



EMPLOYMENT TRIBUNALS

Claimant: Mr P Haden

Respondent: Everything Deserts Foodservice Ltd (1)
JL Drinks Ltd (2)

Heard at: Birmingham (by CVP)

On: 30 June 2023

Before: Employment Judge

Appearances

For the claimant: in person

For the respondents: no attendance

JUDGMENT

1. The Claimant's claim of unlawful deductions is well-founded and succeeds against the second Respondent. He is entitled to **£999.88 gross**.

REASONS

Claim & Procedural History

2. The Claimant contacted ACAS on 29 September 2022 and a certificate was sent on 26 October 2022.
3. By a claim form presented on 13 November 2022, the Claimant brought claims against Everything Deserts Foodservice Ltd and JL Drinks Ltd for arrears of pay. The Claimant's particulars included:

My previous employer owes me a total of £999.88 In unpaid wages (£200.00 remaining from my pay that was due to be paid to me on 10th August 2022, and £799.88 that was due to be paid to me on 10th September 2022). I have raised a claim against both of my previous employers company's, as my payslip states that I worked for Everything Desserts Foodservice Ltd, but I spent my last two months, as per my previous employers instructions, working for his other company JL Drinks Ltd.

I initially tried to email my previous employer personally to resolve the issue, and then contacted ACAS to engage in early conciliation, but there has been no response to either. EC certificate numbers have been attached (R243020/22/64 and R23581 9/22/77).

4. On 15 November 2022, notice of claim was sent to the Respondents. This included notice of the hearing today.
5. The Claimant submitted a schedule of loss dated 6 December 2022.
6. It appearing that the claim may not have been sent to an address where it would have come to the attention of the second Respondent, the claim was re-served on 29 December 2022.
7. Also on 29 December 2022, notice was sent to the first Respondent under rule 21, saying that no response had been presented within the required time and it might only participate to the extent permitted by an Employment Judge.
8. No response was received from either Respondent, within the time permitted, or at all.
9. On 27 June 2023, the Tribunal re-sent the letters of 15 November 2022 and 29 December 2022 to both Respondents by post at their registered addresses.
10. Neither Respondent attended the hearing today.

Evidence

11. I was provided with a witness statement by the Claimant and he gave oral evidence under affirmation. The Claimant also produced payslips and messages he had exchanged with Mr Kooner.

Facts

12. The Claimant was employed by the first Respondent from 2 September 2020 as Warehouse Manager, at premises in Dudley.
13. From the beginning of 2022, there were numerous occasions on which the Claimant's wages were late or short and had to be made up subsequently. This caused him to worry about the financial security of the Company and his position.
14. In May 2022, Mr Kooner, owner of the first Respondent, told the Claimant he was closing down the business as he had sold the name and customer base. When this happened, the Claimant would be transferred to work for another business owned by Mr Kooner, namely the second Respondent, based at premises in Kingswinford.
15. On or about 1 June 2022, the Claimant was transferred and went to work for the second Respondent. He carried out the same role for the second Respondent as he had for the first, namely Warehouse Manager. He also had some additional duties with respect to sales. Despite the transfer, the Claimant's payslips continued to show the name of the first Respondent. When the Claimant queried this with Mr Kooner, he was told not to worry and that the name did not matter.

16. Despite the assurances given, the Claimant was still concerned about the security of his position and looked for alternative employment.
17. On 15 August 2022, the Claimant gave notice with immediate effect.
18. The Claimant was not paid for the last weeks of his employment and nor were the employer contributions to his pension made. There was a total shortfall of £999.88.

Law

19. So far as material, section 13 of the **Employment Rights Act 1996** (“ERA”) provides:

13 Right not to suffer unauthorised deductions.

(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 worker’s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

Conclusion

20. The Claimant’s employment transferred to the second Respondent on or about 1 June 2022. This occurred by way of contractual novation, the parties having agreed that his employment would be taken over by another of Mr Kooner’s businesses. Had I not found there was contractual novation, then I would have reached a conclusion that the Claimant had new employment with the second Respondent.

21. The Claimant received less than was properly payable with respect to ordinary pay and employer pension contributions as at the termination of his employment on 15 August 2022. There was a shortfall of £999.88, the calculation of which I accept is correctly set out in the schedule of loss.
22. The Claimant suffered an unlawful deduction and is entitled to **£999.88**.
23. Had I not construed the claim as one for unlawful deductions, I would have found this to be a breach of contract claim, with the same amount being due as outstanding on termination.

EJ Maxwell

Date: 30 June 2023