



EMPLOYMENT TRIBUNALS

Claimant
A Fortella

v

Respondent
CJB Limited

Heard at: Watford by CVP
Before: Employment Judge Anderson

On: 7 September 2023

Appearances

For the Claimant: In person

For the Respondent: Did not attend

JUDGMENT

1. The claimant's claims of unpaid wages, unlawful deduction from wages, failure to pay holiday pay and for notice pay are upheld.
2. The respondent is ordered to pay the sum of £3215 (gross) to the claimant within 28 days of the date that this judgment is sent to the parties.

REASONS

Background

1. The claimant was employed by the respondent, a construction company from 4 July 2022 to 12 September 2022, when the respondent advised that it was unable to pay the workforce's wages. The claimant brings a claim of unpaid wages, failure to pay holiday pay, notice pay and unlawful deduction from wages.

The Hearing

2. The respondent did not file a response or take part in the proceedings. The claim was served on the respondent at 2 Charles Street, London W1J 5DB, its previous registered address, and the address given by the claimant on the claim form. It was also served to 5 Park Court Road, Pyford Road, West Byfleet KT14 6SD, the address currently showing as the registered address on the Companies House website. It appears that the respondent is now in voluntary liquidation though no confirmation of this was received before the hearing today.

3. The claimant filed a copy of his terms and conditions and copies of emails between him and his manager Charlie Blowers, including an email on 12 September 2022 in which Mr Blowers confirms to the respondent's employees that the employment has ended. The claimant gave evidence on oath. He was a credible and consistent witness. I accepted his evidence in full.

Facts

4. The claimant was employed by the respondent as an apprentice electrician from 4 July 2022 to 12 September 2022.
5. He was paid a wage of £80 per day for the first two weeks and thereafter £90 a day. He was given an increase of £10 a day after two weeks as he was asked to work in Enfield rather than Liverpool Street and therefore had an additional £7 per day in travel expenses. The respondent agreed to the increase.
6. The claimant worked five days a week. During term time he attended college on one of the five working days. The respondent was re-imbursed for this absence as part of the claimant's apprenticeship scheme. For this reason any calculation of wages or holidays should be made on the basis that the claimant was a full time (five days a week) worker.
7. The claimant was told by Mr Blowers when he commenced working that he would have to work a week in lieu, for which he was not paid, but that payment for that week would be made when the claimant left the employment of the respondent.
8. The claimant was paid fortnightly in arrears.
9. The claimant was employed by the respondent for 12 weeks. He was not paid for the final two weeks and one day and was not paid for the first week.
10. During the nine weeks for which he was paid, Mr Blowers deducted 20% from the claimant's pay which he said was for tax.
11. The claimant contacted HMRC and was advised that no tax payments had been made by the respondent to HMRC on behalf of the claimant.
12. On 12 September 2022 Mr Blowers wrote to the respondent's employees stating that because of a client failing to pay monies due to the respondent he was unable to pay the employee's wages. The email ends '*I am deeply sorry it had to end like this lads and I wish you all the best for the future.*'
13. Early conciliation commenced on 4 October 2022 and ended on 24 October 2022. The claim was filed on 15 November 2022.

Law, decision and reasons.

Employment Rights Act 1996

13 Right not to suffer unauthorised deductions.

(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.*

14. The claimant worked for the respondent for 12 weeks at a wage of £400 per week for the first two weeks and £450 for the remaining 10 weeks and one day.
15. He was not paid for the first week (£400) or the final two weeks and one day (£980). There was no lawful basis for this deduction and the claimant’s claim that this amount (£1380) was unlawfully deducted from his wages is upheld.
16. The respondent deducted 20% of the claimant’s wages at source for the nine weeks that it paid him. This deduction was said to be for tax but was not paid to HMRC. The deduction was therefore unlawful. The deduction amounts to £800 (£80, being 20% of £400 for the second week worked plus £720, being 20% of £3600 for the next eight weeks).
17. The respondent failed to pay notice pay. The claimant had no contractual entitlement to notice pay so is entitled to statutory notice pay of one week having worked for the respondent for less than two years. (S86 employment Rights Act 1996). That amount is £450.
18. The claimant did not take any annual leave during his employment. It is set out in the employment offer letter that he has up to 21 days holiday. The statutory minimum is 5.6 weeks per annum including bank holidays which equates to 28 days per annum (SS13 and 13A Working Time Regulations 1998). As the claimant worked for the respondent for twelve weeks and one day he is entitled to payment in lieu of six and a half days of annual leave. At a daily rate of £90 the amount due is £585.
19. The claimant also said that he was owed overtime payments, or tax deducted unlawfully on overtime worked, but he did not have figures to hand, nor had he filed any evidence on this matter. I did not consider it and make no award in that respect.

Employment Judge Anderson

Date: 7 September 2023

Sent to the parties on: 13 October 2023

T Cadman
For the Tribunal Office

