



EMPLOYMENT TRIBUNALS

Claimant: Mr Cann and Mr Rimmer

Respondent: Aquatic Chemicals Limited

Heard at: Bristol (by CVP)

On: 23 August 2023

Before: Employment Judge Murdoch

Representation

First Claimant: Mr Cann

Second Claimant: Mr Rimmer

Respondent: Did not attend

JUDGMENT

First claimant: Mr Cann

1. The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 in respect of the period 1 December 2022 to 8 December 2022 is well-founded. The respondent is ordered to pay to the first claimant the gross sum of **£646**.
2. The complaint of breach of contract in relation to car hire expense is well-founded. The respondent is ordered to pay to the first claimant the gross sum of **£270**.
3. The complaint of breach of contract in relation to notice pay for the period 9 December 2022 to 31 December 2022 is well-founded. The respondent is ordered to pay to the first claimant the gross sum of **£1354** (calculated as gross monthly pay of £2000 minus gross pay for 1-8 December 2022 awarded above).

Second claimant: Mr Rimmer

4. The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 in respect of the period 1 December 2022 to 30 April 2023 is well-founded. The respondent is ordered to pay to the second claimant the net sum of **£2297**.

REASONS

Introduction

1. The first claimant, Mr Cann, started employment for the respondent on 21 November 2022. His employment was terminated on 8 December 2022. The first claimant was employed by the respondent as a sales manager. The first claimant makes one unauthorised deduction of wages complaint in relation to unpaid wages from 1-8 December 2022, and two breach of contract complaints in relation to unpaid expenses for car hire and unpaid notice pay.
2. The second claimant, Mr Rimmer, started employment for the respondent on 1 January 1999. He is still employed by the respondent. The second claimant's role was in graphic design and print. The second claimant makes one unauthorised deduction of wages complaint in relation to unpaid statutory sick pay from 1 December 2022 to 30 April 2023.

The hearing

3. I heard the claim on 23 August 2023. Both claimants represented themselves and gave sworn evidence. As the claimants did not have witness statements, I took their ET1 form as evidence in chief, which they confirmed under oath to be true and accurate.

Preliminary matters

4. At the beginning of the hearing, before I heard any evidence, I dealt with the preliminary issue of the respondent's non-attendance.
5. I asked both the claimants when they last heard from the respondent. The first claimant stated that he had not heard from the respondent since he left the company in December 2022. He had tried contacting the respondent multiple times, including in writing and by phone, but to no avail. The second claimant stated that he had tried contacting the respondent multiple times since January 2023 (which is when he realised that he had not been paid by the respondent) but also to no avail.
6. I made sure that the address of the respondent was the same for service as it was on Companies House. I then made practicable enquiries by asking the clerk to call the respondent on both the respondent's landline phone number and mobile number. There was no answer. I noted that the Employment Tribunal had reached out to the respondent on multiple occasions by email, with no response, including on 28 July 2023, stating that under rule 21, because the respondent had not entered a response, that a judgment may now be issued.
7. I did not have any information to suggest there is a good reason for the respondent not attending or that the absence was beyond the party's control.

8. I therefore decided to proceed to hold the hearing in the respondent's absence. This is in accordance with the overriding objective, as set out in rule 2 of the Employment Tribunal Procedural Rules, which makes clear that we must deal with cases fairly and justly, including dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility, avoiding delay and saving expense.
9. I noted that the absent party is entitled to apply for the judgment to be reconsidered (under rule 70 of the Employment Tribunal Procedural Rules) whereby the judgment can be confirmed, varied or revoked if it is in the interests of justice to do so.

Issues for the Tribunal to decide

First claimant: Mr Cann

10. Having dealt with this preliminary matter, I agreed with the first claimant that the issues for me to decide in this hearing were:
 - a) Whether there had been an unauthorised deduction from pay contrary to Part II Employment Rights Act 1996 in respect of wages due from 1 December 2022 to 8 December 2022;
 - b) Whether there had been a breach of contract in relation to car hire expenses; and
 - c) Whether there had been a breach of contract in relation to unpaid notice pay from 9 December 2022 to 31 December 2022.

Second claimant: Mr Rimmer

11. I agreed with the second claimant that the only issue for me to decide in this hearing was whether there had been an unauthorised deduction from pay contrary to Part II Employment Rights Act 1996 in respect of statutory sick pay from 1 December 2022 to 30 April 2023.
12. The second claimant confirmed that he was no longer claiming 'severance pay' as he had set out in his ET1. He also confirmed that he was no longer pursuing this issue in writing to the Employment Tribunal on 14 June 2023.

The law

Unauthorised deduction from wages

13. Section 27(1) Employment Rights Act 1996 defines 'wages' as any sums payable to the worker in connection with his employment.
14. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make unauthorised deductions from the wages of a worker.
15. The provisions of section 13 of the Employment Rights Act 1996, to the extent relevant to this claim, state:

(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.

16. Section 13(3) provides that a deduction occurs where the total amount of wages paid to the worker on any occasion is less than the amount properly payable to the worker on that occasion.

Breach of contract

17. The Employment Tribunal is given the power to deal with breach of contract claims by the Employment Tribunal Extension of Jurisdiction Order 1994. This only applies to breach of contract claims outstanding at termination of employment, so breaches occurring after the effective termination date are outside of the Employment Tribunal's jurisdiction.

Findings of fact and conclusions

First claimant: unauthorised deduction from pay

18. I find that the first claimant worked for the respondent for the agreed gross wage of £2000 a month. This was evidenced via a text message from the respondent to the first claimant. The second claimant had also included this figure in his ET1, which I accepted as his evidence in chief.

19. I accept the claimant's sworn oral evidence and written ET1 evidence that the first claimant worked for the respondent from 1 December to 8 December. This was also evidenced in a pay slip to the first claimant from the respondent, dated 31 December 2022, which set out that the respondent owed the first claimant a gross sum of £646 (net sum of £564).

20. I accept the claimant's sworn oral evidence and written ET1 evidence that the claimant was not paid any wages for his work for the respondent from 1 December to 8 December. This was evidenced by four screen shots of the first claimant's bank account which showed that the respondent had not paid these monies at the end of December 2022 or the beginning of January 2023, which is when they were due. I was satisfied that the first claimant was showing me the details of the correct bank account, as he showed me a screen shot of the same bank account receiving monies from the respondent on 1 December 2022 for wages earned in November 2022.

21. I find that the failure to pay these monies was not required or authorised by statute, nor was it required or authorised by a written term of the contract, nor was it agreed by the first claimant before it was made.

22. I therefore find that the claimant is owed a gross sum of £646.

First claimant: breach of contract re car hire

23. I accept the first claimant's evidence, as stated on his ET1 and in oral evidence, that he was asked to hire a car for two weeks for the purposes of his work, on the understanding that the respondent would pay for it.
24. With regards to the first week of the car hire, I accept the first claimant's evidence that it had been paid for by the respondent after the first claimant had booked the car in his name.
25. With regards to the second week of the car hire, I accept the first claimant's evidence that the second week had not been, but should have been, paid for by the respondent. The first claimant showed me a text message dated 1 December 2022 where he asked the respondent whether to extend the car hire. The respondent replied 'extend for 1 week'. I accept the first claimant's evidence that the respondent's card was declined and that he notified the respondent that there was a problem with payment. The first claimant showed me a text message where the respondent stated that it would sort out payment the next day (i.e. on 2 December 2022).
26. The respondent failed to make this payment for the second week of car hire charges, which I consider to be a breach of contract. Given that the respondent agreed to make the payment on the 1 December 2022, or 2 December 2022 at the latest, I consider this breach to have occurred whilst the first claimant was still employed by the respondent (last day of employment being 8 December 2022).
27. Given the car hire was in the first claimant's name and he understandably did not want to have debt against his name, the first claimant paid the cost of this second week of car hire charges on 20 December 2022. The first claimant produced a receipt for this car hire payment, which showed that he had paid a gross sum of £270.
28. I therefore find that the respondent breached the contract in relation to the car hire expense, and the respondent is accordingly to pay the gross sum of £270 to the first claimant.

First claimant: breach of contract re notice pay

29. I accept the claimant's written and sworn oral evidence that the respondent orally agreed to pay the first claimant notice pay from 9 December 2022 to 31 December 2022. I accept that this conversation occurred in the morning of 8 December. This evidence was unchallenged by the respondent and there is no reason to doubt the first claimant's credibility.
30. I therefore find that the respondent breached the contract in relation to the notice period. The amount payable is the gross monthly pay of £2000 (which is set out in the ET1 and the offer of employment evidenced in a text message) minus the gross pay of £646 for 1-8 December 2022 that I

have already awarded. The respondent is therefore ordered to pay to the claimant the gross sum of £1354.

Second claimant: unauthorised deduction from pay

31. I accept the second claimant's evidence that he received pay slips from the respondent for statutory sick pay for the net figures of:

- a) £538 in December 2022;
- b) £538 in January 2023;
- c) £508 in February 2023;
- d) £552 in March 2023; and
- e) £161 in April 2023.

32. The second claimant showed me each of these pay slips.

33. I accept the second claimant's evidence that he did not receive the statutory sick pay as set out in his pay slips for December 2022, January 2023, February 2023, March 2023, and April 2023. The second claimant showed me his bank statements corresponding to each pay slip, which did not show any incoming monies from the respondent. I was satisfied that the second claimant was showing me details of the correct bank account, as he showed me his pay slip of November 2022 and the same corresponding bank account showing receipt of monies from the respondent.

34. I asked the second claimant if he accepted whether the respondent's figures for the statutory sick pay were correct, and he accepted that they were.

35. I find that the respondent's failure to pay these monies was not required or authorised by statute, nor was it required or authorised by a written term of the contract, nor was it agreed by the second claimant before it was made.

36. I therefore find that the second claimant is owed a net sum of £2297 (which is the sum of the figures set out in paragraph 31 above).

Employment Judge Murdoch

Date 25 August 2023

JUDGMENT SENT TO THE PARTIES ON
15 September 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

Case No: 1401257/2023 and 1403416/2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.