



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MR G TIGHE (C1)
MRS L TIGHE (C2)

AND

Respondent

KASTEEL COLLECTION LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 26TH FEBRUARY 2024

EMPLOYMENT JUDGE: MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANTS:- IN PERSON

FOR THE RESPONDENT:- MS H SULEMAN (SOLICITOR)

REMEDY JUDGMENT

The judgment of the tribunal is that:-

- i) Unlawful deduction from wages – The respondent is ordered to pay each claimant - **£5840.29**;
- ii) Breach of contract (pension) - The respondent is ordered to pay each claimant - **£1344.00**;
- iii) Total per claimant - **£7184.29**.

Reasons

1. Following my earlier judgment as to liability, today's hearing has concerned the appropriate level of compensation. The central dispute is that in respect of each of the claims the parties have advanced different methods of calculating any loss.

Other Matters

2. In addition to the specific calculation of the losses set out below, the respondent submits that I should take into account, and effectively set off benefits provided to the claimants. In particular they point out that although rent was deducted from their salaries (as set out in the liability judgment) that no payment was ever sought or received for utilities bills or council tax etc. and that credit should be given for this. In addition during the Covid lockdown the claimants supplemented their incomes by doing delivery driving which should also be taken into account.
3. The claimants submit that this is entirely irrelevant and that all that is required is for them to be compensated for the overpayment of the accommodation offset and pension losses. Secondly that the permitted accommodation offset relates to all expenses associated with the provision of accommodation, and that to accept this would be to go behind the earlier liability judgment.
4. In my judgment the claimants are correct, and as is set out below, I have simply calculated losses directly flowing from the claims I upheld and have not considered or included any other matters.

Claims

5. For the reasons set out in the liability judgment I upheld claims for:
 - a) Unlawful deduction from wages in that the deduction of the accommodation offset payments reduced the claimants' pay to below that required by the National Minimum Wage.
 - b) Unlawful deduction from wages / breach of contract in the failure to make appropriate pension contributions.

Unlawful deduction from Wages

6. In summary the claimants were employed by the respondent at their an hotel "10 Castle Street" Cranborne, Dorset from 21st June 2019 until 31st July 2020. Whilst doing so they were provided with accommodation by the respondent at "The Cottage" (9 Castle Street). Throughout their employment each claimant had a contractual salary of £1400 per month from which £700 was deducted for the provision of the accommodation.

7. It is not in dispute that the maximum permitted accommodation offset was £7.55 until 31st March 2020; and £8.20 from 1st April 2020 until 31st July 2020. The fundamental difference between the parties is how the loss should be calculated. The claimants contend that the correct method of calculation is to calculate the daily rate of the actual amount deducted for the accommodation, and deduct from it the amount that could lawfully have been charged (£7.55/£8.20) on the basis that a daily accommodation offset in excess of that figure is unlawful. This gives a daily loss which is multiplied by the total number of days of their employment to give the overall figure. In each case that amounts to £12,294.84.
8. The respondent contends that this is wrong in principle. The claimants are wrong to contend that the amount of the accommodation offset is unlawful in and of itself; it is only unlawful if and to the extent that it reduces the claimants' salaries below the national minimum wage. If it did not do so it would have been entirely lawful to deduct the full £700 per month from each of the claimants' pay. The correct method of calculation is therefore to calculate the daily rate of pay by reference to the amount the claimants actually received (£700 per month) then to add the permitted daily offset at the relevant times (£7.55/£8.20); and then to divide this figure by the hours worked. If this gives an hourly rate below the national minimum wage (which the respondent accepts that it does) the loss and measure of damages is the difference between the hourly rate paid and the national minimum wage; not the difference between the total amount deducted and the maximum accommodation offset as asserted by the claimants.
9. In my judgment, in principle the respondent is correct and I accept its method of calculation. However the respondent's calculation uses the number of hours per week as thirty five, throughout the whole period of employment. This is contractually correct from 7th February 2020 (the date of the second contract). However the first contract expressly sets out a forty hour week. Ms Suleman stated that her instructions were that in fact a 35 hour week was at all times correct. There is no evidence before me to this effect and in my judgment I am obliged to use the contracts as the basis for assessing the correct hours, as being the only evidence of hours worked.
10. It follows that there are three periods during which the calculations are different
 - i) *21st June 2019 – 7th February 2020 – The hourly rate calculated by reference to a forty hour week plus the permitted accommodation offset (£7.55)*
 - ii) *8th February 2020 – 31st March 2020 The hourly rate calculated by reference to a thirty five hour week plus the permitted accommodation offset (£7.55)*
 - iii) *1st April 2020- 31st July 2020 - The hourly rate calculated by reference to a thirty five hour week plus the permitted accommodation offset (£8.20)*

11. That gives the following figures :

- i) Period 1 – Annual total £11,155.75 ((£8,400 (12 x £700) plus £2755.75 (£7.55 x 365) - divide by 52 / 40 = £5.36 per hour. Shortfall against NMW £2.85 (£8.21 - £5.36) x 40 x 33.43 = **£3811.02***
- ii) Period 2 – As above except divide by 35 = hourly loss £2.08 (£8.21 - £6.13) x 35 x 7.43= **£540.90***
- iii) Period 3 - **£1488.37** (as calculated in the respondents spreadsheet)*
- iv) Total - £5840.29 per claimant**

Pension Loss

12. It is not in dispute that the respondent did not, as it was contractually obliged pay the appropriate employees or employers contribution into the claimants pensions. It is agreed that this is 8% in total. The dispute between the parties relates to the figure used to calculate the loss. The claimants contend that their salaries were £1400 per month and 8% of this is the correct figure (giving a total of £1344.00 per claimant). The respondent contends that this is illogical. If the unlawful deduction from wages is judged against the amounts actually received (see above), then that figure (£700) should also be used to calculate the pension loss (giving a total of £672.00 per claimant).
13. In my judgment the claimants must be correct in this regard. Their salaries were £1400 per month. The question as set out above was whether the accommodation deduction reduced the actual amount received below the national minimum wage. That is by definition an enquiry into the effect of deductions from the headline salary. The calculation is different in respect of the pension as it must necessarily, in my view, be judged against the headline contractual salary before deductions. It follows that the figure of £1400 per month is the correct one against which to make this calculation.
14. It follows that each claimant is awarded £1344.00 in respect of pension contribution.

EMPLOYMENT JUDGE

Dated: 26th February 2024

And copies sent to the parties on:

13th March 2024

for Secretary of the Tribunals