



EMPLOYMENT TRIBUNALS

Claimant: Mr G A Wontumi
Respondent: Ethos Family Care Services Limited
Heard at: London South Hearing Centre by CVP
On: 17/08/23
Before: Employment Judge McLaren

Representation

Claimant: In person

Respondent: Ms. E Mingle, Director

JUDGMENT

1. The claim for notice pay is dismissed on withdrawal by the claimant
2. The claim for unlawful deduction from wages does not succeed.

REASONS

Final Hearing

1. I confirmed that I have been provided with a number of documents by the claimant and I also heard evidence from him. The claimant was assisted by the services of an interpreter. At the outset of the hearing the claimant confirmed that he could communicate with the interpreter. The language is Twi.

2. I also heard evidence from Ms Mingle who is a director of the respondent. She sent in some additional documents at my request. These were further copy of the P 45, a copy of the payslip for the pay period including 27 November and a copy of the staff handbook.

Background

3. The claimant was a senior support worker. His employment began on 18 July 2022. The ET 1 states that the employment is continuing but it did in fact come to an end in February or March 2023 after the The respondent is described on the Companies House website as providing residential care activities for learning difficulties, mental health and substance abuse.

4. The claimant brought employment tribunal proceedings on 21 January 2023 this followed a period of ACAS conciliation from 10 December 2022 to 12 January 2023.
5. In his claim, the claimant brought claims for notice pay and other payments. That was set out in the detail of his claim form as being a claim for wages for the shift he was due to work in the week that he was injured and the difference between his full pay and statutory sick pay following injury at work together with the national insurance and tax deductions which the claimant says were deducted from him but not paid to HMRC.
6. In correspondence with the employment tribunal the claimant confirmed that he was seeking damages for loss of earnings as a result of personal injuries. He was aware, however, that that claim is outside the jurisdiction of the employment tribunal's and therefore he was looking into unlawful stoppages of his wages and termination of his employment.
7. The claimant had not indicated a claim of unfair dismissal on the ET1. In any event he has less than two years service and accordingly the tribunal has no jurisdiction to hear any such claim. As it was not formally brought as part of the claim I am not dismissing it, but I have explained the position to the claimant.
8. The claimant confirmed he had not understood what notice pay was and had not intended to bring that claim. His claim is for unpaid wages only. I confirmed I would not therefore address this

The issues

9. The claim is for unlawful deduction of wages pursuant to Section 13 of the Employment Rights Act 1996 (ERA). I must determine
 - a) whether the sums claimed are properly payable (set out what they are?
 - b) If so, has the employer made a deduction
 - c) If so, was that deduction authorised?

Findings of Fact

Terms of engagement

10. There was a dispute between the parties as to whether the claimant was a zero hours contract worker or not. There was also a dispute as to whether the claimant had or had not received a copy of the staff handbook. Having reviewed the staff handbook it does not in any event make any reference to what monies paid during sick pay.
11. I find that the claimant was not therefore given written terms of employment was not given any documentation about sick pay terms. However, I accept the

evidence of Ms Mingle that this is a business which pays statutory sick pay only for any period of absence. I find there is no contractual right to be paid full pay or part pay over and above statutory sick pay for periods of absence.

Events leading up to the claimant's absence

12. It is not disputed that on the 24th November 2022 the claimant was on duty taking care of two service users. At around 6 o'clock that day, very unfortunately, one of the service users attacked the claimant who was injured. The claimant ended up in hospital as a result of these injuries. The claimant tells me that this incident continues to have an ongoing impact on his life with eye and head injury problems.

Payment of wages for 27 November 2022.

13. The claimant provided a copy of the roster for the 21st to 27th of November. That shows that he was on duty on the 24th and the 25th. Both agree that he was paid in full for these dates.
14. The dispute arises in relation to 27 November when the claimant was also shown on the roster. It was the claimant's case that he had worked 24 hours on the rota at the time the incident occurred and he was due to work a further 24 hours that week (on the 27th) which he was unable to do because of his injury. He believed he should have been paid for this, although he accepts he was unable to work the shift because he was off sick.
15. Ms Mingle explained that while the roster is done from a Sunday to Sunday, this is to ensure appropriate cover. The payment periods is from Sunday to Saturday. The claimant accepted that 27 November, although that was shown on the roster, belonged to the next pay period.
16. As the claimant agreed that he was off sick and I found there was no right to an enhanced payment, the respondent was entitled not to pay him when he did not work.

Payments during sickness absence

17. The claimant had included in the bundle a series of sick notes. These show that he was unable to work as he was unwell from 2-16 December 2022. The next sick note covers the period 7 January to 7 February 2023. There is a sicknote for the 8 February to 8 March 2023 and another for the period from 3 March to 3 April 2023.
18. The claimant also provided me with a series of payslips that show that in week 36 (8 December 2022), week 37 (15 to December 2022, week 38 (22nd of December 2022) week 40 (6 January 2023, and week 41 (13 January 2023) he was paid £93.56. This is agreed to be statutory sick pay.
19. The claimant also provided a copy of his bank statement from 20 July 2022 to

10 February 2023. This shows that the last payment of full pay was on 2 December 2022. The claimant continues to be paid £93.56 until 20 January 2023. On 26 January, 3 February 10 February he is paid £73.69.

20. As I have found there was no rights to any payment over and above statutory sick pay the claimant had no right to be paid any additional money to these periods.

Tax and national insurance deductions

21. The claimant explained that after his accident he was told by his employer contact HMRC. During conversations with HMRC he was told that they had no record of the deduction for tax and national insurance had been paid by the employer. The claimant said had been given a reference number but did not produce any evidence of this.
22. Ms Mingle referred me to the P 45 which showed deductions which are consistent with the deduction shown on the payslips and told me that these had been paid appropriately.
23. On the balance of possibilities I accept the respondent's position. The claimant to prove his case and has not produced any evidence to back up his claim although he said that he had some.

Relevant law

Statutory sick pay

24. This is the minimum level of sick pay employers are obliged to pay to most employees who have been off sick for four or more consecutive days. The employer pays statutory sick pay (SSP) as if it were normal pay, having deducted tax, national insurance contributions and any other deductions normally made from pay, e.g. pension contributions, trade union subscriptions, student loan repayments and attachment of earnings.
25. Statutory sick pay is calculated on a weekly basis. There is a standard rate of SSP and for the period of the claimant's absence was £99.35 a week. ,

Deductions

26. The statutory prohibitions on deductions from wages are contained in Part II of the Employment Rights Act 1996 (ERA). The general prohibition on deductions is set out in s.13. A right arises where monies have not been paid which are "properly payable". There must be an actual failure to pay and it must relate to money that is due to the individual. If an individual enters into a written agreement and consents to making the deduction ,then the money is not due.

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.

.....
. (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

- 27. In applying the relevant law to my findings of fact I conclude as follows. There is no entitlement to be paid an individual is not at work because they are sick. The claimant was not able to work on 27 November because he was upset. His claim for unlawful deduction from wages cannot succeed because the money was not properly payable. There was no deductions.
- 28. The same applies to the monies he is claiming to top up his statutory sick pay for the period covered by sick notes. There is no contractual right to this money. The money was not properly payable and there is therefore no deductions.
- 29. On the balance of abilities I have found that the respondent did payable to HMRC money deducted from the claimant’s payslip.
- 30. For this reason I am dismissing the claims in their entirety.

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Employment Judge McLaren
Date: **17 August 2023**

JUDGMENT & REASONS SENT TO THE PARTIES ON:
Date: **6 September 2023**
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FOR THE TRIBUNAL OFFICE