



EMPLOYMENT TRIBUNALS

Claimant: Mr Alan Gilmour

Respondent: Neil Hadris (Owner, NH Transport Services – Sole Trader)

Heard at: Reading (by CVP)

On: 24 July 2023

Before: Employment Judge Cotton

Appearances

For the Claimant: Mr Alan Gilmour in person.

For the Respondent: No attendance.

RESERVED JUDGMENT

1. The respondent made an unlawful deduction from the wages of the claimant in respect of remuneration due but not paid for April 2022 in the net sum of **£988.80**.
2. The respondent failed to provide the claimant with written particulars of employment and shall pay to him the sum of **£824.00**, this being 2 weeks' net pay, for breaching that obligation.
3. The claimant's claim of unfair dismissal is dismissed on withdrawal.
4. The claimant's claim that the respondent made unauthorised deductions from his wages in respect of holiday pay and pension are dismissed on withdrawal.

REASONS

Introduction

1. The claimant was employed by the respondent, a Sole Trader, as a driver from 17 May 2021 – 12 April 2022. He was dismissed without notice on 12 April 2022. Early conciliation started on 9 May 2022 and ended on 10 May 2022. The claim form was presented on 11 May 2022.
2. A Notice of Claim was sent to the respondent by a letter dated 22 June 2022, to the address provided by the claimant in his ET1 (Grove Business Park, Oxfordshire). However, this Notice was re-sent on 25 January 2023 to a

different address (Cobweb Buildings, Wantage) because 'service at the address provided by the claimant is unlikely to come to the attention of the respondent.'

3. The respondent failed to issue a response. By a letter dated 13 March 2023, the respondent was informed that, because he had not issued a response, a judgment may be issued under Rule 21 of the Employment Tribunal Rules of Procedure; and that he could only participate in any hearing to the extent permitted by the Employment Judge hearing the case.
4. The respondent has not taken any part in the proceedings or provided any information. A judgment was not issued in the claimant's favour pursuant to Rule 21 because more information was needed. The full merits hearing took place on 24 July 2023, and was attended by the claimant.
5. Having checked the Insolvency Register, the respondent does not appear to be listed as insolvent.

Issues

6. The issues to be determined by the Tribunal were agreed at the outset of the hearing as follows:-
 - 6.1 Did the respondent make an unauthorised deduction from the claimant's wages by failing to pay him the net sum of £1,959 on 30 April 2022, this sum being the claimant's wages for April 2022.
 - 6.2 In determining this question, it is necessary to consider:-
 - 6.2.1 What was properly payable to the claimant.
 - 6.2.2 When was it paid or due.
 - 6.2.3 How much was actually paid.
 - 6.2.4 What is the shortfall.
7. At the hearing, the claimant confirmed that he wished to withdraw his claim for unfair dismissal. He did not have the necessary two years' continuous service. He also confirmed that he wished to withdraw his claims that the respondent had made unauthorised deductions of holiday pay and pension contributions from his wages.

Evidence

8. I heard oral evidence from the claimant during the hearing.
9. There was no bundle of documents and no witness statement. However, before or during the hearing, I was provided with the following documentary evidence/information:-
 - 9.1 The claimant's summary of his claim before the Tribunal.
 - 9.2 Payslips dated 28 June 2021, 26 July 2021 and 24 August 2021. The claimant said that he had no later pay slips because no subsequent pay slips has been issued by the respondent.
 - 9.3 Bank statements for the following periods:-
 - 9.3.1 7 January to 6 February 2022.

- 9.3.2 7 February to 6 March 2022.
- 9.3.3 7 March to 6 April 2022.
- 9.3.4 7 April to 6 May 2022.
- 9.4 WhatsApp messages between the claimant and the respondent on 12 April, 13 April, 7 May, 8 May and 9 May 2022.
- 9.5 WhatsApp messages between the respondent, the claimant and another individual on 30 April, 1 May, 7 May and 8 May 2022.

Relevant legal framework

- 10. Section 13 of the Employment Rights Act 1996 (“the Employment Rights Act”) provides – in summary - that an employer shall not make a total or partial deduction from the wages of a worker employed by him except in certain specified situations (none of which have been argued in this case). A claim must be brought within 3 months beginning with the date the wages should have been paid.

Findings of Fact and Law

- 11. Based on the evidence I heard and read, I make the following findings.
- 12. I find that the claimant’s employment contract with the respondent was oral, and was not evidenced in writing. The claimant was not provided with a Written Statement of Particulars.
- 13. This is based on the claimant’s oral and documentary evidence. If the claimant had had a written contract or statement of particulars, it is more likely than not that he would have provided it to the Tribunal.
- 14. In the absence of written terms, I have taken into account the evidence about how the parties conducted themselves. I find that the claimant was in practice, and was entitled to be, paid monthly in arrears; and that at the relevant time his net salary was £1,785.60. The evidence set out below, along with the claimant’s oral evidence, is sufficient to demonstrate, on a balance of probabilities, an agreement to this effect.
- 15. The claimant provided pay slips for 26 June 2021, 26 July 2021 and 24 August 2021 which show payments from the respondent of £1,959.53, £1,716.53 and £1,629.27 respectively. He provided bank statements from 7 January to 6 May 2022 which clearly show the sum of £1,785.60, marked ‘wages’, going into the claimant’s bank account from the respondent at or around the end of each month. (The claimant’s evidence was that the respondent sometimes had to be ‘chased’ for payment, so that payments were not always made on the last day of the month.)
- 16. The reason for the difference in pay as between the 2021 pay slips and the more recent bank statements is not clear. However it is worth noting that the claimant also carried out some work on an ad hoc basis for the respondent, particularly at weekends, for which he was paid separately. (This finding is based on the claimant’s oral evidence its consistency with the information in

his bank statements. For example, the respondent paid him £110 for Saturday 5 February 2022 and the same amount for Saturday 12 February 2022.)

17. I find that the claimant was dismissed on 12 April 2022.
18. This is evidenced by the WhatsApp messages of that date. In summary, the claimant messaged the respondent asking why he had been told that he could no longer drive any vans; the respondent replied to say 'we can't use you any more due to Venture not allowing you to drive their vans anymore'. The claimant asked for a non-driving job 'for the remainder of my employment' and the reply was negative.
19. I find that the claimant did not receive his monthly salary from the respondent for April 2022.
20. The relevant bank statement indicates that the claimant received his March wages on 5 April 2022 and ad hoc payments of £110 and £10.99 on 9 April 2022 (the claimant said, and I accept, that this was for weekend work). However, as of 7 May 2022, no payment is shown for April. In a WhatsApp message dated 12 April 2022, the respondent appeared to confirm to the claimant that he would be paid up to 29 April, but wrote that the payment would be 'Minus any damages Venture charge for us.' However, there is no further evidence about the alleged 'damages'. On 30 April 2022, the respondent messaged the claimant to say '...we are waiting on final figures from our Accountant and you will be paid at the latest next weekend!' On 7 May 2022, the respondent messaged the claimant to say 'We will pay you once the accountant has finalised things.'
21. However, the WhatsApp messages show that the claimant was still chasing his wages on 9 May 2022, and there is no evidence to suggest that the wages were paid thereafter. It is more likely than not that the claimant was not paid for April 2022, other than the ad hoc payments referred to above. There was no evidence about any authorised deductions having been made.
22. I find that the claimant should, on 30 April 2022, have been paid the sum of **£988.80** for the period from 1 April to 20 April; and that he was not paid this sum.
23. The question of what is 'properly payable' to a worker under section 13(3) of the Employment Rights Act is critical in determining whether an unlawful deduction has been made. There must be a legal - though not necessarily contractual - entitlement to the sum in question. In this case, the claimant worked until 12 April 2022, and so was entitled to wages for that period. He was also entitled to at least one week's notice (ending on 19 April 2022) pursuant to section 86(1)(a) of the Employment Rights Act.
24. Accordingly, I find that the claimant should, on or around 30 April 2022, have received his normal pay for the period from 1 April 2022 to 19 April 2022. Based on an annual salary of £21,427 (£1,785.60 x 12), I find that the

claimant's weekly wage was £412 ($£21,427 \div 52$) and his daily wage was £82.40 ($£412 \div 5$). Hence, he was entitled to be paid a total of £988.80 – that is to say, 2 weeks plus 2 days. (These are all net figures.)

25. Although the claimant argues that the respondent should have paid him up to the end of April 2022, the evidence is insufficient to support an agreement to this effect. In his WhatsApp message dated 12 April, the claimant writes 'Will I be paid up until the 29th April then as I am a salaried employee?' And the respondent replies, 'Minus damages Venture charge us for.' This is too ambiguous to give rise to a legal entitlement to be paid from 19-29 April.

Failure to provide statement of employment particulars

26. Section 1 of the Employment Rights Act says that an employer must give to a worker a written statement of particulars of employment. I have found the respondent to be in breach of this duty. Pursuant to section 38(3) of the Employment Act 2002, I therefore increase the claimant's award by £824, this being equivalent to two weeks' net pay.

Reservation of judgment

27. The judgment was reserved because there was insufficient time to deliver it orally. This was a one hour hearing during which additional evidence was provided.

Conclusions

28. The respondent made an unauthorised deduction of £988.80 from the claimant's wages, contrary to section 13 of the Employment Rights Act.
29. When the proceeding were begun the respondent was in breach of his duty under section 1 of the Employment Rights Act to give a written statement of initial employment particulars to the claimant. Pursuant to 38(3) of the Employment Act 2002, the respondent must pay the claimant the sum of £824, this being equivalent to 2 weeks' net pay.

Employment Judge Cotton

Date: 25/7/2023

Sent to the parties on: 06/9/2023

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For the Tribunal Office