



EMPLOYMENT TRIBUNALS

Claimant: Mrs Ghada Al-Naimi

Respondent: Buildmaster Construction Services Ltd

Heard at: London South, in public, by CVP

On: 21 June 2023

Before: Employment Judge Rice-Birchall (sitting alone)

Representation

Claimant: In person

Respondent: Mr T Hussain, Litigation consultant

RESERVED JUDGMENT

The Claimant has suffered unauthorised deductions from her wages and is awarded the sum of £12000 gross payable by the Respondent.

REASONS

Background

1. The claimant presented a claim to the Employment Tribunal on 14 January 2023 following a period of early conciliation between 2 and 6 January 2023. The claim raised a complaint of unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 (ERA) from the period between June 2022 and December 2022. The respondent denies the claim.

2. The claim is against the claimant's employer, a limited company of which she is company secretary. Her husband, Mr Ahmad Al-Naimi is the sole director.

3. There is significant ill-feeling and hostility between Mr and Mrs Al-Naimi arising from their ongoing divorce and financial settlement proceedings. It was necessary for the Tribunal to clearly set out the parameters of the hearing and to remind the parties of the issues to be determined.

Respondent requests to postpone/stay

4. The respondent sought a postponement request on 23 February 2023 and again before the hearing but these were refused by Employment Judge Perry and Acting Regional Employment Judge Balogun respectively.
5. In any event, the respondent made a further postponement request and/ or a request for the claim to be stayed at the outset of the hearing on the basis that the claimant's previous claim, which was based on earlier deductions, and in which she had been successfully awarded arrears of pay under section 13 ERA, had been appealed to the Employment Appeal Tribunal.
6. The appeal had been rejected by Judge Susan Walker on the basis that the appeal disclosed no reasonable grounds for bringing the appeal. The respondent was therefore referring to an application under rule 3(10) of the EAT Rules.
7. The Tribunal explained to the parties that whether or not to stay proceedings in such circumstances was at its discretion. There is no automatic right to stay proceedings where a matter of law is appealed to the EAT.
8. In the circumstances, and considering the overriding objective to deal with claims fairly and justly and without undue delay, the Tribunal decided that the claim should not be stayed and that the hearing should proceed. Reasons were given orally to the parties during the hearing.

Claimant's application to amend

9. The claimant included, in correspondence dated 1 June 2023, an application to amend her claim to include deductions made between January and May 2023, May 2023 being the latest available payslip at the date of the hearing, these being subsequent months in which she had suffered a deduction following her claim being submitted. The respondent objected to the application to amend on the basis that there had been a new contract started with the claimant, albeit oral, and a "partial" dismissal and therefore the claim was out of time as it should have been made within three months of the partial dismissal. This point was not raised in the respondent's defence.
10. The Tribunal allowed the amendment application on the basis that this was a series of deductions and so any new claim would not be out of time; that the respondent could not point to any prejudice in proceeding on that basis; and that to allow the amendment was likely to avoid a further Tribunal claim being submitted by the claimant. The Tribunal therefore considered that to allow the amendment application was in the interests of the overriding objective in that it avoided delay, was an efficient way to deal with proceedings and would save expense. Oral reasons were given at the hearing for this decision.

The issues

11. The Tribunal explained the issues to the parties as follows: what was the agreement as to payment of wages; was it varied; what was the pay date; what is owed? More formally: what was properly payable to the Claimant, what was she paid, was there any shortfall between the two and did that amount to an unauthorised deduction from wages?

The evidence

12. The Tribunal had the following documents: the claim and response; the claimant's bundle of documents and her witness statement; the Respondent's bundle formed of a main bundle and two supplementary bundles and Mr Al-Naimi's witness statement consisting of ten paragraphs which stated that he also relied on his previous witness statement dated 10 October 2022 which had been produced in relation to the previous hearing referred to above. The Tribunal also read that statement.

13. The Tribunal heard evidence from the claimant and Mr Al-Naimi on behalf of the Respondent, and oral submissions from both parties.

Findings of fact on the balance of probability

14. The claimant is the wife of Mr Al-Naimi, who is the sole director of the respondent. Divorce proceedings are ongoing between the claimant and Mr Al-Naimi.

15. The claimant has been employed since 2002 as a company secretary for the respondent. At present, she is suspended from that role as a result of allegations of gross misconduct. She does not have any written contract of employment or a statement of terms and conditions of employment.

16. The claimant was paid monthly in arrears on the last day of the month. The claimant's position is that for the period of time that this claim is concerned about, that is June 2022 to May 2023, her basic salary was agreed to be £2,400 per month gross and that from June 2022 onwards it was paid at a reduced amount without her agreement. In fact, she had received reduced pay from October 2021, after furlough ended, but the alleged deductions prior to June 2022 were the subject of a previous employment tribunal claim.

17. The total amount the claimant should have received as salary during each month of the period in question was £2,400. In fact, she received £1,400 in each relevant pay period, leaving a shortfall of £1,000 per month and totalling a £12,000 shortfall over a twelve month period (June 2022 to May 2023). The respondent did not seek to deny that these were the payments made and that £2,400 had been the salary which had previously been paid.

18. There was no evidence before the Tribunal to indicate that the Claimant had, prior to the reduction in her salary, signified in writing her agreement or consent to the reductions, nor were there any written documents indicating that her entitlement to salary had been varied. Indeed, both parties agreed that there was nothing in writing as to the variation of salary.

The law

19. Unauthorised deductions from wages are governed by Part II of the Employment Rights Act 1996 ("ERA"). Section 13 ERA prevents an employer from making any deduction from the wages of workers unless it is:

- a) authorised by statute. This enables the employer to deduct from wages the PAYE tax and National Insurance payments as required by law or payments following a court order;
- b) authorised by a "relevant provision in the contract". There is no requirement that the term of the contract should be in writing, and the term in question can be an implied rather than express term. However, it is necessary

for the employer to have notified the worker in writing of the existence of the term before making the deduction; or
c) previously agreed in writing by the worker that the deduction may be made.

20. It is important to note that a), b) and c) set out above are the only methods by which a deduction from wages may be authorised. Specifically relevant to this case, this may be by agreement in writing or by variation of contract. Where the deduction is said to be authorised by an agreed variation of the contract, although that agreement does not need to be in writing, it must be communicated in writing to the employee.

21. Where the total amount of any wages that are paid by an employer to a worker is less than the total amount of the wages that are properly payable to the worker on that occasion, the amount of the deficiency will be treated as a deduction made by the employer from the worker's wages.

22. Under section 23 ERA, a worker can make a claim to the Employment Tribunal asking for a declaration that the employer has made unauthorised deductions and an order that the employer repay the sums deducted. To decide whether there has been an unauthorised deduction, the Tribunal will have to consider the facts and, if necessary, decide what the contract meant. The Tribunal claim must be made within three months of the date of the deduction or, if the worker has made a payment to the employer, of the date when the payment was made, subject to allowance for the period of time that the matter is being dealt with by ACAS under the Early Conciliation process.

23. Under section 23(3) ERA, if the employer made a series of deductions, the time limit runs from the last deduction. In this situation, a claim could be made for deductions going back more than three months, eg for an ongoing reduction of wages which has not been agreed.

Conclusions

24. The respondent's position was that part of the claimant's role was redundant, albeit that there had been no discussions around this, nor any paperwork to evidence that position. It was the claimant's case that there had been no such discussions. The Tribunal found the claimant's evidence to be credible in this regard as there was no contemporaneous documentation whatsoever to support the respondent's position, and even according to its case, the claimant remained "partially" employed, and was suspended.

25. In the alternative, the respondent sought to argue that the claimant had not suffered any unauthorised deductions from her wages as she had not done any work and was therefore not entitled to any wages. The respondent confirmed however, that there was no contract which indicated that the claimant was only paid for the work done, and there was a clear and consistent pattern of the claimant having been paid £2,400 in the past.

26. The respondent also sought to argue that the claimant was legally dismissed and she was re-employed on new terms and conditions which entitled her to lower pay. Again, none of this was evidenced by any documentation and the respondent sought to argue that it was a technical argument only. The

argument lacked credibility and the claimant denied that there had been any conversations around such a change to her terms and conditions. In any event, there was nothing in writing to support this position.

27. Finally, in his October statement, Mr Al-Naimi sought to argue that the claimant's gross misconduct had the effect of dismissing her from the respondent. Again, there was no documentary evidence to support this position and indeed the respondent had continued to pay the claimant, albeit at a lower rate of pay.

28. The Tribunal is satisfied that nothing about any alleged variation, or dismissal, or redundancy, was confirmed in writing. Therefore, the deduction was not authorised in terms of section 13 and the amount of the deduction is recoverable by the claimant.

29. Whether or not the claimant agreed to vary her contract, which she in any event denies, a verbal agreement would mean that the statutory conditions laid out in section 13 ERA would not be met and she would still be entitled to recover the difference in pay.

30. What was properly payable to the Claimant was £2,400 per month gross. During June 2022 to May 2023 she received less than was properly payable, as she received £1400 only. The reason for those deductions does not fall within section 13 ERA as set out above.

31. In the circumstances, the reduction of the Claimant's wages during June 2022 to May 2023 amounts to a series of unauthorised deductions of £1000 gross per month and she is awarded the sum of £12,000 gross payable by the Respondent.

Employment Judge Rice-Birchall

Dated: 07 July 2023