Case Number: 2500491/2023

EMPLOYMENT TRIBUNALS

Claimant: **Miss K Bradley**

Respondent: **Billy Davidson NV Stables Ltd**

Heard at: **Teesside Employment Tribunal**

On: **27 July 2023**

Before: **Employment Judge Sweeney**

Representation

Claimant: **In person**
Respondent: **Billy Davidson**

JUDGMENT having been given on **27 July 2023** and a written record of the Judgment having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

WRITTEN REASONS

1. The Claimant commenced ACAS Early Conciliation on **03 January 2023**. An EC Certificate was issued on **14 February 2023**. She presented a Claim Form on **15 March 2023**, in which she claimed:

    a. Unfair dismissal
    b. Arears of pay

2. At the outset of the hearing, the Claimant withdrew the claim of unfair and confirmed that it could be dismissed. I was concerned only with the remaining claim of unlawful deduction of wages.

3. There was no agreement as to the content of the final hearing bundle. The parties were to have exchanged documents by **18 May 2023** and to have agreed the content of the bundle by **01 June 2023**. The Respondent had prepared the bundle. He objected to the Claimant introducing documents that were not contained in his bundle on the basis that she had not sent those documents to him by **18 May 2023**. She had attempted to do so by email on

that date but the email did not send, due to a lack of signal. When she realised this on **22 May 2023**, she sent the documents again and the Respondent received them. He had, therefore, received them before the date by which the bundle was to be finalised. However, he steadfastly refused to include them, maintaining the Claimant to be in breach of the orders. As it happened, his documents had not been received by the Claimant until after **18 May 2023**. This is because the Respondent posted his documents to her. Where he lives, the Respondent has a poor signal and does not trust sending documents by email. Therefore, both parties had tried to ensure their documents were received by the directed date but neither succeeded. Because the Respondent would not include the Claimant's documents, she prepared her own bundle. I admitted all the documents and in the end, I was referred to two bundles, even though there was much duplication. This was an unnecessary and unreasonable dispute generated by the Respondent.

4. The Claimant provided a witness statement in accordance with directions sent to the parties. However, in breach of tribunal directions, the Respondent did not prepare or send a witness statement. When asked why not, he said that he had not wanted to send one. When I explained that there had been a direction to do so, the Respondent said that he believed that he could nevertheless give evidence orally without having done so. The direction was clear: '*everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement*'. The Claimant did not object to the Respondent giving evidence without a statement, even though this might be to her disadvantage as she would not have advance notice of what that evidence was going to be. There being no objection from the Claimant, I gave Mr Davidson permission to give sworn witness evidence. Therefore, both parties gave oral evidence. Mr Davison did not challenge or ask any questions of the Claimant in relation to her evidence.

Facts

5. The Claimant was employed as a Groom by the Respondent from **31 October 2022** to **28 December 2022**. She had been contacted by Mr Davidson on **19 September 2022**, asking how her current job was going. She agreed to start on a month's trial having explained that she would need a full-time job and essentially a steady wage to be financially stable. It was of particular importance to the Claimant that she had a steady income as she would be giving that up to work for the Respondent. **Mr Davidson** said to her that some weeks she would work less than 30 hours and some she would work more but that he would pay her a set wage equivalent to 30 hours a week at £10 an hour so that matters balanced themselves out. The Claimant accepted this. Therefore, the agreement was that she would be paid £300 a week whether she worked 30 hours, or more or less in a week.

6. Every employer has a statutory obligation under section 1 ERA 1996 to provide an employee with written particulars of employment setting out essential terms

such as hours of work and pay. The Respondent did not do provide the Claimant with such a written statement. He says he was unaware of the requirement to do so. Written particulars stand as evidence of the agreement but is not the agreement itself.

7. The agreement reached consisted of what was said verbally and what was set out in writing. The only written reference to the terms is an email at **page 6** of the Respondent's bundle.

8. I find that the essential terms of the agreement (for the purposes of this hearing) were as follows:

    a. That the Claimant would work on average 30 hours a week, that some weeks might be more and some might be less than this.

    b. To reflect the Claimant's need for stability in pay, she would be paid a gross payment of £300 a week (subject to tax) whether or not she worked more or less than 30 hours in that week. This was arrived at by multiplying 30 hours by £10 an hour – the notional hourly rate.

    c. Payment would be weekly, on a Monday.

    d. The agreement to pay £300 a week irrespective of hours worked changed on **27 December 2022** from which point the Claimant was to be paid £10 an hour and only for the hours actually worked.

9. I arrive at this from the following evidence:

    a. The Claimant's written and oral evidence. She was a truthful and honest witness, in contrast to Mr Davidson, whose evidence I considered unreliable and confusing. A good example of his unreliable and confused evidence was his account of a payment to the Claimant on **19 December 2022** of £180. He initially said that the Claimant gave him the document at **page 8** of his bundle a week **before 19 December 2022**. Only when asked how that could be when the document referred to what had happened on 19 December, he agreed that it must have been handed to him after that date, explaining that he had earlier 'assumed' that she had.

    b. The email at **page 6** of the Respondent's bundle, which refers to the payment of wages in hand – determined as a payment in respect of 30 hours – before the Claimant started work

    c. The payslips at **pages 26-27** of the Respondent's bundle, which show a gross amount of £300 being paid for each week – consistent with the agreement being as the Claimant described it in her evidence.

10. I did not accept the Respondent's evidence that the payslips showed one thing but that the reality was quite different. This was not a complicated relationship. If he had wished to offer employment to an employee on the basis that she would be paid hourly and only for the hours worked, that he would pay her steadily but recoup wages at some (ill-defined) point in time, he could have set this out or explained it to her for her to agree. However, he never did. Further, I do not accept, as suggested by Mr Davidson, that there is any way of implying into what is written on **page 6** that he could thereafter adjust pay to reflect what was in fact worked each week.

11. The Claimant was provided with only three payslips during her employment. It is another statutory obligation of an employer to ensure that payslips are provided at or before the time at which any payment of wages or salary is made. The Claimant chased Mr Davidson for payslips. When she was eventually provided with them she noticed that each payslip was £11.44 short of what should have been paid.

12. On **21 November 2022**, the Claimant was paid £275. In accordance with their agreement, the gross payment should have been £300, leaving a shortfall of **£25.** On **28 November 2022**, she was paid £275. The gross payment should have been £300, leaving a shortfall of **£25.** On **05 December 2022**, she was paid £270, leaving a gross shortfall of **£30**. On **12 December 2022**, she was paid £270, leaving a gross shortfall of **£30**. On **19 December 2022**, she was paid £180, leaving a shortfall of **£120**.

13. On each of those occasions, the claimant was paid less than was properly payable (i.e. £300). There was no contractual authority entitling the Respondent to pay less than was otherwise properly payable or to make any deductions from the amount properly payable. It is right that the Claimant's hours varied and towards the end of her employment the hours reduced. I accept her evidence that this was not of her own choosing, that she was sent home by the Respondent. Again, the reason for the reduction in hours is not the issue in this case. The issue was what was the Claimant entitled to be paid in accordance with the agreement.

14. Although the agreement was that the Claimant was entitled to be paid for 30 hours a week whether she worked more or less than 30 hours a week, that arrangement changed in late December 2022. It changed because the Respondent sought to vary the agreement, so that, thereafter, the Claimant would only be paid for the actual hours worked. I accept the Claimant's evidence that this is precisely what happened. I accept that she had no option but to agree to this – whatever it was that led to this change of attitude by the Respondent, which was not an issue before me today.

15. This change was reflected in and evidenced by the Claimant's texts to the Respondent on **pages 21-22** of her bundle which the Respondent did not

respond to. This new arrangement, whereby she would be paid for each hour worked, came into effect on **27 December 2022**.

16. **On 28 December 2022** the Claimant sent a message to the Respondent to say that she would not be in the next day, **29 December 2022**. She resigned.

17. On the next pay day, which would have been **02 January 2023**, the Claimant was entitled to and was due to be paid **£255** gross. That is clear from the Respondent's own payslip of **06 January 2023**. In fact, she was not paid anything, leaving a shortfall of the **£255**.

Relevant law

18. Section 13 of the Employment Rights Act 1996 provides as follows:

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.

19. In an ideal world, a contract of employment will be set out in writing, identifying clearly and comprehensively the terms agreed between the parties. In practice that may not happen. There is no legal requirement for a contract of employment to be reduced to writing, although there is a statutory obligation on

employers, under section 1 Employment Rights Act 1996, to provide the employee with a written statement of particulars of employment. A contract may be partly oral and partly written or wholly oral. Terms may be expressly agreed or implied, for example, by conduct, by custom and practice or as a characteristic term. A term should not be implied merely because it is fair or merely because it is reasonable to do so. A term should not be implied which is inconsistent with the express terms of the contract.

20. It is usual for matters concerning wages to be agreed expressly between employer and employee. Where not reduced to a written agreement, establishing an oral term governing wages is a matter of assessing the relevant evidence as to what was said and taking account of any supporting documents.

Conclusions

21. The key issue is to determine what was properly payable under the contract of employment. This required me to determine the essential terms of the contract regarding payment. There was a dispute of fact between the parties as to what was agreed as to payment in this case. Having considered the evidence before me, I made the finding as set out in paragraph 11 above, namely that the agreement was that the Claimant would be paid the equivalent of £30 a week at the rate of £10 an hour whether or not she worked 30 hours a week. This was an important term for the Claimant who make it clear that she needed the stability of a steady income. The parties agreed to this on the basis that it would be a case of 'swings and roundabouts' in that it was always expected she would work around the 30 hours a week mark and it mattered not because whereas in some weeks she might work less than 30 hours, in other weeks she would work more. The parties proceeded on this 'swings and roundabouts' basis until **27 December 2022**.

22. Mr Davidson was, in my judgement, at the very least reckless as to the truth of matters or was not telling the truth as to the nature of the agreement. Whichever of the two, I was satisfied that the Claimant's account was truthful and was in fact reflected by the practice of paying her £300 every week. Mr Davidson contended that the agreement was always that she would be paid for each hour worked and that he paid her more because he was 'a good employer'. I simply did not accept that the payslips did not reflect the reality as Mr Davidson submitted. Nor did I accept that he was paying her £300 regularly 'because he was a good employer' and that they had agreed he could make a reckoning later based on the actual hours worked. Mr Davidson did not, in these proceedings at least, evince the slightest sign of being a good employer as he maintained. In any event, there simply never was any agreement that the Claimant would be paid £300 a week but that there would be a reckoning at some point in the future (of Mr Davidson's choosing) where he could pay the Claimant an amount based on the actual number of hours worked by her.

23. Having determined what the agreement was, I then determined what was properly payable on each pay date. I found that the amount properly payable up to the **27 December 2022** was £300 in respect of each week's work. On those occasions referred to in paragraphs 15 and 20 above, the amounts in fact paid were less than the amounts properly payable under the contract. This amounted to a series of deductions. There was no 'relevant provision' of the Claimant's contract entitling the Respondent to pay less than the amount agreed on those occasions. Having regard to section 13(2) Employment Rights Act 1996, there was no relevant provision comprised in any written term a copy of which the Respondent had given the Claimant on an occasion prior to the employer making the deductions. Nor was such a provision comprised in any term, whether express or implied, written or oral, the existence and effect, or combined effect, of which the Respondent had notified to the Claimant in writing on such occasion.

24. Therefore, referring back to paragraphs 15 and 20 above, the series of deductions amounted to a series of unlawful deductions consisting of:

- **£25**
- **£25**
- **£30**
- **£30**
- **£120**
- **£255**

25. The total amount deducted unlawfully is **£485**, which is the gross amount I order the Respondent to pay to the Claimant.

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Employment Judge Sweeney

Date: 29 August 2023