



EMPLOYMENT TRIBUNALS

Claimant: Mr B.J.J.S.K Platt

Respondent: FDS Recruitment Ltd

Heard at: Croydon **On:** 28 March 2023

Before: Employment Judge Barker

Representatives

For the claimant: in person

For the respondent: no attendance

JUDGMENT having been sent to the parties on 20 April 2023 and a corrected judgment having been sent to the parties (to correct the omission of the claimant's surname) on 18 May 2023, written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues for the Tribunal to decide and preliminary matters

1. The issues for the Tribunal to decide, as set out in the claim form and the response, were as follows:
 - a. Whether the respondent made unlawful deductions from the claimant's wages in April and May 2022, failed to pay him commission during his employment and whether he had suffered consequential financial loss as a result (s13 Employment Rights Act 1996);
 - b. Whether the respondent made unlawful deductions from the claimant's wages in failing to pay him for 13 days' untaken but accrued holidays and if so, what the daily rate was (s13 Employment Rights Act 1996 and Working Time Regulations 1998);
 - c. Whether the claimant was entitled to notice pay and whether the respondent failed to pay this sum in accordance with the contract of employment; and

- d. Whether the respondent's counterclaim succeeds.
2. The claimant originally made a complaint of unfair dismissal but he did not have the requisite two years' service to do so, and this claim was dismissed by the Tribunal on 11 November 2022.
 3. The respondent was asked by the Tribunal in a letter dated 2 September 2022 to particularise the hours they say the claimant did not work and quantify their counterclaim by 16 September 2022. They did not do so. A set of particulars were received by the Tribunal dated 23 September 2022, but these were in narrative form and did not quantify the claim.
 4. The Tribunal wrote again to the respondent in a letter dated 11 November 2022 which acknowledged receipt of the particulars but noted that the claim had still not been quantified and warned that if this was not received, the counterclaim may be struck out on the basis that it has no reasonable prospect of success. No further particulars or quantification was received from the respondent.
 5. Where a party fails to appear at a hearing, either in person or through a representative, the Tribunal may proceed with the hearing in the absence of that party (Rule 47 Employment Tribunal Rules of Procedure 2013). Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
 6. When it became clear that the respondent was not in attendance at the start of the hearing, attempts were made by the Tribunal clerk using the details held on the Tribunal file to contact the respondent before the hearing went ahead, but these attempts were unsuccessful. The Tribunal was satisfied that the respondent had received notice of the hearing at the correct address for service held on the Tribunal file. The hearing went ahead in the absence of the respondent.
 7. The respondent had not provided any written submissions before the hearing for the Tribunal to take into account. The particulars of response and the particulars of the counterclaim were read and considered, but no evidence was provided by the respondent for the Tribunal to consider. As the respondent had sent no further information or particulars to the Tribunal and did not attend the hearing, the claimant's claim was not defended.
 8. There is no duty on the tribunal to turn itself into an investigating forum and to take upon itself the responsibility of cross-examination of the claimant in place of the absent respondent. The claimant made submissions to the Tribunal about his losses and how they were incurred, and told the Tribunal how this was calculated. The Tribunal accepted the claimant's submissions and calculated his financial losses on the basis of his submissions, including his detailed particulars of claim and the correspondence to the Tribunal between the parties, including the claimant's emails of 3, 16, 25 and 26 September 2022.

Findings of Fact

9. During the hearing, the Tribunal heard evidence and submissions from the claimant but did not make findings of fact as the respondent did not provide any evidence for the Tribunal to consider.

10. The Tribunal accepted that the claimant was paid an annual salary of £45,000. The respondent provided no information about the claimant's salary in the ET3 response or otherwise.

The Law

11. Section 13 of the Employment Rights Act 1996 states that an employer shall not make a deduction of wages of a worker employed by him unless the deduction is authorised by the terms of the worker's contract or a relevant statutory provision or the worker has previously consented in writing to the deduction.

12. Section 27 of the Employment Rights Act 1996 defines "wages" as any fee, bonus, commission, holiday pay or other emolument referable to his employment.

13. Section 24(2) of the Employment Rights Act 1996 provides that Tribunals have the discretion, if a complaint of unlawful deductions from wages is well-founded, to also order the employer to pay to the worker such amount as the Tribunal considers to be appropriate in all the circumstances to compensate the worker for the financial loss sustained by him which is attributable to the unlawful deductions.

Application of the law to the facts found

14. The Tribunal accepted the claimant's submissions that the respondent had failed to pay the sums claimed which were owed to him and that the claimant suffered consequential losses of bank charges and interest payments as a result. The Tribunal accepted that these deductions and the failure to pay were not authorised in any way.

15. The respondent failed to provide any information as to the value of the counterclaim and so this counterclaim could not be quantified, so fails and is dismissed.

16. The Tribunal awarded the claimant the sums claimed by him and an amount for consequential financial losses, which sums are:

1. £3750 for unpaid wages for April and May 2022. This is for a period of one month;
2. £2250 for 13 days unpaid holiday pay at a daily rate of £173.08;
3. Unpaid commission of £1400;
4. £7500 for unpaid notice pay for two months;
5. £380 for financial losses arising out of the breach of contract and comprising bank charges (£100) and interest payments (£280).

Employment Judge Barker
Date: 21 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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