



EMPLOYMENT TRIBUNALS

Claimant: Mr Cameron Shaw

Respondent: Alphadean Ltd (in Creditors' Voluntary Liquidation)

Heard at: Leeds (By CVP Link) **On:** 05 May 2023

Before: Employment Judge R S Drake

Representation:

Claimant: In Person

Respondent: No Response filed and no attendance/appearance today

JUDGMENT

1. The Claimant has established that he suffered an unlawful withholding of pay for 114.5 hours worked contrary to Section 13 of the Employment Rights Act 1996 ("ERA") for the period upto 26 October 2022 in the net sum of £1,182.50 and of pensions deductions in the sum of £30.96 made but not paid into pension and the Respondents shall pay to him the total sum of £1,213.96. His claim in this respect succeeds.

REASONS

2. The Claimant attended in person but could only be heard and not seen. The Respondent as a viable company but has not responded to the claim and nor has it made any appearances before me today. It therefore may not participate in these proceedings unless given leave. I note that a specialist accountancy firm (Seneca Insolvency Practitioners of Matlock Derbyshire) purport to be appointed as Liquidators of the Respondent pursuant to Creditors' Voluntary Liquidation resolved by it and agreed by its creditors as of 12 January 2023. Seneca has undertaken correspondence with the Tribunal but had neither caused a formal ET3 Response to be filed, nor did it challenge the Tribunal's jurisdiction to hear the claim. They have not

sought a stay by Order of the Court. The Liquidators thus accepted and/or submitted to the Tribunal's jurisdiction and merely challenged the identity of the Respondent cited by the Claimant. I heard evidence and argument from the Claimant given under Affirmation.

Findings of Fact

3. I accept the Claimant's unchallenged evidence as it was persuasive and cogent. Therefore I found that he had worked for the Respondent as a Kitchen Assistant at their trading premises (Handmade Burger Company) at Meadowhall, Sheffield, from 1 September 2022 until he gave notice on 15 October 2022 his last working day being 26 October 2022.
4. The Claimant received a payslip dated 31 October 2022 showing that the Respondent accepted he was entitled to pay for 114.5 hours outstanding and unpaid as at that date being a gross sum of £1,259.50 and a net sum of £1,182.43 after deduction of tax and NI, and pension contribution deductions of £30.96 which he later learned from the auto-enrolment fund administrators "Nest Administrators" had not been remitted despite being deducted by the Respondent.
5. I noted that, as well as not challenging the claim nor the Tribunal's jurisdiction, Seneca had messaged the Tribunal on 4 May 2023 as follows:-

"The Director informed us that all employees were transferred to another company.

This employee has submitted the claim in Alphadean Ltd for the wages not paid.

Therefore, I suggest to contact the company which this employee was transferred to. We are currently unaware of the details of this company and if you have any information I will be grateful if you could provide these details."

This was disappointingly unhelpful for the following reasons:-

- a) "The Director" is unidentified – and
 - b) "All employees were transferred to another company" does not identify the company nor the date of alleged transfer - which the Claimant denied being aware of;
6. I had no basis to accept this in the absence of clarity and evidence, so I found that the Claimant's employment had not at any time been transferred at the time his employment came to an end and his wages became accrued and due.

The Law and its Application

7. The Claimant’s complaint of/for unpaid wages is framed under Section 13 of the Employment Rights Act 1996 (“ERA”) which provides as follows: -
- “(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 workers contract, or –
- (b) the worker has previously signified in writing her agreement or consent to the making of the deduction ...”
9. I award the Claimant Judgment for unpaid wages for the period of 1 September to 31 October 2022 (i.e. 114.5 hours) in the sum of £1,182.43 and withheld pension deductions not remitted to the pension administrator in the sum of £30.96 and thus a total of £1,213.39 to which extent his claim in this respect succeeds.

Employment Judge R S Drake

Signed 05 May 2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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