



# EMPLOYMENT TRIBUNALS

**Claimant:** Reece Raymond

**Respondent:** 1<sup>st</sup> Solutions Contractors Limited

**Heard at:** Watford                      **On:** 22 March 2023

**Before:** Employment Judge Oldroyd (sitting alone)

## Appearances

For the Claimant: In person

For the Respondent: No appearance

## JUDGMENT

1. Pursuant to Rule 34 of the Employment Procedure Rules, 1<sup>st</sup> Solution Contractors Limited shall be substituted for Verol Francis Hamilton as the Respondent to these proceedings.
2. The Respondent made an unlawful deduction from wages by failing to pay the full amount of wages due in May and wages in the form of holiday pay in June 2022 and is ordered to pay the Claimant sum of £2,500 being the net sum due to her.
3. The Respondent was in breach of section 8 Employment Rights Act 1996 by failing to provide the Claimant with itemised statements of pay in May and June 2022.
4. The Respondent is ordered to pay the Claimant sums equivalent to the total sum of unnotified deductions pursuant to Section 12(4) Employment Rights Act 1996 in the sum of £947.
5. In consequence of paragraphs 2 and 4 hereof the Respondent must pay the Claimant the sum of £3,447 by 5 April 2023.

## REASONS

### Introduction

6. The Claimant alleges that the Respondent made an unlawful deduction of wages by failing to pay her wages in May and June 2022. The Claimant further alleges that she was not provided pay slips for these periods.
7. The Respondent, in its ET3, defends the claim on one material basis only, namely that it is unable to pay the wages due owing to financial hardship.

### Representation

8. The Claimant represented herself.
9. The Respondent made no appearance. The Claimant advised me that she was in contact with the Respondent, ACAS and the Tribunal office earlier this year (but after this hearing was listed). I was therefore satisfied that the Respondent, through its director Mr Hamilton, was aware of the hearing and it should proceed in spite of its non-attendance.

### Preliminary matter

10. ET1 identifies the Respondent to the claim to be Verol Francis Hamilton, the director of 1<sup>st</sup> Solutions Contractors Limited (**1st Solutions**).
11. The Claimant explained to me that she was all times employed by Ist Solutions and not Mr Hamilton personally. The Claimant confirmed that she had entered into a written contract (although she no longer had a copy of it) with Ist Solutions.
12. The Claimant accepted that her claim properly lay against Ist Solutions and she invited me to amend her ET1 accordingly.
13. Pursuant to Rule 34 Employment procedure Rules 2013, the Tribunal may add a party to a claim by way of substitution if it appears that there are issues between that party and another and it is in the interests of justice to have those issue determined.
14. I duly ordered substitution in this case. In so doing, I noted that:
  - a. 1<sup>st</sup> Solutions has been aware of the claim, though its director at all times.
  - b. Mr Hamilton identified 1<sup>st</sup> Solutions as the correct Respondent in his ET3
  - c. adding 1<sup>st</sup> Solutions did not require further evidence to be adduced.

- d. the effect of not adding 1<sup>st</sup> Solutions would cause a considerable injustice to the Claimant.

### **Fact findings**

- 15. The Respondent is a company that specialises in electrical work.
- 16. The Claimant's employment with the Respondent commenced on 10 December 2012. The Claimant's role was to assist with management of the office, which included attending to payroll issues.
- 17. The Claimant and Respondent entered into a written contract. The contract was not before the Tribunal but the Claimant explained to me that:
  - a. The Claimant ordinarily worked 42 hours in each work (albeit the precise number of hours worked might fluctuate).
  - b. The Claimant's agreed hourly rate was £18.50.
  - c. The contract provided that the Claimant would be entitled to 28 days of paid holiday in each year.
- 18. The Claimant went on to say that she decided to leave the Respondent's employment in the spring of 2022 on account of her wages being paid in a sporadic fashion and invariably late (which was apparent from the Claimant's bank statements that were disclosed in the proceedings).
- 19. The Claimant's last day of employment was on 17 June 2022.
- 20. The Respondent, however, did not provide the Claimant with a pay slip for the month of May or June. (The Claimant accepts pay slips were otherwise provided to her and indeed it was the Claimant's role to assist in the production of pay slips). I accept that no pay slips were provided in May and June 2022 and this indeed has never been denied by the Respondent.
- 21. By e-mail dated 30 June 2022, the Claimant advised the Respondent of the wages she was owed as at the date of the termination of her employment being:
  - d. £1,400 (net) in respect of work carried out the May pay period; and
  - e. £1,572.50 (gross) in respect of unpaid but accrued holiday that ought to have been paid to her in the June pay period.
- 22. The Respondent has never actually disputed that the sums claimed by the Claimant were not properly owed to her. The only basis on which the claim was defended in ET3 was because the Respondent had no financial means to pay the Claimant (which is not a defence at all).
- 23. The Claimant explained to me in the hearing how she had calculated the wages that she was claiming. I was satisfied with her explanations which I summarise below.

24. In respect of the May pay period, the Claimant says that she recalls inputting payroll data (this being her role) that would have entitled her to a payment of £1,900 net for the period up to 28 May 2022. This seems consistent with the fact the Claimant believes that she worked approximately 35 hours in that particular pay period. However, the Claimant accepts that she was paid £500 on 6 June 2022 by the Respondent in respect of this pay period and that is why she is claiming £1,400 on a net basis. Absent any cogent and contrary explanation from the Respondent or indeed a pay slip, I accept that £1,400 represents the net sum due to the Claimant in the May pay period.
25. In respect of the June pay period, the Claimant explained that although she attended the office on occasions (having been away for a period of time with Covid) she was not making a claim in respect of the hours that she worked. Instead, the Claimant says that when her employment came to an end, she had accrued but not taken 10 days of holiday for which she was entitled to be paid the sum of £1,572 on a gross basis. Again, absent any cogent or contrary explanation from the Respondent. I accept that £1,572 represents the gross sum due to the Claimant in this regard..

### **The Relevant Law**

26. Section 13 Employment Rights Act (**ERA**) provides that an employer shall not make a deduction from wages of a worker employed by them unless such deduction is required to be made by virtue of a statutory provision, or the worker has previously signified their agreement in writing to the making of the deduction
27. Section 8 ERA provides that a worker has the right to be given by their employer a written itemised pay statement. This statement should include information regarding the gross and net amounts to be paid to the worker and any deductions which require to be made.
28. Section 11 ERA provides that a worker can make a reference to an employment tribunal where they have not been provided with a statement as required by section 8.
29. Section 12 ERA provides that where on such a reference, an employment tribunal finds that an employer has failed to meet the requirements of section 8, then it shall make a declaration to that effect.
30. Section 12(4) ERA states that 'where on a reference in the case of which subsection (3) applies the Tribunal further finds that any unnotified deductions have been made...the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made'.

### **The Issues**

31. I am satisfied, for reasons that are set out above, that the Claimant was not paid all of the wages that she was due in May and June 2022 pay periods. In May, there is a shortfall of £1,400 (net) and in June there is a shortfall of £1,572 (gross). In respect of the June pay period, it is difficult to precisely calculate the net sum due to the Claimant but, based upon her earnings as a whole, she agreed that the net sum was likely to be in the region of £1,100. Adopting that figure, the Claimant is entitled to recover the net sums due to her pursuant to Section 13 ERA 1996 being a total of £2,500.
32. I have found that the Respondent failed to provide the pay slips in May and June 2023 and so it failed to meet the requirements of S8 ERA 1996 and it is appropriate to make a declaration to that effect.
33. The Respondent has provided no good reason for not providing pay slips. This failure has, of course, made it more difficult for the Claimant to establish the sums due to her in these proceedings and to verify any deductions that might have been made. In these circumstances, I am satisfied that it is appropriate for me to direct that the Respondent pay the Claimant a sum equivalent to any deductions that fell to be made in respect of the May and June pay periods. As to this:
- a. In the May period, the net sum due to the Claimant was £1,900 after deductions for tax. Being conservative, I estimate the gross sum payable to be £2,375. This means the deductions made in the May pay period were £475 and I award this sum to the Claimant pursuant to Section 12(4) and 13 ERA 1996.
  - b. In the June period, the gross sum due to the Claimant (before deductions for tax) is £1,572 and I have assessed the net sum to be £1,100. This means the deductions made in the June pay period were £472 and I also award the Claimant this pursuant to Section 12(4) and 13 ERA 1996.

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Employment Judge Oldroyd

Date: 30 March 2023

Sent to the Parties on

13/4/2023

Naren Gotecha

For the Tribunals Office