



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Tina Gambling

v

Mitie Care & Custody Limited

Heard at: Watford

On: 31 July 2023

Before: Employment Judge Alliot (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms Sarah Harty (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim is dismissed.
2. The claimant is ordered to pay the respondent costs in the sum of £600.

REASONS

1. By a claim form presented on 2 March 2023 the claimant claims unauthorised deduction of wages and a claim for holiday pay.
2. The figures are not disputed in this case. It is agreed that between September 2019 and November 2020 the claimant was overpaid £2,686.59.
3. It is agreed that on 7 March 2021 the claimant signed a loan request form ("LRF") agreeing to repay the overpayment at £44.52 per month over 60 months. The claimant told me that her agreement was reluctant but agree it she did.
4. The LRF provided that in the event that the claimant departed from the company any outstanding amount would be deducted from the claimant's final payment.
5. The claimant resigned with immediate effect on 4 September 2022. £1,840.71 remained outstanding.
6. It is agreed that the claimant's final pay slip accurately records all sums due to the claimant for pay and holiday entitlement. The final pay slip deducted most of the outstanding amount but credited the claimant with £245.79 that was written off to her benefit.
7. Section 14(1) Employment Rights Act disapplies sec. 13 as regards deductions for overpayments.

8. Section 13(1)(b) disapplies sec. 13 where a worker has previously signified in writing her agreement to the making of the deductions.
9. In my judgment the claimant has no claim on both grounds and the claim must be struck out.
10. The claimant complained that others had been treated differently and had amounts owing written off. In my judgment that is irrelevant.

Costs

11. Rule 76 provides that I may make a costs order and must consider whether to do so where I consider that a party has acted unreasonably in the bringing of proceedings or the way that have been conducted or if the claim has no reasonable prospect of success.
12. The respondent has applied for solicitor costs in the sum of £3,196 and a brief fee of £600.
13. The claimant brought her claim on 2 March 2023. She told me she took advice from Acas and CAB and a free legal advice phone line on her home insurance. The claimant felt she had been treated unfairly and I do not consider the bringing of her claim to be unreasonable albeit she had no claim in law.
14. On 3 May 2023 the respondent wrote to the claimant setting out the law and making a costs warning. The respondent re-iterated its position on 17 May 2023 and 30 May 2023.
15. The claimant has 20 years experience in HR. In light of the clear and reasoned statements that she had no case in law I consider it would have been reasonable for the claimant to look into the issue and, had she done so, she would or should have realised she had no case and she should have withdrawn it. In my judgment the claimant has conducted the case unreasonably after 30 May 2023 in continuing to present a claim that had no reasonable prospect of success. I have no breakdown of solicitor costs after that date and I am not prepared to speculate.
16. I consider it is in the interests of justice for the claimant to pay some costs. The respondent's brief fee is £600 and I award that amount in costs. In my judgment it was totally unnecessarily incurred.

Employment Judge Alliott

Date: ...31 July 2023.....

Sent to the parties on:
13 September 2023

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For the Tribunal Office

