EMPLOYMENT TRIBUNALS

Claimant: Mary Olagunju

Respondent: Eco Climate Solutions (1)
Fagin Enterprise Limited (2)

Heard at: Croydon (public by CVP) **On:** 26 October 2022

Before: Employment Judge S. Evans

Appearances
For the claimant: In person
For the respondents: No attendance

JUDGMENT

1. The claim brought against the first Respondent is not well- founded and is dismissed.

2. The claim of unlawful deduction of wages brought against the second Respondent is well-founded and succeeds.

3. The second Respondent failed to provide the Claimant with written particulars of her employment as required by s.1 Employment Rights Act 1996.

4. The second Respondent is ordered to pay the Claimant the total sum of £1782 which is comprised as follows:

Unlawful deduction from wages	£702
Failure to provide s.1 statement of particulars of employment	£1080

REASONS

Background

1. The Claimant issued an ET1 against Eco Climate Solutions on 5 October 2021.

2. On 24 February 2022 the Tribunal wrote to the Claimant as follows:

" The name provided for the respondent to your claim, namely **1. Eco Climate Solutions,** appears to not be the correct legal name for the respondent. **Eco Climate Solutions Ltd.** is listed on Companies House, however this company was dissolved on 29 February 2019. It is not possible to pursue a claim against a dissolved company."

3. The Tribunal invited the Claimant to provide the full and correct name of her former employer.
4. Correspondence sent to the Tribunal by the Claimant dated 3 May 2022 stated that the letter of 24 February 2022 was not received. it was resent by e-mail of 4 May 2022 and the Claimant provided the name of her former employer as Fagin Enterprise Limited by e-mail on 4 May 2022.

5. An e-mail from the second Respondent was sent to the Tribunal on 27 June 2022. It stated that the second Respondent did not have an employment contract on file for the Claimant and that she had never been on its PAYE system. The email ended with a request for further information.

6. On 15 July 2022 the ET1 was served on the second Respondent.

7. There is no ET3 on the Tribunal file.

The Hearing

8. There was no attendance at the hearing by or on behalf of the Respondents.

9. The hearing was listed at 10am but was assigned to me at around 12 noon. The hearing began at 12.45 after Tribunal staff communicated with the Claimant and second Respondent. The Tribunal staff spoke with Ms. Gina Spoons of the second Respondent who said she had no childcare arrangements. No request was made for an adjournment and no explanation as to why another representative of the second Respondent could not attend.

10. I concluded that it was in the interests of justice and in accordance with the overriding objective to proceed with the final merits hearing.

11. At the hearing, I took evidence from the Claimant and was directed to a number of documents that she had sent into the Tribunal. Some of those documents were not available to me at the hearing and I directed that the Claimant should re-send to the Tribunal anything she had previously submitted. I took account of those documents, as well as the oral evidence and the correspondence referred to at paragraphs 1 – 7 above, in reaching my decision.

12. The Claimant had an urgent appointment at 1.30pm. I was satisfied that she had had an opportunity to give her evidence in full and to make her submissions. Judgment was reserved.

Findings of Fact

13. The Claimant was employed by the second Respondent to do administration work.

14. The Claimant began working for the second Respondent on 29 June 2021 after responding to an advert on the Indeed website.

15. The Claimant was engaged by Ms. Gina Spoons for the second Respondent. She was told by Ms. Spoons that she would be signing a written contract but the Claimant was never given a written contract of employment. She had no written confirmation of the terms of her employment.

16. The Claimant's hours of work were 8.30 am – 1 pm Monday to Friday. She was required to clock in to start work. She was not given details of sick pay or holiday but was told that she had to call in sick if she could not attend work. She was not permitted to send anyone in her place to do her work. She was required to wear a uniform top whilst at work.

17. The Claimant was part of a job share with another employee, Micha, who worked 1pom – 5.30pm. If the Claimant and Micha wanted to swap shifts they arranged it through Ms. Spoons. This happened once during the Claimant's employment.

18. The Claimant's rate of pay was £12 an hour.

19. On 1 August 2021, the Claimant was paid £1095.20 for the hours worked from 29 June – 27 July 2021. The payment was made to the Claimant's bank account. I had sight of the Claimant's bank statement, sent to the Tribunal, showing the payment made in the sum of £1095.20 on 1 August 2021 from "Fagin Enterp Ltd".

20. On 13 August 2021 the Claimant sent Ms. Gina Spoons a WhatsApp message to say she was leaving.

21. On 1 September 2021 the Claimant sent a WhatsApp message at 15:44 to Ms. Spoons asking about her outstanding pay. Her message referred to 12 days pay. The Claimant worked between 28 July 2021 and 13 August 2021 Monday – Friday from 8.30 am – 1pm except for 3 August 2021 when she worked the 1 – 5.30 shift instead. This is a total of 13 days.

22. The Claimant received a WhatsApp message from Ms. Spoons of 1 September 2021 at 18:58 stating "*There are training costs that need to be calculated and deducted. You where trained for two weeks then just left without any notice!"*

23. The Claimant sent four further messages to Ms. Spoons on 1 September 2021 challenging Ms. Spoons' statements. She received no reply.

The Law

24. Section 27 (1) Employment Rights Act 1996 defines "wages" as any sums payable to the worker in connection with his employment.

25. The provisions of section 13 of the Employment Rights Act 1996, to the extent relevant to this claim, state:

(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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(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.

26. Section 14 Employment Rights Act 1996 sets out a series of excepted deductions where s.13 will not apply. I considered the exceptions but have not set them out here as none apply on the facts found.

27. Section 23 (1) Employment Rights Act 1996 provides that a worker may present a complaint to an employment tribunal that their employer has made a deduction from their wages in contravention of section 13. Under s. 23 (2) the Tribunal shall not consider a complaint unless it is 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.

28. Section 230(3) Employment Rights Act 1996 defines a worker as:

"*an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly."

29. Section 1 Employment Rights Act 1996 requires an employer to give a worker a written statement of particulars of employment when the worker begins employment with an employer.

30. Section 38 Employment Rights Act 2002 applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

    Section 38(3) Employment Act 2002 states:

    "If in the case of proceedings 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 instead.

    Under s.38 (4), references to the minimum amount are to an amount equal to two weeks' pay, and references to the higher amount are to an amount equal to four weeks' pay.

    Section 38 (5) provides that the duty under subsection… (3) does not apply if there are exceptional circumstances which would make an …increase under that subsection unjust or inequitable.

31. The jurisdictions listed in Schedule 5 Employment Act 2002 include s.23 Employment Rights Act 1996.

Conclusions

32. The claim against the first Respondent is dismissed as it is not a legal person and did not employ the Claimant.

33. In an email to the Tribunal of 27 June 2022, the second Respondent stated that it did not have an employment contract on file for the Claimant and that she had never been on its PAYE system. I have considered these points and reject them as evidence that the Claimant was not an employee or worker of the second Respondent.

34. The Claimant was employed as a worker by the second Respondent. She was engaged under an oral contract which was either a contract of employment or was a contract which required the Claimant to perform her role, doing administrative work for the second Respondent, personally. The second Respondent was not a client or customer of any profession or business undertaking carried on by the Claimant.

35. The Claimant had to attend work at set times, notify the employer if she was to be absent, arrange any change of shifts through the second respondent and wear

a uniform top whilst in work. This suggests that she meets the definition of an employee working under a contract of employment but, if not, the circumstances in which she worked clearly meet the definition of a worker as defined above. She was obliged to do the work personally, there was no option of substitution and the second Respondent was not her client or customer.

36. The second Respondent did not make a payment of wages to the Claimant for the period of 28 July 2021 to 13 August 2021. This is a total of 13 days worked at 4.5 hours a day. Her hourly rate was £12. The total hours worked in this period were 58.5 hours. Multiplied by the hourly rate of £12, the second Respondent has failed to pay the Claimant wages of £702 gross.

37. The second Respondent's only explanation, set out in the WhatsApp message referred to at paragraph 22 above, for the failure to pay is that there were training costs to recover and that the Claimant left without notice. Neither of these reasons (disputed by the Claimant) amounts to a lawful deduction. The non-payment is not a deduction which was required or authorised to be made by virtue of a statutory provision or a relevant provision of the Claimant's contract and the Claimant had not previously signified in writing her agreement or consent to the making of the deduction.

38. The deduction was therefore an unlawful deduction from wages and the Claimant's claim is upheld.

39. The second Respondent failed to provide the Claimant with any written particulars of her employment.

40. The Tribunal has made an award to the Claimant in relation to an unauthorised deduction of wages and must now increase the award unless there are exceptional circumstances which would make an increase unjust or inequitable. There are no exceptional circumstances that would make the increase unjust or inequitable. The second Respondent has given no adequate explanation for its failure to comply with its obligations under s.1 Employment Rights Act 1996. No written details of any nature were provided to the Claimant at the start of or during her employment and no details have been given since she left her employment. Whilst I remind myself that the mandatory increase in award is two weeks' pay, I also take note that I can increase the award to an amount equal to four weeks' pay if it is just and equitable, in all the circumstances, to do so. For the reasons stated, I find that it is just and equitable to increase the award by four weeks' gross pay. The claimant's weekly pay is 22.5 hours multiplied by an hourly rate of £12, totalling £270. The total increase in award is £270 multiplied by four weeks, totalling £1080.

41. The total sum to be paid by the second Respondent to the Claimant is £1782.

Employment Judge Evans

8 November 2022

Sent to the parties on:
24 November 2022
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For the Tribunal Office:

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