referred to the Second Respondent. It is also asserted that the First and Second Respondent are not connected, however it is noted by this Tribunal that both Respondents do have the same Director, a Mr Townsend. The First Respondent asserted that the Second Claimant was never been employed by it.
4. The above was not known at the hearing before Employment Judge Livesey on the 13 January 2022 as the responses had not been connected to the file. After reconsideration and a case management hearing before Employment Judge Livesey on the 25 May 2022, proceedings were then served on the Second Respondent and the First Respondent was given permission to submit an amended response if so advised. The Second Respondent did not file a response and the First Respondent did not file an amended response.
5. Notice of this hearing was given to the parties and they were reminded of it in correspondence from the Tribunal dated 5 September 2022. Mrs Millward

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attended on behalf of the Claimants and Mr Townsend submitted via the video hearings officer that he had informed the Tribunal that the Respondents would not be attending.

6. The hearing proceeded in the Respondent's absence pursuant to Rule 47 of the Employment Tribunal Rules of Procedure 2013.
7. Mrs Millward gave oral evidence by affirmation confirming that the First Claimant had an offer letter from the First Respondent and worked for it, and the Second Claimant did not have such an offer letter, but it was understood he was apprenticed by the First Respondent. Mrs Millward confirmed that the Claimants could be assigned to work at the premises of the Second Respondent, but it was understood they remained employed by the First Respondent.
8. Accepting the evidence of Mrs Millward, it was confirmed that the Judgment made by Employment Judge Livesey at the hearing on 13 January 2022, that he had then reconsidered, would now be made in the same terms pursuant to the determinations at this hearing, against the First Respondent.

Employment Judge Gray
Date: 26 October 2022

Judgment sent to Parties: 31 October 2022

FOR THE TRIBUNAL OFFICE