



EMPLOYMENT TRIBUNALS

CLAIMANT: MR M HON HUI

Respondent: SAINSBURY'S SUPERMARKETS LTD

Heard at: Cambridge by video

On: 2 November 2023

Before: Employment Judge Skehan

REPRESENTATION:

Claimant: In person

Respondent: Mr Fireman, counsel

JUDGMENT having been sent to the parties on 20 December 2023 and reasons having been requested on 29 December 2023 in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

WRITTEN REASONS

1. This matter was listed for a two-hour final hearing on 2 #november 2023. At the commencement of the hearing time was taken to identify the relevant documentation. Mr Fireman helpfully forwarded documentation including a hearing bundle that had not previously been sent to me. It was thereafter agreed that all relevant documentation was before me. The page numbers in this judgment are references to the bundle.
2. The claimant was employed by the respondent, 'Sainsbury's' as an online driver. He was employed between 10 October 2022 and 24 December 2022. He commenced the ACAS early conciliation on 24 February 2023 and the ACAS certificate was issued on 7 April 2023. He presented his ET1 on 9 April 2023
3. Time was taken to identify the issues. The claimant's claim was for unauthorised deduction from wages only. It was noted that this claim arises from a dispute in respect of an overpayment of and subsequent deduction from wages made by the respondent. It was common ground that the claimant's employment terminated on 24 December 2022. The respondent failed to process the claimant as a leaver until 15 January 2023. This led to the claimant being paid for an additional two

weeks' work following the termination of his employment. The respondent sought to rectify its mistake. The respondent initially calculated the overpayment as £457.46. It thereafter recalculated the overpayment as £264.14. Mr Singh's statement on behalf of the respondent stated that, *'It is my understanding that Sainsbury's do not owe the Claimant any wages, and that, according to the calculation by the Leaver Repayments department of payroll, the Claimant has been overpaid by £264.14.'*

4. The claimant had produced a witness statement detailing an alleged underpayment on the respondent's part, however at the beginning of the hearing I explained that I had difficulty in understanding the claimant calculations by reference to the claimant's witness statement. I discussed the best way forward with the parties. I explained that the normal process would be for the claimant and Mr Singh to be cross-examined with reference to their witness statements, however this did not appear to be the best use of time in these particular circumstances where a specific calculation was in issue. I noted that the claimant had been employed for a relatively short period of time. It appeared in line with the overriding objective to deal with the matter fairly and justly and without delay in the time available, to deal with the claim by way of submissions and effectively work through the payslips together to identify where the dispute was. This would allow both parties to identify any error within the calculations. It was agreed by both parties that this was an appropriate way forward.
5. The background facts were:
 - 5.1. The claimant worked for 36 hours a week.
 - 5.2. He is pay was initially £11.05.
 - 5.3. He was entitled to an additional £2.45 for every unsocial hour worked. Unsocial hours were said to be between 12am and 5am.
 - 5.4. The claimant pay increased to £11.30 per hour in November.
 - 5.5. The claimant was entitled to an additional 'market payment' of £1.50 per hour.
 - 5.6. 'Unpaid short time' was recorded when the claimant finished early.
 - 5.7. The respondent had a contractual entitlement to deduct overpayments from the claimant's wages.
6. The first payslip [page 40/41 of the bundle] reflected a pay date of 21 October 2022 and a pay period from 18 September 2022 to 15 October 2022. This was agreed to be correctly calculated by both parties.
7. The second payslip [page 42/43 of the bundle] for the period 16 October to 12 November 2022 was agreed by the parties to be correctly calculated.
8. The third payslip [Page 44/45 of the bundle] for the period 13 November to 10 December 2022 was agreed to be correctly calculated.
9. The fourth payslip for the period 11 December 2022 to 7 January 2023 was incorrect. In particular it was agreed that:
 - 9.1. The period should be 11 December 2022 to 22 December 2022.
 - 9.2. The claimant had worked 56 hours and two minutes during this period.

- 9.3. The claimant's final pay should be calculated by reference to an hourly rate of £12.80 (made up of £11.30 and £1.50 market payment). This amounted to basic salary of £719.36. A further unsociable hours payment of 49p was due.
 - 9.4. The claimant's basic pay for this period should have been £719.85.
 - 9.5. The amount actually paid to the claimant for this period was £1188.50.
 - 9.6. The parties agreed that the overpayment was £468.65.
 - 9.7. Holiday entitlement was worked out and agreed by both parties to amount to 42 hours of accrued but untaken holiday entitlement.
 - 9.8. The claimant was entitled to the agreed amount of 42 hours holiday pay calculated at £12.80 per hour. This amounted to £537.60.
 - 9.9. The above figures indicated that there had been an underpayment to the claimant of £68.95. It was further agreed that holiday pay is properly calculated in accordance with the respondent's policy allowing for an extra 30p per hour. This amounts to a further £12.60 holiday pay entitlement.
 - 9.10. It was agreed that the total outstanding amount owed to the claimant from the respondent following the above calculation was £81.55.
 - 9.11. All of the figures set out above are gross figures.
10. For the sake of completeness, I note that the claimant also raised that his working hours had been incorrectly recorded on page 41 of the bundle and they should be 32 hours and 15 minutes however there was no evidence before me from either party in respect of actual hours worked. I did not have sufficient evidence from the claimant to conclude that the working hours had been incorrectly recorded and this part of his claim was unsuccessful. The claimant also made submissions for recovery of an 'administration fee' from the respondent. There was no evidence before me of any financial loss incurred by the claimant. I did not consider that it was an appropriate in the circumstances of this claim to make any further award.
11. I thanked both parties for their assistance during the hearing. I thanked Mr Fireman in particular for his constructive and pragmatic approach on behalf of the respondent in dealing with this hearing within the time available. I noted that the respondent's position was now that it was agreed that the claimant was underpaid in the sum of £81.55. Mr Fireman noted on behalf of the respondent that the claimant's calculations were not understood by the respondent prior to the hearing and his instructions appeared reasonable throughout. He also noted that the respondent had unsuccessfully sought to settle the claim on a without prejudice basis and submitted that the respondent had not acted unreasonably in defending the matter.
12. For the reasons set out above, I concluded that the respondent should pay the claimant the gross sum of **£81.55**. As this was a gross calculation of unpaid wages it would be subject to applicable tax and employee national insurance deductions.

13. Finally, I record that these reasons have been provided in response to a request by the claimant submitted to the tribunal on 29 December 2023 and sent to me on 26 January 2024.

Employment Judge Skehan
5 February 2024
Sent to the parties on:
7 February 2024

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For the Tribunal Office:

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