



EMPLOYMENT TRIBUNALS

Claimant: Mr Tyler Wood

Respondent: Techonics Canterbury Ltd

Heard at: London South Employment Tribunal (by CVP video conference)

On: Friday 9 June 2023

Before: Employment Judge Musgrave-Cohen

Representation:

Claimant In person

Respondent Did not attend

JUDGMENT

1. The claim was issued in the London South Employment Tribunal on 5 January 2023. The respondent has failed to present a valid response on time and did not attend the hearing. The tribunal proceeded to hear and determine the claim in the absence of the respondent and in the absence of a respondent's ET3 in accordance with rules 21 and 47 of the Rules of Procedure.
2. The respondent made unauthorised deductions from wages by failing to pay the claimant the full amount of wages due between 1 August 2022 to 21 September 2022 and is ordered to pay to the claimant the sum of £134.34 being the total gross sum deducted.

3. The respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the claimant is increased by £26.87 being a 20% uplift to the award for unauthorised deduction from wages.

REASONS

Introduction

1. The claimant was employed by the respondent as an apprentice from 23 August 2021 until his resignation on 21 August 2022 which took effect on 21 September 2022. ACAS was notified under the early conciliation procedure on 10 November 2022 and the certificate was issued on 22 December 2022. The ET1 was presented on 5 January 2023. The respondent failed to present an ET3.

Procedure and Evidence

Lack of attendance from respondent

2. The notice of claim was sent to Technics Canterbury Ltd at their business address on 8 February 2023 but they failed to provide a response.
3. On 28 April 2023 of their own volition the Tribunal resent the ET1 to Technics Canterbury Ltd at registered office address. The Tribunal notified the respondent that the time limit for presenting a response had passed and should they wish to defend the claim they would need to apply for leave to do so.
4. On 24 May 2023 Mr Munro of the respondent wrote to the Tribunal saying that the company was in the hands of a receiver and would be placed into liquidation shortly. He wrote that he was not sure how to inform the tribunal of the events which he said would have an effect on any proceedings and claim but that any assistance would be appreciated. Mr Munro wrote again with a similar message on 8 June 2023 this time saying that he had been seeking guidance on this as the company had not traded since last year.
5. The respondent did not attend the tribunal on the date of the hearing.

6. At my request, an email was sent to Mr Munro and he was telephoned to remind him that the hearing was happening today and to ask him what his intentions were. He was told that unless he contacted the tribunal by 10.30am the hearing would proceed in his absence. The tribunal clerk spoke to his colleague who said he was unavailable. An email was received from Mr Munro shortly afterwards apologising for his absence. He said Techonics Canterbury Ltd had ceased trading last year and were going through the process of liquidation. He said he did not have access to the personnel files for the company due to the process and apologised if time had been wasted.
7. I noted from Companies House that the company is still active. The claim can proceed.
8. The respondent did not attend the hearing on 9 June 2023. The claimant did attend. He had thoroughly prepared his claim and had access to all of the relevant documents which he explained to me he had provided to the respondent in accordance with the orders of the tribunal.
9. I proceeded to hear the claim under rule 21 and 47 Rules of Procedure.

Procedure

10. The claimant was able to clearly articulate his claim and the basis for it. He did so with the support of his mother in the room albeit his mother could not hear proceedings which were being played through the claimant's headphones. I encouraged him to arrange for her to be able to hear my judgment when I delivered it.
11. The claimant provided a witness statement and a number of documents including all payslips in his possession, evidence of payment for the last two months of his employment, his contract of employment, his apprenticeship agreement and correspondence between himself and employees of the respondent.

The issues

12. The claimant agreed that the issue in the case was as follows:

Unlawful deduction of wages:

12.1 Was the claimant entitled to receive an increase in his pay from 23 August 2022 until the end of his contract following him completing 1 year of an apprenticeship?

12.2 Did the respondent make an unauthorised deduction from wages by withholding payment of that increased wage in August 2022 and/or September 2022?

Findings of Fact

13. The claimant secured an Advanced Apprenticeship Level 3 through the apprenticeship provider Estio. His employer was the respondent where he began on 23 August 2021 earning £10,000 per year to be paid in 12 monthly instalments on or around 28th of each month. The claimant was to work a 37.5 hour week.

14. On 30 September 2021, the claimant received his first payslip showing a salary of £833.33 and back pay of £269.23. £269.23 is equivalent to the 7 working days that remained in August 2021. This shows me that the each pay cheque the claimant received was for a full month despite that it may or may not have been paid by 28th of the month.

15. The claimant received £833.33 for each month of work from his start date until July 2022.

16. On 23 August 2022 the claimant wrote to Miriam Hatfield, Administration Manager of the respondent, and asked if his rate of pay would be increased to national minimum wage now that he had completed one year of his apprenticeship.

17. After confirming the claimant's age and apprenticeship start date, Ms Hatfield replied at 18:07 saying "So you should get £6.83 from the 23rd August then!". She also confirmed that as of 23 August 2022, the claimant had 5.3 days annual leave left to take (email of 23 August 2022 at 17:59).

18. On 30 August 2022, the claimant received £857.65 for work done in August 2022. This included any annual leave he was entitled to at his usual rate of pay. He had not taken any sick leave and so there were no deductions.
19. In September, the claimant had 3 days of annual leave before his contract of employment concluded on 21 September 2022. The claimant asked Ms Hatfield to confirm that he would receive payment for the remaining 2.3 days of holiday and his increased rate of pay of £6.83 per hour.
20. Ms Hatfield confirmed the rate of pay and said he would receive 2.25 days of holiday. I prefer the account of the claimant that he would receive 2.3 days of holiday as that tallies with Ms Hatfield's original email on 23 August at 17:59.
21. On 3 October 2022 the claimant received pay of £848.26. This would have been for the period 1 – 21 inclusive September 2022.
22. The claimant emailed Mr Munro to query the pay on 3 October 2022. He did not reply. The claimant wrote again on 10 October 2022 setting out the payments he believed he was entitled to receive. Again, Mr Munro did not reply.
23. On 27 October 2022, the claimant raised a formal grievance which Mr Munro failed to respond to. The claimant then approached ACAS and later issued these proceedings. At no stage has Mr Munro provided any explanation for whether he considers he has paid the right sum or of not, why not.

Applicable Law

Apprenticeship rate of pay

24. Regulations 4a and 5 National Minimum Wage Regulations 2015 SI 2015/621 read together confirm that apprentices aged 19 and over who have completed at least one year of their apprenticeship are entitled to the standard national minimum wage rate for their age. The regulations are amended each year to detail the appropriate hourly rate. In the relevant year for this claim, that is the year from 1 April 2022 – 31 March 2023, the rates were as follows:

4A.— Workers who qualify for the national minimum wage at a different rate

(1) *The hourly rate of the national minimum wage is—*

...

(b) *£6.83 for a worker who is aged 18 years or over (but is not yet aged 21 years).*

25. An apprentice may bring a claim to the Employment Tribunal for unlawful deduction of wages to enforce their right to receive national minimum wage (section 17 National Minimum Wage Act 1998).

Unlawful deduction from wages under section 13 Employment Rights Act

26. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

27. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

ACAS Code of Practice on Disciplinary and Grievance Procedures (2015)

28. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) applies to claims of unlawful deduction from wages pursuant S.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and Schedule A2.
29. The tribunal may increase or decrease an award by up to 25% if it considers it just and equitable to do so if the employer has unreasonably failed to comply with a relevant code of practice relating to the resolution of disputes, this includes the ACAS Code of Practice on Grievance Procedures.

Conclusion

30. In applying the relevant law to my findings of fact I reach the following conclusions in respect of each of the issues identified at the outset of the hearing.

Unlawful deduction from wages

Was the claimant entitled to receive an increase in his pay from 23 August 2022 until the end of his contract following him completing 1 year of an apprenticeship?

31. Having found that the claimant began his apprenticeship on 23 August 2021, I find that he was entitled to receive an increase in his pay from 23 August 2022 onwards. This is confirmed by the National Minimum Wage Regulations 2015 and the commitment from Ms Hatfield of the respondent that his wage should increase to £6.83 per hour.

32. During the first year of his apprenticeship the claimant received £10,000, that is £192.31 gross per week or £38.46 gross per day.

33. I find that from 23 August 2022 onwards, the claimant was entitled to receive payment of £256.13 gross per week or £51.23 gross per day.

Did the respondent make an unauthorised deduction from wages by withholding payment of that increased wage in August 2022 and/or September 2022?

August 2022

34. In August 2022, the claimant should have received the following:

- 16 days at £38.46 gross per day and 7 days at £51.23 gross per day =
- £615.36 + £358.61 = £973.97.

The claimant received £857.65. This is a shortfall of £116.32.

September 2022

35. In September 2022, the claimant should have received the following:

- 15 days at £51.23 and 2.3 days of accrued but untaken leave at £51.23 gross per day =
- £748.45 + £117.83 = £866.28.

The claimant received £848.26. This is a shortfall of £18.02.

36. I conclude that the respondent made an unauthorised deduction from wages by failing to pay the claimant the full amount of wages due between 1 August 2022 and 21 September 2022 and is ordered to pay to the claimant the sum of £134.34 being the total gross sum deducted.
37. I understand that no tax will be due on this sum and that the employee's national insurance contribution would be nominal. The respondent will be entitled to deduct the national insurance contribution before payment to the claimant and to ensure that the national insurance contribution is paid directly to HMRC.

ACAS Code of Practice

38. The claimant made several attempts to resolve his pay dispute without litigation. This included email correspondence and a formal grievance. The respondent failed to reply to the queries. This is unfortunate as the matter could have been simply and swiftly resolved possibly with the assistance of Ms Hatfield to carry out the necessary payroll checks. The claimant is a reasonable man and I consider he would have engaged with any process to resolve this dispute and would have accepted his pay being corrected even if the sums were not quite the same as he had personally calculated them.
39. I heard from the claimant about the steps he had followed to try to resolve his pay dispute. I did not hear from the respondent but they had not filed a response or elected to play a role in the hearing and as such I resolved this matter without their further involvement.
40. I conclude that the wages due should be increased by 20% to reflect the respondent's failure to engage with the grievance and so comply with the ACAS Code of Practice. I do not award the full 25% as I recognise that the claimant had left employment when

he raised his grievance albeit that was not a total bar to the respondent engaging with him.

Summary

41. As set out above, the respondent is ordered to pay to the claimant the following sums:

Claim	Sum ordered
Unpaid wages	£134.34 gross
Failure to comply with ACAS Code	£26.87
Total	£161.21

Employment Judge Musgrave-Cohen

26 June 2023