



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr M Al Masri

Marriott Hotels Ltd

Heard at: London Central (by video)

On: 4 October 2023

Before: Employment Judge Stout (sitting alone)

Representations

For the claimant: In person

For the respondent: Ms A Greenley (counsel)

JUDGMENT

The judgment of the Tribunal is that the Claimant's claim is dismissed because:

- (1) The respondent did not make any unlawful deduction from the claimant's wages; and,
- (2) The respondent has paid in full the notice pay to which he was entitled under his contract.

REASONS

The type of hearing

1. This has been a remote electronic hearing by video under Rule 46.
2. The public was invited to observe via a notice on Courtserve.net. No members of the public joined. The respondent's witness Ms Jarrard was

unable to join by video but joined by telephone and the hearing proceeded in that way with the consent of the claimant and respondent.

3. The participants were told that it is an offence to record the proceedings. The participants who gave evidence confirmed that when giving evidence they were not assisted by another party off camera.

The issues

4. EJ Elliott determined the single issue in the case to be: did the respondent make an unlawful deduction from the claimant's wages of £2,085.88 over the period from June 2022 to 1 April 2023?
5. In addition, by order of EJ Joffe the Claimant was permitted to amend his claim to include a claim for notice pay.

The Evidence and Hearing

6. I received a witness statement from Ms Jarrard for the Respondent who was sworn in and questioned by the Claimant. The Claimant had not produced a witness statement. I received a bundle of 116 pages.
7. After introductions, the hearing commenced with Ms Jarrard being sworn in and the Claimant given an opportunity to put questions to her about his pay.
8. Thereafter a more informal process was adopted as the Claimant finds it difficult to explain his case and so we proceeded by me listening to the Claimant, and then asking questions of him and Ms Jarrard in order to work out what had happened with the Claimant's pay.
9. At the end of the hearing I gave a short oral judgment, indicating that reasons would also be provided in writing. The written reasons are below.

Decision and reasons

Wages between 8 June 2022 and 13 April 2023

10. The Claimant's original complaint as articulated to EJ Elliott was that he had been underpaid by £2,085.88 between 8 June 2022 and 1 April 2023. The basis for that complaint had been that there was a difference of that amount between what it said on his P60 for 2022/2023 financial year (£21,108.91) and what he received on his payslips for that period (by his calculation £19,022.12). At this hearing, he put his claim differently. He said his gross pay for the period 8 June 2022 to 5 April 2023 (43 weeks) should have been £23,220 based on him working 43 weeks at 40 hours per week at £13.50 per hour.

11. The Respondent had prepared a table at page 89 of the bundle. The Claimant agreed that the table was based on the information in his payslips.
12. The table is, I find, internally consistent, i.e. the lines and columns have been correctly added up.
13. As such, it is apparent that the difference between the figure on the Claimant's P60 and the amount on his payslips is explained by:
 - a. the fact that the P60 contains gross figures before the deduction of tax, NI and pension; and,
 - b. the P60 covers the pay period to 9 March rather than 5 April.
14. The period between 9 March and 5 April and/or 13 April is also dealt with in the table at p 89. Again it is apparent from the table that the Claimant was paid correctly according to hours recorded as worked during those weeks.
15. The difference between the Claimant's new calculation of £23,220 for the period 8 June 2022 to 5 April 2023 and what he was paid during that period is accounted for by the difference between the hours the Claimant thinks he worked (40 hours per week or 1,720 hours) and the hours that the Respondent's system has recorded him as working (1,573.13 + 104 hours holiday and 8 hours' paid absence = 1,685.13).
16. I gave the Claimant an opportunity at this hearing to challenge Ms Jarrard's evidence about how the Respondent's hours recording system works at paragraph 5 of her statement. Although he believes he worked 40 hours per week, he did not take the opportunity to challenge Ms Jarrard's evidence about the system and he did not produce a witness statement for this hearing. As such, I accept Ms Jarrard's evidence about the system and what it has recorded in the Claimant's case.
17. The system records the time that employees swipe in and swipe out of the building, allowing a 5 minute grace period for late arrivals. There is also a manual time sheet record system which provides a 'back up' or 'check' against the automated system, and which employees are supposed to sign off each week. With the system working like that, there is no reason for me not to accept that the Claimant's hours have been recorded correctly.
18. It is also relatively easy to see how an employee might end up not being recorded as having worked a full 40 hours in a week even when they had worked very nearly that because the system starts making deductions for every minute an employee is 'late' after 5 minutes or every minute an employee leaves early. Small differences can add up to larger differences over time, but in fact in the Claimant's case the difference is not so very large. The difference between the hours he thinks he worked and the hours recorded by the Respondent is just 34.87 hours over the whole period, which is a difference of 0.81 hours per week or 0.16 hours (9.7 minutes) per day.

19. In the circumstances, given that I accept that the Respondent has properly recorded the Claimant's working hours (or, at least, that the Claimant has not proved at this hearing that the Respondent did not properly record his working hours), it follows that what the Claimant was paid by the Respondent between 8 June 2022 and 13 April 2023 was correct. The detailed calculations are set out at p 89 of the bundle. There was no unlawful deduction from wages during that period.

Notice pay

20. The Claimant resigned by email of 29 August 2023. Under the terms of his contract (p 57), the Respondent was then entitled to give a counter-notice terminating the contract early, but paying in lieu of "the notice period", which I construe as being the 4 weeks' minimum notice to which the Claimant was entitled under the contract rather than the month's notice he actually gave. (I so construe the clause because otherwise an employee could emasculate the employer's entitlement to terminate the contract on minimum notice by choosing to give many months or years' 'notice' thereby preventing the employer from giving a contractual counter-notice. That would make a nonsense of the contractual provisions on termination and cannot have been intended by the parties.)
21. The Respondent gave a contractual counter-notice by letter of 31 August 2023, terminating the contract with effect from that date and paying the Claimant in lieu of the remaining portion of his contractual 4-week notice period. Four weeks from 29 August 2023 was 26 September 2023 and the Respondent intended to pay the Claimant in lieu of notice up to that date.
22. The Respondent runs its payroll on 15th of each month, paying up to 10th of that month. Pay for 1st-10th August had accordingly already been paid in the August payroll.
23. The Claimant's last payslip therefore should have included pay for the period 11 August to 26 September 2023. However, there were some adjustments properly to be made. The Claimant had overtaken holiday so an amount was deducted to reflect the overpayment of holiday. The Claimant does not dispute that was correct. The Respondent also identified it had made an error in not paying him for New Year's Day 2023. That amount was added on.
24. Otherwise, the Respondent paid him based on hours worked up to 31 August 2023. That payment was correctly calculated based on the hours the Claimant was recorded as working, which I find to be correct for the same reasons as I have given above.
25. The final payment then should have included payment for 3 weeks and 3 days being the period from 1 to 26 September (inclusive). However, the Respondent initially paid only for 3 weeks and 2 days.

26. Last week, the Respondent, purportedly on an ex gratia basis, paid the Claimant an extra 3 days' pay as he was arguing that he had given 1 month's notice expiring on 29 September 2023 and should be paid to that date.
27. As such, the Respondent has now overpaid the Claimant by 2 days.
28. It follows that the Respondent has wholly satisfied its debt to the Claimant and there has been no underpayment or breach of contract in relation to notice pay.

Overall conclusion

29. The Claimant's claims are therefore dismissed.

Employment Judge Stout

4 October 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

04/10/2023

FOR THE TRIBUNAL OFFICE