



EMPLOYMENT TRIBUNALS

Claimant

Mr Olumuyiwa Ajayi

Respondent

AND

Regency Security Services Ltd

OPEN PRELIMINARY HEARING

Heard by CVP:

Before: Employment Judge Nicolle

For the Claimant: In Person

For the Respondents: Mr T Sullivan, employee of the Respondent

JUDGMENT

1. The Judgment of the Tribunal is that the Respondent made an unauthorised deduction of £21.05 from the wages properly payable to the Claimant.

The Hearing

Procedural History

1. The open preliminary hearing took place using the cloud video platform (CVP) under Rule 46. The parties agreed to the hearing being conducted in this way.
2. In accordance with Rule 46, the Tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Court Serve.Net. No members of the public attended the hearing.
3. The parties were able to hear what the Tribunal heard.
4. The participants were told that it is an offense to record the proceedings.

5. The parties experienced some difficulties connecting and hearing but these did not significantly disrupt the hearing and I am satisfied that all parties could hear all material evidence.

Facts

6. Pursuant to a claim form received on 11 January 2023 the Claimant contended that during his engagement with the Respondent between 11 November 2022 and 26 November 2022 as a Door Supervisor Security Guard he had suffered various deductions from the wages properly payable to him.

7. At the commencement of the hearing I established with the parties that the deduction in respect of £53 as a result of a discrepancy between the agreed hourly rate of £15, and what the Respondent believed was the correct rate of £13, had been agreed and that the Respondent therefore undertook to pay the sum of £53 to the Claimant within 7 days of the hearing. It was therefore agreed that the outstanding claim related to deductions totalling £21.05.

8. The Respondent provides a door security services to its clients. It has approximately 1900 staff on its rosta.

9. The staff receive payment in respect of hours worked by a payroll company called Simply PAYE. Simply PAYE issue an invoice to the Respondent prior to making payments to the staff. Simply PAYE are responsible for making deductions form payments made to staff to include those for applicable tax and national insurance contributions.

10. Mr Sullivan explained that staff are recruited via an employment agency. They then have a telephone interview during which he says that they are advised as to what payments they will receive. He says that the hourly rate of pay varies depending on the individual client, venue, and location. Whilst he says the correct rate for the venues at which the Claimant worked on the three days he provided his services, 19, 24 and 25 November 2022, was £13 he accepts that a figure of £15 per hour had been agreed in a text exchange between Dan Honeyball, the Respondent's Area Manager (Mr Honeyball), and the Claimant.

11. Mr Sullivan says that new staff recruits are informed about payment and what deductions are made from payments on their recruitment. He believes that Mr Honeyball would have had this conversation with the Claimant but he says that he cannot be sure and the Claimant denies ever having spoken with Mr Honeyball or receiving any communications, whether orally or in writing, advising him that any deductions would be made from his hourly rate of pay.

12. The Respondent says that its staff are treated as Sole Traders. He says that this is advantageous to them as they are able to receive a certain percentage of their salary without the deduction of tax. He also says that they are not taxed on expenses claimed so, for example, the Claimant made expense claims of approximately £60 and these were not subject to the deduction of tax.

13. The Respondent regards staff as being on zero hour contracts. They do not receive holiday but rather a payment in respect of holiday pay rolled up within their hourly rate of pay.

14. The Claimant received two documents entitled Payment Records dated 30 November 2022 and 7 December 2022 from the Respondent. The payment record dated 30 November 2022 related to the services he had provided on 19 November 2022. It included a client deduction of £10 and accountancy fee deduction of £3.02. Therefore the total deductions being £13.02. The payment record dated 7 December 2022 related to services performed by the Claimant on 24 and 25 November 2022 and included a client deduction of £4 and an accountancy fee of £4.83 therefore total deductions of £8.83 and overall deductions from both payment records of £21.05.

15. Mr Sullivan says that the client deduction is to cover services such as vetting, risk assessments at the venue and liaison with the police. An initial deduction of £10 is made and then £4 on each subsequent payment of wages to the staff member.

16. The accountancy fee deduction is calculated on a percentage basis and reflects the costs incurred by Simply PAYE on calculating tax. It would typically average about £400 per year which Mr Sullivan says is a benefit to the staff member given that their wages are calculated with a reduced rate of overall tax as a result of their Sole Trader status.

17. The Claimant says that at no point during his engagement was he advised that deductions would be made and as to the nature or amount of such deductions. He says that the only communications he had were by text.

18. Mr Sullivan referred me to the STP application form which the Claimant had completed electronically. However, this does not refer to an hourly rate of pay or the basis of any deductions. Whilst Mr Sullivan said that the Claimant would receive documents about how he was paid he was not able to reference any such documents.

19. I was provided with a copy of the Simply PAYE Payroll Handbook. In the introduction it includes the following:

A Sole Trader works for and on behalf of an Outsourced Service Provider Company and elects to pay PAYE, to comply with tax laws (IR35) – YOU ARE NOT EMPLOYED BY THE COMPANY YOU WORK FOR OR BY SIMPLY PAYE.

20. Further it provides:

Why am I paying fees?

We administer all of your payroll requirements for you, instead of you having to pay an accountant.

The Law

21. Key issues involved in determining whether or not there has been a deduction that infringes the provisions of [Part II](#) of the Employment Rights Act 1996 (the ERA 1996) are whether the wages are ‘properly payable’ to the worker; and whether the payment of less than the properly due sum is authorised. The courts have consistently held that the question of what is properly payable to a worker turns on the contract of employment.

S 13 (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.

22. Pursuant to S230(3) ERA 1996 a “worker” means an individual who has entered into or works under:

- (a) A contract of employment, or
- (b) Any other contract, whether express or implied and (if it is express) where 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.

Discussion and Decision

23. I find that in the provision of his services the Claimant was a worker as per S230(3) of the ERA 1996.

24. I find that the Claimant did not provide his services pursuant to a written contract, and neither were any documents provided to him, providing for the basis of payments to be made and any deductions which the Respondent intended to make from such payments.

25. I find that the Claimant had a legitimate expectation that his hourly rate of pay in the services provided for clients of the Respondent would be £15. Further, there was nothing whether in writing or orally, which the Respondent can confirm highlighted to the Claimant any deductions which would be made from such payments. Therefore I find that the Claimant had a legitimate expectation that he would receive £15 per hour and that he had not provided his consent to the making of any deductions from such payments.

26. I therefore find that the Respondent had made deductions from the Claimant's wages totalling £21.05. This is not to say that in all cases staff members of the Respondent would have been entitled to the full payment of wages without deductions but rather that absent express unequivocal communication to a staff member that such deductions would be made and/or the written agreement of the staff member to such deductions, that they constituted the unauthorised deduction of wages properly payable to the Claimant.

27. The Respondent is therefore ordered to pay the Claimant the sum of £21.05 subject to any applicable deductions for tax and employee national insurance contributions.

Employment Judge Nicolle

Dated: 13 March 2023

Sent to the parties on:

13/03/2023

For the Tribunal Office