



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr Dean Manfield

AND

Respondent
B R Rail Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY BY VIDEO (VHS) ON 27 July 2023

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr N Jones, Solicitor

JUDGMENT

The judgment of the tribunal is that the claimant's claim for unlawful deduction from wages is partially successful and the respondent is ordered to pay the claimant the sum of £397.80.

RESERVED REASONS

1. In this case the claimant Mr Dean Manfield brings monetary claims for unlawful deduction from wages against his ex-employer B R Rail Limited. The respondent denies the claims.
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by video (VHS). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 91 pages, the contents of which I have recorded.
3. I have heard from the claimant. I have also heard from Mr Adnan Mumtaz, the respondent's finance director, for the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The Facts:
6. The claimant was employed by the respondent rail company as a Project Manager from 6 December 2021 until 18 November 2022. He was paid a salary of £45,000 per annum, together with overtime. In order for overtime to be paid, the overtime had first to be authorised

- by the claimant's line manager, and subsequently verified as having been worked. The claimant's contractual notice period was one month.
7. As a result of financial pressures, the respondent decided to terminate the claimant's employment. He was informed on 17 November 2022 that his employment would be terminated with immediate effect on the following day, with one month's pay in lieu of his contractual notice period of one month.
 8. On 30 November 2022 the claimant submitted a claim for final overtime payments which were due to him. This consisted of four elements. 10 hours were claimed for 29 October 2022 at £43.27 per hour (£432.70). 10 hours were claimed for 10 November 2022 at £32.45 per hour (£324.50). Two hours were claimed for each of 17 and 18 November 2022 at £21.63 per hour (£43.26 for each of these two days). On 1 December 2022 Mr Mumtaz, the respondent's finance director from whom I have heard, wrote to the claimant confirming that he would be paid for this overtime together with the following three payments: payment for 10 working days in November 2022 amounting to £1,730.80; payment for 3.2 days of accrued holiday entitlement of £559.05; and payment of one month's notice pay of £3,750.00.
 9. These payments totalled £7,176.07 gross pay. Mr Mumtaz also agreed a claim of £448.00 for seven months of mobile telephone expenses at £64.00 per month. These payments were made in two instalments. The first payment of £3,426.07 of gross salary together with the £448.00 expenses was paid on 1 December 2022. The remaining £3,750.00 for the one month's notice was paid on 19 December 2022. The parties also reached agreement that the claimant could retain his laptop for a payment of £500.00 and this was deducted by consent from the one month's notice pay.
 10. The respondent's position is that no further payments were due to the claimant.
 11. The claimant's position is that he has not been paid for the following seven items which have been unlawfully deducted from wages otherwise due to him. I deal with each of the seven items in turn.
 12. First, the claimant claims five hours of overtime for May 2022 at £34.00 per hour. He had claimed 15 hours overtime for this period, but his manager had only authorised the payment of 10 hours which the respondent then paid. The respondent has refused to pay this amount being the balance of five hours overtime pending confirmation of authorisation. The claimant says that he recalls that it was authorised verbally, but he accepts that there is no written evidence that these extra five hours were authorised.
 13. I find that the claimant has not discharged the burden of proof and has not established on the balance of probabilities that this additional five hours of overtime was authorised, and that element of the claimant's claim is dismissed.
 14. Secondly, the claimant claims £82.27 for an unpaid phone bill in May 2022. In fact, the amount on the phone bill is £66.24. The respondent asserts that this was already covered in the claimant's claim for seven months of phone bills at £64 per month totalling £448.00. The claimant now accepts that the expenses for this phone bill have already been paid. I therefore also dismiss this element of the claimant's claim.
 15. Thirdly, the claimant claims for "£757.60 underpaid hourly rate August to September 2022". The respondent does not understand this claim and repeats that it has already paid the claimant for the claims he raised in respect of August and September 2022.
 16. The claimant explained today that he charged for 10 hours' overtime on each of 26 August, 2 September and 9 September 2022 but mistakenly did so at the rate of £10.81, when his normal hourly rate was £21.63 and at £32.45 when at time and a half. He claims the differential between what he says was the mistaken rate and his normal hourly rate, which is now a claim for 30 hours at the differential of £10.82, being a total £324.60.
 17. It is clear that the claimant claimed (and was paid) at the lower rate for these hours, which were included on a mini spreadsheet for expenses and overtime claimed on 28 September 2022. The parties agree that this mini spreadsheet was submitted by the claimant's manager after the two of them had discussed and agreed the claim. In other words, the respondent asserts that any further payment has not been authorised by the claimant's manager.

18. I find that the claimant has not discharged the burden of proof that he worked these hours at the higher rate, nor that it had been authorised by his manager, and I therefore dismiss this element of the claimant's claim.
19. Fourthly, the claimant claims £85.43 for unpaid expenses for September 2022. No documentary evidence has been adduced in support of this claim. It became clear during this hearing that the claimant in fact claims £75.00 for expenses then, which the respondent concedes is due. I therefore find that the claimant succeeds in this element of his claim limited to £75.00.
20. Fifthly, the claimant claims £280.55 unpaid expenses for July 2022. Having received documents in support of this claim, the respondent now concedes that this sum is potentially payable, save that £94.00 has already been paid for July 2022 expenses, and £11.00 of this claim relating to petrol was paid on a respondent's petrol payment card. The respondent therefore concedes that the balance of £175.55 is due. The claimant accepts that this analysis is correct, and I therefore find that the claimant succeeds in this element of his claim limited to £175.55.
21. The sixth and seventh claims are for unpaid phone expenses of £66.18 for January 2022 and £66.68 unpaid phone expenses for December 2021. The respondent contends that no claims have ever been made for these until the invoices appeared in the bundle of documents for this hearing. In fact, the invoices are for £66.18 and £81.07, and having now seen these invoices, the respondent concedes that these sums are also due.
22. The claimant commenced Early Conciliation with ACAS on 10 January 2023 and the Certificate was issued on 17 February 2023. The claimant presented these proceedings on 16 March 2023. The proceedings claimed unfair dismissal and unlawful deduction from wages. The unfair dismissal claim has already been struck out because the claimant lacked sufficient continuity of service to bring that claim. This judgment deals with the monetary claims by way of unlawful deduction from wages only, and not the alleged consequential loss as a result of the dismissal, which would have formed part of the claimant's unfair dismissal claim.
23. Having established the above facts, I now apply the law.
24. The Law:
25. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
26. Judgment:
27. For the reasons explained above I find that the respondent unlawfully deducted from the claimant's wages £75.00 for expenses in September 2022, £175.55 for expenses in July 2022, and two invoices for phone expenses totalling £147.25. The claimant therefore succeeds in his claim for these elements only, and the respondent is ordered to pay the claimant the sum of £397.80.

Employment Judge N J Roper
Dated: 27 July 2023

Judgment sent to Parties on 14 August 2023

For the Tribunal Office