



EMPLOYMENT TRIBUNALS

Claimant: Mr M McMullen
Respondent: Old Street Brewery Ltd
Heard at: East London Hearing Centre (by CVP)
On: 4 September 2023
Before: Employment Judge Jones

Representation

Claimant: in person
Respondent: no representation or appearance

JUDGMENT

1. The Respondent has made an unauthorised deduction from the Claimant's wages.
2. The Respondent failed to pay the Claimant in lieu of entitlement to annual leave.
3. The Respondent is ordered to pay the Claimant the following by way of remedy for his unlawful deduction of his wages:

Wages for November 2022 - £2,295.47
Wages for December 2022 - £2,295.47
20 days annual leave - £2,000.00

TOTAL = £6,590.94

4. The Respondent has paid the Claimant £1,575 which the Claimant accepts as part-payment of the wages.
5. The Respondent is ordered to pay the Claimant forthwith, the sum of **£5,015.94** as his outstanding wages.

REASONS

1. The Claimant brought a complaint of unlawful deductions of wages and failure to pay holiday pay.

Evidence

2. The Tribunal heard sworn evidence from the Claimant and considered all the documents provided. The Respondent failed to present a defence to the claim. The Respondent also failed to attend the hearing. The Tribunal confirmed that the Respondent received both the claim and the notice of hearing for today.
3. The Tribunal made the following findings of fact from the evidence before it.

Findings of Fact

4. The Claimant was employed by the Respondent from 15 November 2021 as a Creative Director. The Claimant left the Respondent's employment on 5 January 2023.
5. The Claimant was employed on a salary of £35,000, working 39 hours over 15 days per month. The Claimant was not paid for November and December 2022.
6. The Claimant produced copies of WhatsApp messages between him and Adam Green of the Respondent. The wages remain unpaid although the Claimant was paid 2 payments of £1,000 and £575 earlier this year. Further attempts to contact Mr Green have proved unsuccessful.
7. The Claim was served on the Respondent by post to Unit 1, Queen's Yard, London E9, which is the place where the Claimant worked and from which the Respondent operated. The Respondent has failed to acknowledge the Claim and no response was submitted within the time set out in the letter to the Respondent dated 18 May 2023, or at all.
8. Mr Green of the Respondent confirmed to the Claimant in a WhatsApp message that he had received the claim.

Law

9. Section 13 Employment Rights Act 1996 states that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
10. The statute also states that where the total amount of the 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 as a deduction made by the employer from the worker's wages on that occasion.

11. Regulation 16 of the Working Time Regulations states that a worker is entitled to be paid in respect of annual leave to which he is entitled under regulation 13 at the rate of a week's pay for each week of leave.
12. Rule 47 of the Employment Tribunals Rules of Procedure 2013 states that if a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence. The Tribunal also notes Rule 21 which states that where on the expiry of the relevant time limit set out in the letter which enclosed the claim, there has been no response presented, or any response received from the Respondent then the Tribunal shall decide whether a determination can be properly made of the claim or part of it. To the extent that a determination can properly be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. The Respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

Decision

13. It is this Tribunal's decision that it has sufficient information from the Claimant, including his live evidence today and his documents, to make a judgment in this case.
14. It is this Tribunal's judgment that the Claimant is entitled to be paid his outstanding wages. The Tribunal's judgment is that the Claimant worked the months of November and December 2022 but he was not paid wages for those months. The Claimant is owed net pay for those months.
15. The Claimant's contract with the Respondent stated at paragraph 9 that the Respondent did not recognise public holidays and that they were considered as normal working days. The Respondent is in the hospitality business. The Claimant took approximately 3 days off during his employment. He therefore claims the remaining 25 days as outstanding holiday pay as he was employed for approximately 13 months. The Claimant worked bank holidays as the Respondent required him to do so and because he was usually running special events at those times.

Judgment

16. The Respondent has made unlawful deductions from the Claimant's wages. The Claimant is entitled to 25 days holiday pay. The Claimant is entitled to his outstanding wages and money in lieu of annual leave accrued but untaken.
17. The Tribunal calculates the remedy due to the Claimant as follows:

18. The Claimant's payslips show that his net pay was approximately £2, 295.47.

Wages for November 2022 = £2,295.47
Wages for December 2022 = £2,295.47
Holiday pay – approximately £2,000.00

Total owed to the Claimant = £6,590.94
19. Amount paid to Claimant in lieu of outstanding wages: £1575.00
20. Balance outstanding £5,015.94.
21. The Respondent is ordered to pay the Claimant the outstanding sum of **£5,015.94** immediately.

Employment Judge Jones
Dated: 8 September 2023