



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Patil

v

The Nutri Cosmetic Company Limited

HELD AT: London Central (by CVP) ON: 15 April 2024

BEFORE: Employment Judge Brown (Sitting alone)

Representation:

For Claimant: In Person
For Respondent: Ms A Mair, CEO

REMEDY JUDGMENT

The Judgment of the Tribunal is that the Respondent shall pay the Claimant £6,000 gross in compensation for unlawful deductions from wages.

REASONS

Preliminary

1. By a claim form presented on 29 November 2023, Mr Patil, the Claimant, brought a complaint of unlawful deductions from wages against the Respondent, his former employer.
2. The Respondent did not defend the claim.
3. At a hearing on 26 February 2024 EJ Fredericks-Bowyer gave judgment in default for the Claimant against the Respondent in his wages claim. The judgment was sent to the parties on 11 March 2024. This hearing was listed to determine remedy. The Respondent was only permitted to participate in the remedy hearing to the extent permitted by me at the hearing.

4. The Respondent Company remains active at Companies House.
5. Mr Patil, the Claimant, gave evidence, as did Ms Mair for the Respondent.
6. The Claimant has not brought a claim for unfair dismissal.
7. The Claimant had provided documents attached to an email on 7 April 2023. Those were all the documents he relied on for the purposes of today's remedy hearing.
8. The Respondent had submitted a "rule 21 judgment statement" and provided evidence attached to it. Ms Mair said that this was to clarify that she had not received Tribunal documents until 1 day before the hearing before EJ Fredericks-Bowyer on 26 February 2024. She told me that the purpose of those documents was to show that the default judgment should not have been granted. I explained that that was a reconsideration application which needed to be considered by EJ Fredericks-Bowyer. I could not consider it.
9. The Respondent had also provided a statement dated 8 April 2024 and an indexed bundle of documents relevant to the remedy hearing.

Remedy Issues / Agreed Facts

10. EJ Fredericks Bowyer found the following facts in his default judgment.

"4. During the course of the hearing, the respondent admitted that the claimant started work on 1 September 2023. It said that the claimant was suspended on an unpaid basis during September 2023 without pay. It concedes that some work was done by the claimant prior to his suspension, which has not been paid.

5. I am satisfied, on the concessions made in the hearing, that the respondent owes the claimant some pay for his short time working there."
11. In that hearing the Respondent had said that the Claimant had been suspended in September 2023 without pay.
12. The Claimant was ordered to provide details of his claim for loss. He presented a Schedule claiming loss of earnings up to 26 March 2024, the date he prepared the schedule.
13. I explained that the Claimant's claim had been presented on 29 November 2023 and therefore claimed only for matters which had occurred up to 29 November 2023. Unless he amended his claim, I could not award any compensation in respect of deductions which had occurred after the date he had presented his claim.

14. There was therefore a dispute about whether the Claimant had in fact been suspended without pay in September 2023 and/or whether the Respondent was entitled to suspend him without pay, so that the Claimant was not entitled to be paid wages after he had been suspended.

15. The parties agreed that the complete terms of the Claimant's employment were set out in an email of 31 August 2023, as follows:

“formally offer you the position of Project Manager with The Nutricosmetic Company.

This is a full- time position of 40 hours per week, Monday – Friday 9 AM – 5 PM (GMT+5:30).

We will be offering you an annual gross salary of 25,00,000 INR with a 3-month probation period. You will be entitled to 15 days of paid vacation per year and 10 annual public holidays. Until further notice, all government taxes will need to be reported by yourself in your domestic country, and or state. Upon notice, we will deduct these from your salary and report these on your behalf.

You will be asked to sign a contract of employment on your start date, and we may ask you to sign an unconditional offer of employment, should you accept this offer.

We would like to have your response no later than today EOD 31st August 2023. Should you accept this offer then your start date will be Friday, 1st September 2023.”

16. The parties agreed that the annual salary set out in the contract, of Indian Rupees. 25, 00, 000, or 25 LAKH. They agreed that 25 LAKH was equivalent to £24,000 per annum, gross.

17. It was agreed that any award I made should be awarded gross, as the Claimant was not domiciled in the UK and the offer letter said that the Claimant was responsible for his own tax.

18. The Respondent contended that the Claimant was both suspended without pay and dismissed on 25 September 2023. The Claimant disputed that. He contended that he had neither been told orally, nor in writing, that he had been suspended or dismissed.

19. The Claimant's claim in these proceedings was therefore for unpaid wages from 1 September 2023 – 29 November 2023. The issue between the parties was whether he was entitled to be paid after 25 September 2023 if he had been suspended without pay and/or dismissed on that date.

Findings of Fact

20. Having heard evidence, I accepted the Claimant's evidence that his access to the Respondent Company's IT systems was stopped on 25 September 2023, but that he never received any letter suspending him from employment, or dismissing him. He contacted the Respondent's HR department, but it never provided him with an explanation of the suspension of his IT access, nor any written or verbal notice of suspension or dismissal.

21. I rejected the Respondent's evidence that the Claimant was dismissed on 25 September 2023. While Ms Mair told me that the Respondent would provide a letter for any employee who was dismissed, she did not tell me that she had dismissed the Claimant herself, nor did she produce any letter of dismissal.

Law

22. By s 13 Employment Rights Act 1996,

"Right not to suffer unauthorised deductions.

(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."

Decision

23. I decided that the Respondent employed the Claimant from 1 September 2023 under a contract of employment, the terms of which were set out in an email of 31 August 2023.

24. The Claimant's salary was £24,000 per annum, gross.
25. The Claimant's claim for unlawful deductions from wages was for the period 1 September – 29 November 2023.
26. I decided that the Respondent did not suspend the Claimant on 25 September 2023. Even if it had, there was no provision of the Claimant's contract entitling the Respondent to suspend him without pay. The Respondent was therefore not entitled to make any deductions from the Claimant's wages on suspension, even if it did suspend him.
27. The Respondent did not dismiss the Claimant.
28. The Claimant was employed for the whole period 1 September 2023 – 29 November 2023, or 13 complete working weeks.
29. He was entitled to be paid for that period without deductions.
30. At the hearing on 26 February 2024, the Respondent conceded that it did not pay the Claimant for the period up to 25 September 2023.
31. It did not pay him for the period after then, either.
32. The Respondent shall pay the Claimant £6,000 gross in compensation for unpaid wages for the period 1 September – 29 November 2023.
33. The Claimant claimed sums for injury to feelings. He was not entitled to be paid compensation for injury to feelings in an unlawful deductions from wages claim.

Employment Judge Brown
Dated: ...15 April 2024.....

Judgment and Reasons sent to the parties on:

24 April 2024

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For the Tribunal Office