



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss E Ramos Garay (1)
Miss P Giustizieri (2)
Mrs E Luz Garay (3)

v Valley Products Limited

Heard at: Sheffield (by CVP)

On: 19 December 2022

Before: Employment Judge A James

Representation

For the Claimants: In person

Translator: Ms M Castello

For the Respondent: Did not appear and was not represented

JUDGMENT

- (1) The claims for unauthorised deduction of wages (s.13 Employment Rights Act 1996) are upheld.
- (2) The respondent is ordered to pay the following amounts, less tax and national insurance, to the following claimants:
 - a. £3616.44 to Miss E Ramos Garay
 - b. £2621.92 to Miss P Giustizieri
 - c. £2065.75 to Mrs E Luz Garay

REASONS

The issues

1. The claimants' claim is for unpaid wages. The task of the Tribunal was to decide whether wages were payable to the claimants; whether any wages have been paid to them; and if not, whether there is any lawful justification for

the payments not being made. If not, the claimants are entitled to the amounts claimed.

The proceedings

2. Acas Early Conciliation commenced on 4 August and was concluded on 15 September 2022. The claim form was issued on 25 September 2022.
3. Notice of hearing was sent to the parties on 18 October 2022. The timing of the hearing was changed, in order to accommodate other cases in the list, and availability of judges. Notification of the change to a 10 am start was sent to the parties on 2 December 2022.
4. An application by the respondent to postpone the hearing, which was made on 30 November 2022, was refused on 15 December 2022 by Employment Judge Bright, because the *'respondent had provided no reason for the application and the claimants have objected'*.
5. At 8:25 am on the morning of the hearing, an email was received from the respondent stating that no representative of the company would be present at the hearing. A reply was sent, noting the contents of that email, and confirming that the hearing would be going ahead; and that if there was no representative of the company, their side of the story could not be given to the Tribunal.

The hearing

6. The tribunal heard evidence from each of the claimants, who affirmed that the evidence they gave is true. Ms Castello ably translated for the claimants.

Findings of fact

7. Miss E Ramos Garay started work for the respondent as Head Chef on 4 July 2022. Miss P Giustizieri commenced work as a Sous Chef on 4 July 2022. Mrs E Luz Garay started work as a Sous Chef on 11 July 2022. They agreed to work 43 hours per week at the respondent's restaurant. Miss Ramos Garay, agreed a salary of £40,000 per year. Miss Giustizieri and Mrs Luz Garay agreed a salary of £29,000 per annum.
8. In the response to the claim, the respondent make a number of assertions. For example, the respondent asserts that Miss Giustizieri and Mrs Luz Garay were not qualified to work as sous chefs, but only as kitchen porters/kitchen staff. Both told me that they have experience working in kitchens before, and that Mr Dresser did not ask for any references or qualifications before they started. They say that three people were required to carry out the necessary work, with all food being prepared from fresh ingredients.
9. It is also asserted by the respondent that the restaurant launch, which had been planned for 20 July, with 25 guests and press invited, had to be cancelled, because the claimants were not ready by then. The claimants say that the fact that the opening date had to be changed was because they had prepared lists of the ingredients which they required and the equipment they needed, but neither the necessary ingredients nor the equipment were provided. That was the reason for the delay. The claimants were ready to carry out the work, but the necessary tools and ingredients were not there for them to do their job as planned. For the same reason, a limited menu was operated on the first official day, 21 July.

10. The respondent asserts the claimants turned up late, and took up to 3 hours in the afternoon. That was denied by the claimants in evidence before me and I accept their evidence, no-one being present from the respondent to counter that evidence.
11. The claimants were asked by Mr David Dresser at the end of July to split the hours they worked between them; in other words, to reduce their hours. They did not agree to that. After a discussion, they decided to hand in their notice, and on 29 July told Mr Dresser that their last day of work would be 5 August.
12. On Sunday 31 July 2022, an argument took place, during which Mr Dresser lost his temper and told the claimants to leave. They did so, despite being willing to work until 5 August.

Relevant law

13. Section 13 Employment Rights Act 1996 provides:

(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.

...

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified. ...

14. Section 14(4) provides:

(4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

(a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

(b) otherwise with the prior agreement or consent of the worker signified in writing,

and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

Conclusions

15. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above.
16. Since no-one from the respondent company has turned up for the hearing, I have only heard from the claimants. I am satisfied on the basis of what they have said, that the first two claimants are due to be paid from 4 July to 5 August 2022; and the third claimant, Mrs Luz Garay, between 11 July and 5 August.
17. Whilst a question arises over the qualifications of two of the claimants, the significance of that has not been explored, because of the failure by the respondent to attend. What is clear to me is that the claimants agreed to work on the salaries offered to them. Miss Ramos Garay, on a salary of £40,000 per year; and Miss Giustizieri and Mrs Luz Garay, on a salary of £29,000 per annum.
18. I calculate the wages owed to them as follows. The period from 4 July to 5 August 2022 is 33 days. The period 11 July to 5 August is 26 days.
 - 18.1. $33/365 \times 40,000 = \text{£}3616.44$ due to Miss Ramos Garay.
 - 18.2. $33/365 \times \text{£}29,000 = \text{£}2621.92$ due to Miss Giustizieri.
 - 18.3. $26/365 \times \text{£}29,000 = \text{£}2065.75$ due to Mrs Luz Garay.
19. I give judgment for those amounts, from which tax and national insurance should be deducted.

Employment Judge A James

Dated 19 December 2022