



EMPLOYMENT TRIBUNALS

Claimant: Mr R Wixey

Respondent: The Green Bus Company Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Midlands West Employment Tribunal (by CVP)

On: 13 September 2023

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr Mack, director of respondent

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The respondent made a deduction from the claimant's wages.
2. The respondent is ordered to pay the claimant the total sum of £2296.00 calculated as follows:
 - a. Compensation in respect of such deduction in the sum of £12.00; and
 - b. An increase to the compensation in the sum of £2284.00 (four weeks' pay) in respect of a failure to provide a written statement of employment particulars.

REASONS

1. After early conciliation from 1 Feb 2023 to 23 Feb 2023, by a claim presented on 23 Feb 2023, the claimant claimed arrears of pay and 'potential damage to my professional reputation'.
2. At the start of the hearing, we explained to the claimant that the Tribunal did not have jurisdiction to hear his claim for damage to reputation.
3. We were provided with a bundle of documents; and witness statements from the claimant and Mr Mack for the respondent. We heard oral evidence from the claimant and Mr Mack.
4. The arrears of pay claim related to pay for the period of the final month for which the claimant was employed and amounted to £1538.46 gross which should have been paid to the claimant on 1 February 2023.
5. It was not in dispute that the respondent had not made this payment to the claimant until 12 Sep 2023. The respondent apparently acknowledged that its reason for failing to make the payment, which was that it alleged the claimant misstated information in his CV to gain employment, did not in law give it the right to withhold the final salary payment. The respondent had paid the claimant the amount deducted on 12 Sep 2023.
6. The claimant claimed compensation for financial loss he said he had suffered as a result of the failure to pay his final salary on time. He also claimed an uplift to his compensation on the basis that he said he had not been provided with a written statement of terms and conditions of employment. The respondent asserted that such a statement was provided.
7. The claimant worked for the respondent as Interim HR Manager from 7 Nov 2022 until 13 Jan 2023.
8. The claimant did not produce written evidence showing the financial loss he said he had suffered as a result of the failure to pay his final salary on time. He was unable to give a figure for such claimed financial loss, except for a fee of £12 he said he incurred in relation to his credit card with Marbles, because he could not make the required credit card payments because of the withholding of his final salary. The claimant did produce documentary evidence to support his contention that he had missed his credit card payment on or before 2 Feb 2023.
9. We accept that it is entirely credible that, if a worker is not paid the salary he is expecting on time he will then have difficulty making credit card payments and he will incur a penalty. We accept the claimant's oral evidence that this is what happened and that the penalty was £12.
10. The claimant's oral evidence was that he was never provided with any written statement of employment particulars. Mr Mack's evidence was that he personally handed the claimant such a statement dated 7 Nov 2022, as submitted by the respondent to the Tribunal and entitled 'Contract of

Employment'. This Contract had a typed signature 'Ian mack'. It had a section for the claimant to sign and date which was blank.

11. The claimant said that it was impossible that such a document was given to him on 7 Nov 2022 because it contained, at clause 4.2 a provision which he, as Interim HR Manager, had recommended the company introduce in December 2022 as a result of a legal seminar he had attended on the effects of the case of *Harpur Trust v Brazel* and his concern about the applicability of the principles in that case to the respondent given that most of its work was term time only work.
12. Mr Mack entirely denied that the claimant had ever recommended any contract of employment changes, that the contract had been changed in this way contended for by the claimant or that it was part of the claimant's role to review the contract of employment for the respondent. He said that clause 4.2 had been in the contract since at least 2017 and that the contract was in the form drawn up by the respondent's solicitors.
13. We must make a finding in the face of such contradicting evidence. We are influenced to decide in favour of the claimant's account by the following:
 - a. The claimant's detailed evidence about the circumstances in which he said he recommended a change to the contract which he says postdated the date on the contract .
 - b. The fact that there is no signature by the claimant on the form of contract provided by respondent to the Tribunal. The respondent was in a position, if it had issued the contract, to take action to ensure that the claimant signed and dated the contract. If it failed to do so, it is in a weak position to argue that in fact the contract was issued to the claimant.
14. Therefore, we find that the respondent did not ever give the claimant a statement of employment particulars.
15. Nor were we referred to any other document allegedly signed by the claimant to allow deductions from salary.
16. The claimant's pay was £3333.33 per month gross.

Relevant law

17. Under s13(1) of the Employment Rights Act 1996 (ERA): 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.
18. Under s13(3) ERA:

- a. 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.

19. Under s23 ERA: A worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages in contravention of section 13.

20. Under s24(1) ERA:

- a. Where a tribunal finds a complaint under section 23 well-founded, (1) it shall make a declaration to that effect and (2) shall order the employer to pay to the worker the amount of any deduction made in contravention of section 13.

21. Under s24(2) ERA:

- a. Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

22. Under s1(1) ERA:

- a. Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.

23. Under s38(3) Employment Act 2002 (EA):

- a. If in the case of proceedings to which this section applies—
 - i. the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and
 - ii. when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) of the ERA, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

24. Under s38(4) EA:

- a. references above to the minimum amount are to an amount equal to two weeks' pay, and
- b. references above to the higher amount are to an amount equal to four weeks' pay.

25. Under s38(5) EA:

- a. The duty under subsection (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

26. Under s38(6) EA:

- a. The amount of a week's pay of a worker shall—
 - i. be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
 - ii. not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

27. The maximum amount of a weeks pay under s227 ERA for our purposes is £571 because the claimant's employment ended on 13 Jan 2023.

28. The Tribunal does not have jurisdiction to award compensation for damage to reputation in claims for arrears of pay.

Conclusions

29. There is no dispute between the parties that the respondent failed to pay the claimant his wages due to him on 1 February 2023. The respondent apparently conceded in the hearing that it was not entitled to make the deduction. For clarity, the respondent had no legal entitlement to make the deduction, there being no contract of employment in place to contain a provision allowing the deduction and no other agreement in writing to the deduction.

30. Therefore, at the start of February 2023, the total amount of wages paid to the claimant by the respondent was less than the total amount of the wages properly payable by him to the worker on that occasion. The claimant therefore suffered a deduction from his wages as defined in s13(3) ERA.

31. Accordingly, we declare that the respondent made a deduction from the claimant's wages. We make no award to the claimant in respect of the deduction because the respondent has now rectified the deduction.

32. Under s24(2) ERA, as we have made a declaration under s24(1)ERA, we may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers

appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

33. We have accepted that the claimant suffered a penalty of £12 because he failed to meet his credit card payments due to the deduction.
34. Accordingly, we order the respondent to pay to the worker £12 compensation for the loss sustained.
35. Accordingly, we have made an award to the claimant for the purposes of s38(3) EA.
36. We have found that the respondent never gave the claimant a statement of employment particulars. Therefore, for the purposes of s38(3) EA, when the proceedings were begun, the respondent was in breach of his duty to the claimant under section 1(1) of the ERA.
37. We cannot see any exceptional circumstances in this case which would make an increase to the award unjust or inequitable under s38(5)EA, and no arguments were put forward to us that there are such exceptional circumstances.
38. Therefore, under s38(3) EA, we must increase the award by the minimum amount and may, if we consider it just and equitable in all the circumstances, increase the award by the higher amount instead.
39. Because the respondent did not provide the claimant with any statement of employment particulars, we consider it just and equitable to increase the award by the higher amount, that is 4 weeks pay, with a week's pay capped at £571.
40. The respondent is therefore ordered to pay the claimant an uplift to the compensation in the sum of £2296.00.
41. We make no findings as to whether the claimant suffered potential damage to his reputation and make no award to the claimant in this regard because we do not have jurisdiction to consider this.

Employment Judge Kelly
26 September 2023