



EMPLOYMENT TRIBUNALS

Claimant: Ms M Kaba

Respondent: Agape Care Solutions Limited

Heard at: Bristol (by video)

On: 1 November 2023

Before: Employment Judge Bradford

Representation

Claimant: In Person

Respondent: Mr G Hine, Solicitor

JUDGMENT having been sent to the parties on 22 November 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant brought a claim for unauthorised deductions from wages contrary to section 13 Employment Rights Act 1996 ('ERA').
2. The Claimant had been employed by the Respondent as a live in carer from 1 September 2019. Her initial contract of the same date stated that the Claimant would work 48 hours/week averaged over a 17 week period. The agreed evidence was that Claimant would work with a client for a number of consecutive days, and then have a 'break' period. On 1 September 2022 a new contract was entered into. According to the Respondent, this had been at the Claimant's request, to allow her flexibility. The Tribunal was informed that it is not unusual for employees in this type of role to work for a second employer on their days off (break periods). The new contract would allow this.
3. The contract dated 1 September 2022 expressly stated that it gave no guarantee of work. There was no minimum number of contracted hours. It was what is commonly known as a 'zero hours contract'. This was the contract in place at the time of events which are claimed to have resulted in unauthorised deductions.

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4. On 28 November 2022, whilst on a break period, the Claimant was informed by the Respondent that a safeguarding referral had been made. The Respondent would not allocate her further work whilst the matter was being investigated. It did not do so, and it did not pay her wages.
5. On 12 January 2023 the Respondent was informed by the council (who had conducted the investigation) that the referral would be closed with no action. On 15 January the Respondent informed the Claimant of this outcome and offered her work.
6. The Claimant's claim is that she was effectively suspended without pay, and as such there was an unlawful deduction from wages. The Respondent's response is that there was no duty to offer work or pay wages as the Claimant was on a zero hours contract.
7. Section 13(3) ERA states that where the total amount of wages paid is less than the wages properly payable the amount of the deficiency is to be treated as a deduction. So the question is whether wages were 'properly payable'.
8. Generally an employer has a duty to pay wages irrespective of whether work is provided. An employee kept idle is has no grounds for complaint so long as they are paid (*Janeczko v Reed Medical Ltd ET Case No. 2401245/05*) and in the absence of a right to suspend without pay, wages are properly payable (*Kent County Council v Knowles EAT 0547/11*).
9. However, where, as here, the contract does not guarantee a minimum number of hours work, there is no duty to provide work, and in turn, no duty to pay wages unless work is performed. It cannot therefore be said that any wages were properly payable to the Claimant when she was not offered, and did not undertake work.
10. It follows that I find that there were no unauthorised deductions from the Claimant's wages between 28 November 2022 and 15 January 2023. The claim is therefore dismissed.

Employment Judge Bradford
Date 7 December 2023

Reasons sent to the parties on 03 January 2024

For the Tribunal Office