



EMPLOYMENT TRIBUNALS

Claimant: Mr S Karakesidis

Respondent: Repair Lab (Retail) Limited

HELD by CVP in Leeds

ON: 27 January 2023

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mr M Haywood, Counsel

Respondent: Did not attend, was not represented and had failed to file a response

JUDGMENT

1. The respondent shall pay the claimant for unauthorised deduction of wages the sum of £13360.72 gross.
2. The claims relating to failure by the respondent to pay over to the relevant authorities sums deducted from the claimant's wages for national insurance, tax and pension are hereby dismissed upon withdrawal by the claimant.
3. The claim for failure to furnish an itemised statement is hereby dismissed upon withdrawal by the claimant.

REASONS

1. Claims

- 3.1. Unauthorised deduction of wages.
- 3.2. Failure to give the claimant a written itemised pay statement of wages or salary.

4. Issues

The issues in this case relate to:

- 4.1. In relation to wages whether the respondent deducted wages and if so how much.
- 4.2. Unauthorised deduction of wages. Whether the respondent having deducted sums for national insurance, tax and pensions from the claimant's wages and then failing to pay such deductions over to HMRC and the pension company amount to unauthorised deduction from wages.
- 4.3. Itemised pay statement. Whether the claimant is entitled to a declaration in respect of a failure by the respondent to make an itemised pay statement.

5. Facts

- 5.1. The claimant was represented by counsel and did not give evidence and the claimant's arguments are as follows:
- 5.2. The claimant did not receive his wages from and after April 2022. Those wages amounted monthly to £3208.33 gross. Mr Haywood argued that in paragraph 8.1 of the claim form the claimant claimed arrears of pay. In the grounds of claim at paragraph 10 whilst the claimant stated that the respondent failed to pay the claimant his monthly salary, the claimant also stated in paragraph 12 that the deductions were ongoing. However in paragraph 13(b) the claims were put in the past tense and therefore, which Mr Haywood accepted, as the claim was presented on 5 August 2022 any claim for deduction of wages after that date had not been adequately pleaded and therefore it was accepted by Mr Haywood that the claim for unauthorised deduction of wages comprised April 2022 to 5 August 2022 inclusive and Mr Haywood accepted that the sum deducted pursuant to the claim was £13360.72 gross (four months at £3208.33 gross per month and five days (in August) in the sum of £527.40).
- 5.3. The claim which was around the respondent deducting national insurance(NI), tax and pension and then failing to pay it on never got off the ground. In simple terms Mr Haywood accepted that by reason of section 13(1)(a) Employment Rights Act 1996 (ERA) the deductions in relation to national insurance and tax were required by virtue of statutory provision. Further by section 27(2)(c) ERA wages did not include payments by way of pension. Further by section 13(3) ERA the total amount of wages paid where less than total amount of pages properly payable will be treated as a deduction but only after deductions and not before. By section 23(1)(a) ERA the worker may only make a deduction from wages in contravention of

section 13 ERA which is not the position in this case. Therefore Mr Haywood took time to speak to the claimant and as a result withdrew aspect of the claim relating to deduction of NI, tax and pension.

- 5.4. During the hearing Mr Haywood attempted to convert the NI, tax and pension into a claim to breach of contract. The Tribunal pointed out that this was more than a mere relabelling and substantially out of time. Mr Haywood took time to discuss this with the claimant and did not pursue the proposed amendment.
- 5.5. With regard to the failure to provide an itemised pay statement this was out of time. The Tribunal also explored how making a declaration to this effect would assist the claimant. Mr Haywood accepted that it would not and the same was withdrawn.
- 5.6. It should be noted that whilst the company status of the respondent was active there was a proposal to strike off.

6. Determination of the issues

- 6.1. Unauthorised deduction of wages - the respondent shall pay to the claimant the sum of £13360.72 gross.
- 6.2. The claims around deduction of national insurance, tax and pension and then failure to pass them on to the appropriate authorities is withdrawn by the claimant and are hereby dismissed.
- 6.3. The claim for failure to furnish an itemised pay statement is withdrawn and is hereby dismissed.

J Shulman

Employment Judge Shulman

8 February 2023

Date _____

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

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