



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Piekieniak

v

**1. Phoenix Healthcare Ltd
2. Rentacar 24/7 Ltd.**

Heard at:

Watford

On: 31 March 2023

Before:

Employment Judge Forde

Appearances

For the Claimant: Mr Isaac, representative

For the Respondent 1: Mr Hussein, Director

For the Respondent 2: Mr Ahmed, Director

JUDGMENT

The judgment of the tribunal is that:

1. The respondents made unauthorised deductions from the claimant's wages by failing to pay the claimant his wages due and are ordered to pay the claimant the sum of £2,912.19 in respect of 323.58 hours worked but not paid by them. The respondents are liable to pay the sum on a joint and several basis.
2. The First Respondent is ordered to pay the claimant the additional compensation of £810 pursuant to s.38 Employment Act 2002 for failure to provide the claimant with a written statement of employment particulars.

REASONS

Claims and issues

1. The claimant claimed unauthorised deductions from wages in relation to arrears of pay. In the claimant's schedule of loss, he also sought an additional four weeks' pay under s.38 Employment Act 2002 for a failure to provide him with a written statement of employment particulars.

Procedure, documents and evidence

2. The claimant, who is dyslexic, gave evidence and was represented by Mr Isaac who was formerly a Company Director. Mr Hussein gave evidence for the First Respondent and Mr Ahmed for the Second Respondent. All had provided witness statements. In addition, there was an unsigned but dated statement from Ms Mariam Khan who was formerly employed by the First Respondent and who asserted that she used to manage the First Respondent's carers and drivers rotas. Ms Khan did not attend the tribunal to give evidence. Further, her statement had been provided to the claimant and the tribunal two days before the hearing meaning that it was late.
3. While it was the case that the admission of Ms Khan's late statement opposed I allowed the statement to be admitted into evidence subject to the warning that the amount of weight or credence that I could apply to the statement would be tempered by the fact of Ms Khan's non-attendance. However, my decision to admit the statement was based, having read the statement, on my view that the statement concerned a very narrow issue within the claim and that provision of a statement would not have caused undue prejudice to the claimant who had the statement and was in a position to address its contents, and because it was in accordance with Rule 2 (the overriding objective) of the 2013 Rules and in the interests of justice to do so.
4. There was an agreed bundle prepared by Mr Isaac on behalf of the claimant which had been agreed between the parties. The bundle ran to 249 pages.

Fact findings

5. This is an unusual case in that the claimant asserts and it is agreed that he worked for both respondents and did so for the majority of his employment.
6. The claimant was employed as a driver by the First Respondent and his employment started on 2 May 2021. His job for the First Respondent was to drive its carers from job to job. At times the claimant was not busy doing the First Respondent's work, he was directed to work for the Second Respondent for whom he provided support to the maintenance of the Second Respondent's cars.
7. The First Respondent was an agency that provided carers and the Second Respondent was a motor vehicle hire business.
8. In evidence, the claimant stated that he was unable to use the First Respondent's system for logging hours worked which was by way of an app located on his mobile phone. Although disputed by Mr Hussein I find that the claimant was unable to use the app and that Mr Hussein was aware of this. In the early days of his employment, the claimant was sent WhatsApp messages by Mr Hussein or others under his direction and control which told him which carers to collect and which time and where they should be taken to.
9. Later on in his employment the claimant was given a sheet which showed the times, names and postcodes and addresses of the carers that he was to

pick up. It was Mr Hussein's evidence that this sheet was a sheet to log and identify when any incidents concerning the car had occurred, for instance, where a parking ticket had been issued. However, Mr Hussein was unable to identify a document within the bundle which supported what he was saying or any policy underpinning the use of the document concerned which is described as an activity log and examples of which can be found within the bundle between pages 196 and 249.

10. The claimant described that having driven a carer to a job he would wait for the carer close to the drop off point and then collect the carer and drive to their next job. He would then return the carers home, after which he would then take the car back to the First Respondent's place operation, pick up his own car and drive home. It was the claimant's case that the course of work that I have described caused gaps to occur during the course of his working day and this was a matter of contention between the parties in evidence. However, and for the reasons that I shall set out later on in this judgment, I do not find that this was an issue that had to consider in reaching my decision.
11. In respect of the Second Respondent, the claimant says and it is not in dispute, that the Second Respondent is a franchise of Hertz Car Rental. The claimant explained that he used to work for the Second Respondent and would travel there in his own car. Whilst working for the Second Respondent he would undertake such jobs as washing and cleaning rental cars inside and out, checking the lights, oil, water, windscreen washer, refuelling where necessary and driving he car to a local garage to ensure that it had a full tank of fuel. He would also be re-tasked with driving a rental car to a client on occasion and described how that would work.
12. The key issue in the hearing was the method by which the claimant recorded his work. I have already described the claimant was unable to undertake this task by way of the app provided to him by the First Respondent. The claimant describes that at the beginning of his employment and given the informality as to the way in which he was provided information pertaining to the jobs that he was to undertake, he used to record his hours on paper, photograph the paper and then WhatsApp them to Mr Hussein or one of the office team. This gave rise to his expectation that he would be paid on the basis of the hours submitted. However, there was a point in his employment, around June, when the claimant was not being given any payslips. It is not in dispute that Mr Hussein had told him where to access his payslips but it is the claimant's evidence that he was never able to do this. He attributes this in part to the failure of the app and part to his dyslexia which he maintained in evidence that he had brought to the First Respondent's attention at the beginning of his employment. While this was disputed by Mr Hussein, I prefer the claimant's evidence as to when Mr Hussein was informed of the claimant's dyslexia because it was consistent with his account of what had happened when it became clear that the claimant was unable to operate the First Respondent's app. Accordingly, I find that the claimant was not provided

with his payslips for the period from June until the termination of his employment.

13. Concerned as he was at the non-provision of payslips, the claimant decided to keep his own records of the hours he worked.
14. By September, the First Respondent had moved its offices from central High Wycombe to a Portacabin near to where the Second Respondent was located at the Wycombe Air Park. Around this time, the claimant made enquiries of the First Respondent's office manager who happened to be his daughter Kelly. He asked his daughter how many hours he had worked. At the time of his enquiry Ms Piekieniak was in the company of Mariam Khan. The claimant describes that Ms Khan had access to the payroll information and that she had disclosed to him that he had worked just under 400 hours that month. However, At the end of that month the claimant received his pay and with it he felt that he had been underpaid.
15. In due course he challenged Mr Hussein about not being paid what he believed he was due and Mr Hussein asserted that the difference in what the claimant had been paid was due to the claimant over claiming for the amount of time he was due. Specifically, Mr Hussein asserted that the claimant was not entitled to be paid for the time between the carer seeing her last client and the time it would take for him to return the First Respondent's car to base. In his witness statement, Mr Hussein acknowledged that a conversation took place between him and the claimant on this subject. He then goes on to say that the hours worked and the wages paid were checked by others and by him to confirm that they were accurate. He then went on to say that payslips were requested from him which were printed and hand delivered by him (Mr Hussein) to the claimant in person.
16. What is not in dispute was that the claimant's employment ended with the First Respondent in the autumn of 2021. From October 2021 the claimant received payslips from the Second Respondent and it is also around this time that the claimant was enrolled into a pension scheme without consultation or information being provided to him of the same.
17. What follows on is a period of time which the claimant attempts to engage Mr Hussein in respect of monies due and payable to him, outstanding payslips and any further pay information that could be provided to him. However, the claimant's efforts in this regard were fruitless as far as he was concerned. Although disputed by Mr Hussain I find that the claimant did as much as he could to find out more about his payments. I base my findings on the evidence presented to me and on my evaluation of the evidence that I heard from the claimant, Mr Hussain and Mr Ahmed.
18. Around 15 February 2022 the first respondent terminated the claimant's employment. By that time the matters in dispute had not been resolved.
19. Specifically, I noted that the statements of Mr Hussein and Mr Ahmed were more or less identical save in respect of one or two minor adjustments.

When I asked Mr Ahmed is Mr Hussein had prepared his statement he confirmed that he had. Further, in respect of the second respondent's case, Mr Ahmed was almost entirely reliant on the evidence of Mr Hussain. I found that the first respondent was entirely responsible for payments made to the claimant on behalf of both respondents due to the fact that the respondents shared the payroll software or system through which the claimant was paid. I find that the payroll fell within the control of the first respondent and of which Mr Hussein was the sole shareholder and director and was the person with whom the claimant had the most significant interactions as regards his pay and other matters.

20. Further I find that evidence of the two respondent directors to have been unreliable. When giving oral evidence Mr Hussein was prone to making broad brush commentaries about working practices within the respondent without providing any evidence to support what he was saying and I find that he did this to support the respondent's case. Accordingly, I considered that it was appropriate to treat what Mr Hussain said with considerable care.
21. The bundle contained contracts for both respondents which were again almost identical and unsigned by the claimant. In evidence, Mr Hussain stated that it was the responsibility of his office manager to issue the claimant with the contract and that he certain that this had been done because there were procedures in place which would ensure that the contract had been issued. It was the claimant's position that he had never seen either contract and that he did not recognise the procedure that Mr Hussein spoke to. Based upon my earlier findings as to the reliability of the evidence presented to the tribunal I preferred the account given by the claimant was appeared to me to be cogent and credible. The same evaluation applies equally to the second respondent and the evidence that I heard from Mr Ahmed.
22. It follows that I find, on the balance of probabilities that the claimant succeeds in his claims of unlawful deductions against the both respondents on a joint and several basis and that the succeeds in his claim for a failure to provide written particulars of his employment against the first respondent only because I find that the first respondent was responsible for the issuing of the contracts to the claimant. I have find the it would be appropriate to award the claimant the equivalent of two weeks' salary in respect of the failure to provide him with written particulars of his employment. I have set out above the basis upon which I have determined the amount due and payable to the claimant in respect of his claim of unlawful deductions from his wages.

Employment Judge Forde

Date: 26 June 2023

Case Number: 3304997/2022

Sent to the parties on: 26 June 2023

For the Tribunal Office