EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107092/2023

Held in Edinburgh Tribunal on 11 March 2024

Employment Judge Murphy

Ms G Pruthi	**Claimant** **In Person**
MP10 Ltd t/a Guidos Proper Fish and Chips	**Respondent** **Represented by** **Mr M Pia -** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and the respondent is ordered to pay to the claimant the sum of **SEVEN HUNDRED AND NINETY POUNDS STERLING AND FIFTEEN PENCE (£790.15)** in respect of unpaid wages in respect of the period from 14 September 2023 to 6 October 2023.

2. The respondent received a payment of £20 from the claimant on or about 17 August 2023 in contravention of section 15 of ERA and the respondent is ordered to repay to the claimant that sum of **TWENTY POUNDS STERLING (£20)** which was unlawfully received.

3. The respondent is ordered to pay to the claimant the further sum of **ONE HUDRED POUNDS** (**£100)** to compensate the claimant for financial loss sustained by her attributable to the respondent's unauthorised deduction.

4. The sum awarded in item 1 is expressed gross of tax and national insurance. It is for the respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

REASONS

Introduction

1. This final hearing took place at the Edinburgh Tribunal on 11 March 2024.

2. The respondent was represented by Mr Pia. He clarified that the respondent is a limited company called MP10 Ltd which trades as Guido's Proper Fish and Chips. With the agreement of the parties, I ordered that the respondent's name be amended to reflect this clarification. Mr Pia confirmed that he is a director of the respondent company.

3. The claimant is a litigant in person.

4. During the preliminaries, the claimant confirmed she brings a complaint of unauthorised deductions from wages (only). She said that she claims she is owed £799.52 of unpaid wages for 76 hours' work undertaken in the period from 14 September to 6 October 2023. She confirms she claims that she was entitled to be paid for the work at the rate of £10.52 per hour. She alleges these sums fell due to be paid on Monday 9 October 2023 but were not paid on that date or at all. The claimant explained she additionally claims £20 by way of a deposit which she paid at the start of her employment for a uniform which she says was not reimbursed to her on the conclusion of her employment.

5. Mr Pia explained he does not accept that the claimant undertook 76 hours' work during the aforementioned period but alleges that she worked 75 hours. Mr Pia further advised that he disputes that the claimant was

entitled to be paid at the rate of £10.52 per hour but alleges the rate was £10.42 per hour. Mr Pia explained that he disputes the claimant is owed £20 by way of reimbursement of her uniform deposit on the basis the claimant did not return her uniform.

6. The claimant gave evidence on her own behalf. Mr Pia gave evidence on behalf of the respondent. A small set of productions running to approximately 15 pages was produced by the claimant.

Findings in Fact

7. The following facts, and any further facts set out in the 'Discussion and Decision' section, are found to be proved on the balance of probabilities.

Background

8. The respondent is a limited company which operates a fish and chip shop. The claimant was employed by the respondent as a food server from 17 August to 6 October 2023.

9. Prior to the commencement of her employment, the claimant had responded to a notice in the respondent's window that they were hiring staff. She sent her CV. She then went into the premises to enquire further about a position. Mr Pia agreed to employ the claimant. No written contract was provided to the claimant at that time or at all. Mr Pia and the claimant discussed hours and she indicated she would like full-time hours of 35 to 40 hours per week. They discussed pay and Mr Pia explained that payment was according to an hourly rate in accordance with the National Minimum Wage. He explained that employees were paid every four weeks. They discussed uniform. Mr Pia explained that a £20 deposit was required from employees for the uniform provided to them (a T Shirt and an apron). Mr Pia explained that this sum would be returned when the employee left, assuming the uniform was returned to the respondent in good condition.

10. The claimant was paid on the first occasion on Tuesday 12 September 2023 (one day late) for the preceding weeks. She was not provided with a pay slip. Based on the hours she believed she had worked, she calculated the rate of pay at which she had been paid for her work to that date to be £10.52 per hour. Given that no pay slip was forthcoming, the claimant

made a point of recording her hours with the respondent on the notes section of her phone so that she could keep track of the wages she was owed.

11. Between 14 September and 6 October 2023, the claimant had 13 rota'd shifts totaling 76 hours and 15 minutes. The claimant was sometimes late for her shift. Across the material period with which the complaint is concerned, around 25 minutes of working time were lost due to the claimant's lateness. Accordingly, she worked 75 hours and 50 minutes across the period. The claimant was due to be paid for these hours on Monday 9 October 2023.

12. By agreement with the respondent, the claimant was not scheduled to work the weekend of 7 and 8 September 2023 as she was away for the weekend. The respondent's shop closed routinely on Mondays and the claimant was not, therefore, scheduled to work on Monday 9 October 2023.

13. On 6 October 2023, the claimant told the respondent that she was getting insufficient hours from them to allow her to meet her financial commitments. She told them she was leaving. At that time, she agreed to work a week's notice. On Monday 9 October, however, the claimant did not receive her pay for the preceding weeks. She was unhappy about this and concerned about how she would manage her rent which was due the following day (10 October). She discussed her pay with the respondent who declined to pay her at that time because they considered the notice she had provided to be inadequate. The claimant decided not to work further for the respondent so that her last shift was on Friday 6 October 2023.

14. The claimant had immediate outgoings which required to be covered. She required to pay £550 in rent to her landlord the following day. She also had other living costs. The claimant's flat mate loaned the claimant around £800. The claimant believed that she would be able to repay her flat mate by the end of January 2024 as she believed that by that time the matter would be resolved with the respondent. She agreed with her flat mate that,

if she had not repaid her by 31 January 2024, she would pay an additional £100 on the loan by way of interest.

15. The claimant was distressed by the events and by her interactions with the respondent which became embittered from and after 6 October 2023. She undertook therapy sessions in the period to the hearing, costing approximately £210 for around 7 sessions.

Observations on the Evidence

16. On the whole I assessed that both the claimant and Mr Pia came to the Tribunal with the intention of giving their evidence in an honest and straightforward manner although recollections did vary on a number of points.

17. One such point was the rate of pay. The claimant's recollection was that, in their conversation prior to commencing employment, Mr Pia had advised her hourly rate would be £11 per hour whereas Mr Pia's recollection is that he told her she would be paid in accordance with the minimum wage requirements. I resolved this conflict in the respondent's favour. There was no evidence that the claimant had challenged the respondent after she received her first pay to claim that she had been underpaid because the incorrect rate had been charged. Though no pay slip was provided, the claimant knew at the time that her own calculations suggested she had been paid at a lower rate than £11 per hour. I accepted Mr Pia's evidence that the respondent's general practice is to pay its employees minimum wage rates. In those circumstances, I accepted that it was improbable that Mr Pia would have quoted a fairly significantly higher rate to the claimant during their discussion.

18. There was a further, relatively trivial conflict in the evidence with respect to the claimant's lateness for shifts. Mr Pia suggested the claimant was late on 8 occasions and the total shift time lost amounted to about 45 minutes (5 minutes on 7 occasions and 10 minutes on one occasion). The claimant accepted that she was late from time to time but disputed she was ever as much as 10 minutes late. She considered she was late on a number of occasions, totaling 25 minutes across the period from 14 September to 6 October. I resolved this conflict in favour of the claimant. I

accepted, on balance, that she was not reprimanded for this and that the lateness was not likely, therefore, to be as frequent as 8 occasions out of a total of 13 shifts. I noted the respondent had made no averments about the claimant's lateness in the ET3. On balance, I concluded that if the issue had been as significant as suggested, it would have been raised with the claimant at the time and it would have been recorded in the ET3. The respondent produced no documentary evidence supporting the extent of lateness claimed by the respondent (such as clocking in and out sheets or other records).

19. I heard some evidence about allegations of the claimant making a couple of personal phone calls during working time. The parties' accounts of the matter differed. I have made no findings in fact about these alleged incidents since both parties accepted that they were not alleged to have happened during the material period between 14 September and 6 October 2023.

20. There was a dispute in the evidence about what was said to the claimant before her employment began about the notice she required to give, in the event she should later resign. Mr Pia maintained that he had told her she would be obliged to give two weeks' notice if she wished to leave. The claimant denied she was told this. It was not disputed that, in the event, the claimant did not give two weeks' notice or indeed the statutory minimum one week's notice.

21. I have no made findings in fact about what was agreed (if anything) in relation to notice before the employment began or at any time. That is because, on considering the issues raised by the claim, I have concluded that the point is not relevant. The claimant clarified at the outset that she brings a claim of unauthorised deductions from wages. This proceeds under Part II of the Employment Rights Act 1996. There is no claim of breach of contract before me and, therefore, no jurisdiction to consider any employer's counter claim for breach of contract. The circumstances in which a respondent is entitled to make deductions from wages are set out in Part II of ERA and they do not include a circumstance where an employee has failed to provide the statutory minimum notice period or any contractually agreed notice period. I concluded the question of whether

there was a notice period agreed between the parties and whether it was breached was ultimately irrelevant to the issues I required to decide.

Relevant Law

Unauthorised deductions from wages

22. Under the section 13 of the Employment Rights Act 1996 ("ERA"), a worker has the right not to suffer unauthorised deductions from her wages.

> "*13 (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."

23. Section 14 sets out various deductions which are excepted where the right not to suffer unauthorised deductions does not apply. None of the circumstances are relevant to the present case. Sections 17 to 21 set out provisions providing additional protection to retail workers in certain circumstances. These provisions have no application outside the specified areas of cash shortages and stock deficiencies and so are not relevant to the present case.

24. Sections 15 and 16 of ERA provide that an employee shall not be obliged to make payments to her employer other than in limited circumstances.

"*15 (1)An employer shall not receive a payment from a worker employed by him unless—*

(a) the payment 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 payment.

(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 receiving the payment 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) 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 receipt of a payment on account of any conduct of the worker, or any other event occurring, before the variation took effect.

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

(5) Any reference in this Part to an employer receiving a payment from a worker employed by him is a reference to his receiving such a payment in his capacity as the worker's employer.

16 Excepted payments.

(1) Section 15 does not apply to a payment received from a worker by his employer where the purpose of the payment is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Section 15 does not apply to a payment received from a worker by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Section 15 does not apply to a payment received from a worker by his employer where the worker has taken part in a strike or other industrial action and the payment has been required by the employer on account of the worker's having taken part in that strike or other action.

(4) Section 15 does not apply to a payment received from a worker by his employer where the purpose of the payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer."

25. Under section 23 of ERA, a worker may complain to an employment tribunal that an employer has made a deduction from her wages in contravention of section 13 or that her employer has received from her a payment in contravention of section 15. Where a tribunal finds such a complaint well founded, it shall make a declaration to that effect and order the employer to pay the amount of the deduction and / or to repay to the worker the amount of any payment received in contravention of section 15 (section 24 ERA).

26. Where a tribunal makes such an order, it may order the employer to pay the worker such additional amount as it considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by her which is attributable to the matter complained of (section 24(2)). The tribunal may not award compensation in respect of financial loss such as upset and injury to feelings under section 24(2).

Submissions

27. The parties declined to give submissions.

Discussion and Decision

28. I have found that the claimant worked for 75 hours and 50 minutes (i.e. 75.83 hours) across the material period and that the rate of pay to which she was entitled was £10.42 per hour. She was therefore owed wages in the sum of **£790.15** (75.83 x 10.42).

29. It is not disputed that this fell due on 9 October 2023 and that it was not paid. I therefore considered whether the respondent was entitled to deduct these wages from the claimant in the circumstances. The deduction was not authorised or required by a statutory provision or by a relevant provision of the claimant's contract. Nor was it an excepted deduction for the purposes of section 14 of ERA.

30. The respondent focused heavily on the claimant's failure to give or work an agreed two-week notice period. Even if that were the case, and no finding is made to that effect, it would not have authorised the respondent to deduct the claimant's wages as they did on 9 October 2023.

31. The respondent has, therefore, made an unauthorised deduction of **£790.15** (gross).

32. It is not disputed that the respondent required the claimant to pay £20 as a deposit for her uniform. Nor is it disputed that this was not returned to her (and indeed that she did not return the uniform). I considered the provisions of sections 15 and 16 of ERA.

33. The £20 payment made by the claimant to the respondent on or about 17 August 2023 was not required or authorised by a statutory provision. Nor was it required or authorised by a relevant provision of the worker's contract. Under section 15(2), to be authorised by a relevant provision of the worker's contract, it would be necessary that the provision was comprised of one or more written terms given to the claimant before the payment was made. No such written terms were provided before the payment was made or at all.

34. Alternatively, under section 15(2) to be authorised by a relevant provision of her contract, it would have to be comprised 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. No such written notice of the existence and effect of any unwritten term was provided to the claimant before the payment was taken.

35. I considered whether the £20 deposit payment was an excepted payment for the purposes of section 16 of ERA and concluded that it was not.

36. I, therefore, find that the respondent unlawfully received from the claimant the **£20** payment in contravention of section 15 of ERA.

37. Having so found, I have the discretion to order the respondent to pay the claimant such amount as I consider appropriate in all the circumstances to compensate the claimant for any financial loss sustained by her which is attributable to the matter complained of. I have decided to order the respondent to pay the claimant **£100** to compensate her for the additional interest she has agreed to pay on a personal loan from her flat mate. This financial loss is directly attributable to the unlawful deduction suffered which required the claimant to take immediate action to take a loan to cover her rent which was imminently due.

38. I make no award in respect of the costs of the claimant's therapy sessions. No award is available for injury to feelings. Insofar as it might be said that the cost of the sessions was a financial loss the claimant sustained attributable to the matter complained of, I do not conclude, on the balance of probabilities that this was so. The claimant herself accepted when giving evidence that the financial uncertainty into which she was plunged caused her stress but also that a significant factor in her requirement to have therapy was the acrimonious circumstances in which her employment with the respondent ended and the difficult communications between the parties. I find on balance that the therapy costs were not proved on balance to be attributable to the deductions but were substantially due to the tone

and manner of the communications as the relationship deteriorated.

L Murphy

Employment Judge Murphy

13 March 2024

Date of Judgment

Date sent to parties