



EMPLOYMENT TRIBUNALS

Claimant: Mr D Wilson

Respondent: Manddbars Ltd

Before: Employment Judge Wright

On: 24/11/2022

JUDGMENT

The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 is well-founded. The respondent made an unauthorised deduction from the claimant's pay in respect of the period 1/7/2020 to 30/9/2020. The respondent is ordered to pay to the claimant the gross sum of £9,401.93 deducted from his pay.

REASONS

1. This notice of hearing for this final one hour hearing was sent on 30/7/2021, therefore one year five months ago. Two previous hearings were listed firstly for the 12/8/2021, which was brought forward to the 25/5/2021 at the claimant's request. Directions (steps to take by way of preparation for the hearing) were sent on 11/3/2021. The 25/5/2021 hearing was postponed due to lack of judicial resources.
2. On the 13/10/2022 the parties were asked if they were ready for the final hearing. The claimant replied that he was. There is no response on file from the respondent. In fact, the last correspondence received from the respondent was 15/4/2021.
3. It is understood that the respondent and his lay representative Mr Wells attended. The claimant attended with a witness (Ms G Heinecke), the hearing was ready to commence, the claimant was no longer on the video call. The Tribunal Clerk attempted unsuccessfully to contact him by telephone. At this point, it was 20 minutes into a one hour hearing. There was no witness statement for Ms Heinecke before the Tribunal. Witness statements should have been exchanged on 13/5/2021. In any event, it is

difficult to see what evidence Ms Heinecke can add to a claim for unauthorised deductions from wages.

4. Turning to the claimant's claims, in his claim form (which is where what he is claiming is particularised Chandhok & Anor v Tirkey UKEAT/0190/14/KN) states that he is claiming notice pay and for wrongful dismissal/breach of contract, he then set out that he was not paid three months' notice. The claim is therefore a quantified claim for notice pay. The claimant provided the calculations and stated that he was owed £20,412.49 net, less a net payment of £11,826.21, giving a net sum due of £8,586.28. That claim is clear and straight-forward. The claimant said that he cannot provide gross figures as he did not receive payslips. The claimant referred to not being placed on the Coronavirus Job Retention Scheme, due to information not being supplied to HMRC. There is however no right to be placed on the Coronavirus Job Retention Scheme and no legal right to make a claim in respect of those payments.
5. The claim form and other papers were sent to the respondent on 23/12/2020, to the address provided by the claimant and were returned marked 'not at this address'. The papers were re-sent to the respondent on 11/3/2021 the ET3 response to the claim form was due on the 8/4/2021. On the 15/4/2021 the respondent emailed the Tribunal and sent in documents which he said showed he had been in the US and so had not seen the posted documents. What was attached was a boarding pass for a flight from Miami to London on 5/4, there was however no year on the boarding pass and no other evidence (such as copies of tickets). This correspondence was not copied to the claimant and the respondent did not expressly ask for an extension of time to present the response. In any event, no response or defence to the claimant's claim has ever been received.
6. On 14/5/2021 the parties were told the final hearing would be a video hearing. As referred to above, the hearing on 25/5/2021 was postponed. The respondent emailed the Tribunal on 26/5/2021 to give dates he was unavailable, as did the claimant on 29/5/2021.
7. Prior to this, on 8/4/2021 the claimant sent a schedule of loss and schedule of remedy. The sums sought had expanded to include unpaid wages, holiday pay and 'lost furlough support earnings'. There has been no application by the claimant to amend his claim to include these claims and they were not referenced in the original claim. Those claims are out of time. The time limit, calculated from 4/9/2020 and allowing for Acas early conciliation was 2/1/2021. The sum the claimant now sought was £51,887.90.
8. The sum the claimant sought for unpaid notice was £9,504.67. That also accounted for a payment he had received of £3,098.07. Although the sum sought had been amended, the basis of that claim had not. The claimant seeks three months' notice pay, based upon his gross salary of £50,000. Three months' gross pay is £12,500. Less the sum paid of £3,098.07

leaves a figure of £9,401.93. The claimant said that the respondent did not account to HMRC for deductions, therefore the sum (£3,098.07) he did receive was a gross payment.

9. The respondent has never presented a response to the claim. This is despite it clearly having been received. Under Rule 21, when no response has been presented, an Employment Judge shall decide whether on the available material a determination can properly be made, and if so a Judge shall issue a judgment accordingly.
10. It is possible, based upon the information the claimant has supplied to determine that he is due from the respondent the gross sum of £9,401.93. The claimant is to account to HMRC in respect of any deductions which should be made.
11. No further hearings will be listed in this case.

Employment Judge Wright

Date: 24 November 2022