



EMPLOYMENT TRIBUNALS

Claimant: Miss S Peacock (Radionova)

Respondent: Mr Tariq Jawed

HELD at Newcastle CFCTC

ON: Friday 8 September 2023

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: In person (accompanied by Mr D Dorosh (lay representative))

Respondent: No attendance, no appearance

Interpreter: Miss Liliya Munton

JUDGMENT

1. The claimant's complaint of unlawful deduction from wages is well founded and succeeds. The respondent is ordered to pay to the claimant the sum of £16,435 in respect of wages unlawfully deducted. That is a gross amount and the claimant is responsible for the payment of any income tax and national insurance contributions thereon.
2. The claimant's complaint of unlawful deduction from wages (failure to pay accrued holiday pay) is well founded and succeeds. The respondent is ordered to pay to the claimant the sum of £3,353.64 in respect of accrued holiday pay. That is a gross amount and the claimant is responsible for the payment of any income tax and national insurance contributions thereon.
3. The claimant's complaint of breach of contract (failure to pay statutory pension contributions) is well founded and succeeds. The respondent is ordered to pay to the claimant compensation in the sum of £493.05.
4. The claimant's complaint that the respondent failed to provide her with itemised pay statements is well founded and succeeds. The Tribunal declares that the respondent has failed to provide the claimant with itemised pay statements. The Tribunal does not consider it just and equitable to award any further compensation to the claimant.
5. The total sum ordered to be paid to the claimant by the respondent is £20,281.69.

REASONS

1. By a claim form presented on 19 March 2023 the claimant brought the following complaints:-
 - 1.1. Unlawful deduction from wages.
 - 1.2. Failure to pay accrued holiday pay.
 - 1.3. Breach of contract (failure to make statutory pension contributions).
 - 1.4. Failure to provide itemised pay statements.
2. By a response form presented on 2 June 2023 the respondent defended the claims. The respondent stated that the claimant had received all monies due to her, that the respondent had provided itemised pay statements and had made the necessary pension contributions.
3. A case management hearing by telephone took place on 8 June 2023 before Employment Judge Sweeney. On that occasion case management orders were made to ensure that the necessary steps were taken to ensure that the case was fully prepared for a final hearing. The Orders made on that occasion included:-
 - 3.1. An Order that by 30 June 2023 the claimant sent to the respondent and the Tribunal a document setting out how much she was claiming in respect of wages, holiday pay and pension contributions. The claimant was ordered to send the appropriate calculation to the respondent together with copies of any documents upon which she relied in making those calculations.
 - 3.2. By not later than 21 July 2023 the respondent was ordered to send to the claimant a document explaining the hours which the claimant had worked between March 2021 and March 2023, how much the claimant had been paid for those hours and setting out his position in response to the claimant's assertion that she had not been allowed to take annual leave. The respondent was also ordered to set out what he had paid in respect of employer's and employee's pension contributions. The respondent was ordered to send copies of the relevant documents with his calculation.
4. On 29 June 2023 the claimant complied with those Orders, sending the relevant documentation to the respondent and copying the same to the Employment Tribunal. As at today's date, the respondent has failed to comply with his obligations as set out in paragraphs 3.5, 3.6 of the Orders made on 8 June. The respondent has failed to provide any meaningful explanation as to why he has not complied with those Orders.
5. By notice of hearing sent to the parties on 20 June 2023, the parties were informed that the final hearing would take place on 8 September at 10am at the Employment Tribunal Hearing Centre at Barras Bridge, Newcastle-upon-Tyne.
6. The claimant has on several occasions written to the Employment Tribunal, complaining that the respondent has failed to comply with the Orders made on 8 June. On 4 September the Tribunal wrote to the respondent, requiring him to

explain why he had not complied with those orders. The respondent has failed to do so.

7. On 7 September 2023 at 16:39pm (one day before the hearing) the respondent wrote to the Employment Tribunal in the following terms:-

“Please find attached images from passports belonging to Mr T Jawed’s wife demonstrating that she was out of the country, Mr Jawed had to look after his family and the business in the meantime and he has been ill of health, the information is not ready. Please kindly extend the date of the hearing by at least two weeks.”

8. The Employment Tribunal replied 18 minutes later stating:-

“Thank you for your email. Unfortunately, there is no judge available to consider your application this afternoon. You will be able to make the application at the hearing tomorrow.”

9. The hearing was called at 10am this morning. The respondent was not present. The respondent was still not present at 10:15, nor was he present at 10:30. At that stage the Tribunal decided to proceed with the hearing.

10. I note and record that I am satisfied that the respondent was fully aware of today’s hearing. I am satisfied that the respondent was fully aware of his obligations under the Orders made by Employment Judge Sweeney on 8 June 2023. I am satisfied that the respondent has failed to comply with those Orders. I am not satisfied that there is any meaningful explanation as to why the respondent has failed to comply with those Orders, nor am I satisfied that the respondent has a good reason for not attending this morning’s hearing. In accordance with the Overriding Objective (to deal with cases justly) I am satisfied that it is in the interests of justice for the hearing to proceed.

11. The claimant is of Ukrainian nationality and today required the assistance of an interpreter to enable her to fully understand what was being said in these proceedings. The Tribunal is grateful to Munton for her assistance as interpreter.

12. The claimant gave evidence under oath and confirmed the following matters:-

12.1. The claimant began working for the respondent as a shop assistant in February 2014. Her agreement was that she would work five days a week, for five hours a day which totalled 25 hours a week. However, the claimant worked 34 hours per week from the start of her employment.

12.2. The claimant was paid in cash at the end of each week and was never provided with an itemised pay statement.

12.3. The sums paid to the claimant in respect of the hours she had worked meant that she was being paid less than the National Minimum Wage hourly rate.

12.4. The claimant regularly worked overtime hours for which she was not paid in accordance with the hourly rate for the National Minimum Wage.

12.5. The claimant was frequently and for lengthy periods the only person working in the shop, which meant that she was unable to take any annual leave. The respondent made no arrangements for, or enquiries of the claimant as to when she intended to take her annual leave.

13. The claimant has set out in a document headed “Schedule of Loss” the hours which she has worked since March 2021 through to March 2023. That Schedule sets out what she was paid and what she should have been paid. The claimant confirmed under oath the accuracy of those calculations. I am satisfied that the claimant had not been paid in accordance with the National Minimum Wage Regulations. The shortfall in the claimant’s wages is £15,375.60. In addition to that the sum of £1,059.40 in respect of unpaid overtime. I am satisfied that the respondent owes the claimant £16,435 in respect of unpaid wages. The respondent is ordered to pay that sum to the claimant.
14. The claimant has set out her calculation of holiday pay due to her in respect of the two-year period up to the presentation of her claim form. The sum to which the claimant is entitled in respect of accrued holiday pay is £3,353.64 for the period from 1 May 2021 to 31 December 2022. The respondent is ordered to pay that sum to the claimant.
15. Under the Pensions Act 2008 the respondent was obliged to enrol the claimant into an automatic enrolment scheme which required the respondent to pay 3% of the claimant’s pension into that pension scheme. Applying that figure to the sum of £16,435, I am satisfied that the respondent has failed to pay pension contributions on behalf of the claimant in the sum of £493.05. The respondent is in breach of contract by failing to do so and I order the respondent to pay that sum to the claimant by way of compensation.
16. I accept the claimant’s evidence that the respondent has failed to provide her with any itemised pay statements. The respondent has failed to produce copies of any such statements, despite the Orders made by the Tribunal.

G Johnson

Employment Judge Johnson

Date: 28 September 2023

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.