



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. Aaron Kempster

V

Park End Farming Limited

Heard at: Watford, by CVP

On: 30 October 2023

Before: Employment Judge Daley

Appearances:

For the claimant: Mr Aaron Kempster

For the respondents: Mr Phil Neal

WRITTEN DECISION

Judgment

(I) The claimant's claim for an order in respect of unlawful deduction of wages under Section 13 of the Employment Rights Act 1996 succeeds.

(II) Judgment for the claimant in the sum of £799.43

REASONS

The claim

1. In these proceedings, the claimant's claim is brought under Section 13 (I) of the Employment Rights Act 1996.

2. The claimant was employed as a farm labour responsible for animal husbandry from the 18 July until 23 October 2022.
3. He claimed that in July and August 2022 he was required to work overtime to help with the harvest. The claimant claims that he worked a total of 82 hours. On 24 October 2022 he was dismissed by the respondent for gross misconduct.
4. The claimant's claim is that he was not paid for the overtime worked.
5. The respondent denied the claimant's claim in its entirety.

The procedural history

6. The claimant applied for ACAS early conciliation. On 1 November 2022 the early conciliation period ended on 13.12.22 and a certificate was granted.
7. The claimant issued his ET 1 on 14 December 2022. On 20 December 2022, a Notice of Claim was sent to the Respondent. The Notice of claim provided that the Respondent had until 17 January 2023 to submit a response.
8. The Respondent failed to file a response.
9. On 8 September 2023 Judgement was entered on behalf of the claimant, the Judgement order which was dated 20 September 2023 set out that the parties "May within 14 days ask for a reconsideration and within 42 days may appeal."
10. No steps were taken by the respondent to set aside the Judgement.
11. The matter was set down for a remedy hearing on 30 October 2023. The respondent sought a postponement of the hearing on the grounds that the director/ owner of the farm was going on holiday, the application for a postponement was refused. The hearing was held on 30 October 2023.

The Issues

12. This case had not been listed for a case management hearing, and there was no agreed list of issues. However, the issues have been set out as the Tribunal understood them to be, and which I consider relevant, in reaching this decision.
 - Whether the claimant's claim is well founded, and if so;
 - The sum of unpaid wages that the claimant is entitled to pursuant to the Judgement of 8 September 2023

The Hearing

Attendance

13. The hearing was held by CVP, and all those who attended, attended by Video-link, The claimant Mr Kempster attended, and Mr Phil Neal attended on behalf of the respondent.

The Background

14. The Claimant was employed as a Farm Labourer from July 2022 until 24 October 2023 on a contract which required him to work for 39- hours a week at a wage of £9.35 per hour. He was employed to take care of the livestock. His contract which is dated 3 August 2022`stated at paragraph 8 that he is to assist with arable activities as required". The job description required him to feed the cows, pigs and dogs within the farm. However, the claimant stated, and it was not disputed by Mr. Neal that during the harvest he was expected to help with arable activities in accordance with paragraph 8 of his contract.
15. On 24 October 2022. The claimant set out that he was called into the office by Mr. Neal and told that he was being dismissed on the basis that animals that he was responsible for had died. He acknowledged that this had occurred.
16. However, the claimant stated that he had discussed this with a contractor who was responsible for attending farms for the purpose of retaining and disposing of dead animals. He had discussed the problem with him and had been told that it was due to the hot weather during the summer of 2022, and this had meant that a higher number than usual of animals had died.
17. He was dismissed by the respondent. It is his claim that he was not paid for overtime which he had worked,
18. Prior to the hearing the Respondent provided an email dated 27 October 2023 and a copy of his contract of employment and the letter of dismissal.

The Evidence

19. The claimant produced a time sheet together with his calculations for the July- August 2022 period, he explained that he had worked an additional 82- hours and his claim was for payment of the additional hours worked at the rate of £9.35 per hour (National Minium wages). The time sheet set out the hours that had been worked by him.
20. It was explained to the claimant, that although Judgement had been entered in default, in accordance with the order of the Tribunal dated 20 September 2023, it was still for the claimant to satisfy the Tribunal on a balance of probabilities that he had a well-founded claim.
21. Mr Neal on behalf of the respondent did not dispute that 82 additional hours had been worked. In the email that had been sent to the Tribunal It was stated that the contract required the claimant to work for 39 hours a week, "...At no point does it mention any form of payment for overtime and that any pay for additional work was included within his salary...".

22. At the hearing Mr Neal submitted that the claimant had been dismissed due to his poor treatment of the animals. He stated that he had evidence of this from a neighbour, a vet and the Animal Husbandry Association.

23. He also claimed that the claimant took (stole) equipment which he then sold on eBay which belonged to the respondent.

The Law and the issues

24. Right not to suffer unauthorised deductions.

25. (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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Was the claimant subjected to an unlawful deduction of wages within the meaning of the Employment Rights Act 1996.

26. The Tribunal was satisfied on a balance of probabilities that the claim for unlawful deduction of wages was well founded. The respondent did not deny that the overtime had been worked, and whilst Mr Neal on behalf of the respondent at the hearing sought

to raise a defence by way of set off, no application was made to set aside the judgment. Further the Tribunal was satisfied that the judgement which also provided for the hearing of this matter came to the respondent's attention. No application has been made to set aside the Judgement.

27. Having considered the contract of employment the Tribunal is satisfied that although overtime was mandatory that the payment for the additional hours was not covered within the remuneration set out in the contract. The Tribunal does not accept that overtime was covered within the basic pay provided. Accordingly the Tribunal finds that there was an implied term that the claimant would receive remuneration for the additional hours, at the national minimum wage which was applicable at the time.
28. The Tribunal was provided with a copy of the claimant's time sheet and was satisfied on the evidence before it that he worked 82 additional hours during the periods July to August 2022. This was not denied by Mr Neal.
29. In his statement to the Tribunal Mr Neal sought to submit that no sums should be paid to the claimant as animals had died on the farm due to the claimant's neglect, and that the claimant had retained equipment which belonged to the farm which he had subsequently sold on eBay, however Mr Neal provided no evidence to support this.
- 30. Accordingly, I am satisfied that the claimant's claim for unlawful deduction of wages is well founded.**
- 31. Order**
- 32. Judgment for the claimant in the sum of £799.43 (seven hundred and ninety-nine pounds and forty-three pence.)**

Employment Judge Daley

Date: 22 December 2023

Sent to the parties on: 22 December 2023

For Secretary of the Tribunals