



EMPLOYMENT TRIBUNALS

Claimant

Mr H Pisarev

Heard at Bury St Edmunds by CVP

Before: Employment Judge Manley

For the Claimant: In person

For the Respondent: No appearance

Respondent

Gold Mecka Limited

On: 10 October 2023

JUDGMENT

JUDGMENT having been given orally to the parties on 10 October 2023, sent to the parties on 6 December 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

- 1 This was a short hearing to determine the claimant's claim for unpaid wages. It was held by CVP and the respondent did not attend. No reasons were provided for the respondent's non attendance but a response had been filed along with an unsigned and undated statement and other documentation on 26 July 2023 which I had before me. I also had the ET1 which claimed that the claimant had not been paid the full amounts agreed with the respondent.
- 2 The issue was therefore for me to determine what the agreement for pay had been, what had been due and paid and whether there were outstanding sums due.
- 3 As there was no attendance by the respondent, I considered the documents which had been sent. The claimant gave evidence and I

asked him questions, particularly in relation to the points raised in the response and accompanying documents. There was no written agreement with respect to rate of pay for the work so I needed evidence on what had been said such as to constitute an oral agreement. I gave an oral judgment in favour of the claimant.

The facts

- 4 The claimant worked for about a month as a delivery driver for the respondent towards the end of 2022. The claimant's evidence, which I accepted, was that he spoke on the phone to Mr Ghitu, before he began driving for them in November 2022.
- 5 The claimant told me that the rate which was agreed was £200 per day because it was a busy time leading up to Christmas. The rate agreed for any Sundays worked was £250. When asked about what the respondent said in the response and Mr Ghitu's statement about the agreed rate of pay, the claimant said that £1.50 and 75p had been mentioned but that the agreement was £200 or £250 for Sundays.
- 6 Mr Ghitu is the manager who completed the tribunal response and had sent a statement which states that the rate of pay was £1.50 for "full payment" and 75p for packages. He also sent a copy of a "Agreement for the Provision of Occasional delivery/courier services to Gold Mecka Limited". That document does not mention a rate of pay, either per day or per delivery. It does mention other matters such as insurance and rental of the van.
- 7 I found the claimant to be a credible witness. He was clear that there had been an oral agreement for £200 and £250 for Sundays and has been consistent in that evidence. The respondent seeks to rely on the written agreement that does not mention the rate of pay and there is no evidence before me, save that mentioned in the response and the unsigned statement, that the payment of £1.50 or 75p per item was agreed.
- 8 In the response, Mr Ghitu said he stopped the claimant from working because there were 36 complaints. The claimant confirmed that Mr Ghitu had mentioned these complaints but he denies any were made and saw no detail of them. Mr Ghitu also said that there was damage to the van which the claimant also denied. The claimant's case on the reason he stopped working for the respondent was that he decided to

go to Yodel as he was not finishing work for the respondent until about 9pm. He said Mr Ghuti had tried to stop him leaving. It is not necessary for me to decide whose version is correct as it is not relevant to whether sums are owed to the claimant.

- 9 It is agreed that the sum which was paid to the claimant at the end of his working for the respondent was £277. Mr Ghitu calculated the sum due to the claimant, he stated in the response, from the number of stops the claimant made, less diesel; van rental, "penalty for 36 complaints"; damage to van and missing parcel. The claimant's calculation is that he is owed a total sum of £2850, being 13 x £200 and 1 Sunday at £250. He denies that there was any agreement to reduce for diesel or the van rental and states those were to be included.

The law

- 10 This is a claim for unpaid wages, relying on the provisions of Part 11 of the Employment Rights Act 1996 which includes the right not to suffer unauthorised deductions. That right is conferred on employees and workers so that would cover the claimant's work for the respondent.

- 11 In order to assess whether there have been unauthorised deductions, I must find what the agreement was for payment. I do that on the basis of oral evidence and any relevant documentary evidence.

Conclusions

- 12 I have found, as a fact, that the agreement was, as the claimant stated. That is, £200 per day and £250 on Sunday. There is no dispute about the days worked or that a sum of £277 has been paid. I do not accept that there was an agreement for reductions to be made for the items mentioned by the respondent and, in any event, it is unclear how the figures for any reduction have been arrived at.
- 13 The claimant must therefore succeed in his claim. It is a straightforward calculation as shown below. The respondent is ordered to immediately pay the following gross sum to the claimant (from which tax may be deducted or the claimant will account to HMRC for it when received)

Unpaid wages
(13 days x £200 + 1 day x £250 = £2850)

Minus £277 paid

Total

£2573

Employment Judge Manley

Dated 25 March 2024

Sent to the parties on:
26 March 2024

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For the Secretary to the Tribunals