



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Chinnery
Respondent: Anita Perry
Heard at: Remotely via CVP **On:** 27 February 2024
Before: Employment Judge R Vernon

Representation:
Claimant: In person
Respondent: In person

JUDGMENT having been sent to the parties on 28 February 2024 and reasons having been requested by the [claimant/respondent] in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. Today is the final hearing of the case, the claim having been presented to the Tribunal on 21 November 2023. The nature of this claim is that it is a claim for unlawful deductions from wages. In summary, the Claimant, Mrs Chinnery says that she worked a number of hours in the last week of September of last year for the Respondent at a public house in Merthyr Tydfil and she says that she has not been paid anything for the work that she did. She therefore contends that she is due to receive from Mrs Perry, the Respondent, payment of wages for the hours that she worked.
2. The claim is defended by Mrs Perry today, as I understand it, on the basis that she is not in truth the right person to be paying wages; she effectively contends that she was not the Claimant's employer, but that it was somebody else. She accepts that there was an agreement reached for the Claimant to do work and she accepts that the Claimant has not been paid

for the work that was undertaken. Mrs Perry does however say that there was a trial period for which the Claimant was not entitled to receive payment at all and therefore if she is entitled to receive payment it is for a lower number of hours than the Claimant is making a claim for.

3. Those details are set out at this stage simply to summarise the parties' respective positions.
4. In terms of relevant legal principles, there are only two which I really need to note. The first is that the Claimant brings the case and so the Claimant has to prove her case. What that means is that she needs to prove the facts that she relies on and that that entitles her to what she is claiming by way of unpaid wages. The standard of proof required is the balance of probabilities. What that means is that she needs to satisfy me that what she says is more likely than not to be a true and accurate account of what happened as opposed to the account that I have been given by Mrs Perry.
5. The second legal principle is that claims of this type are governed by Section 13 of the Employment Rights Act 1996. That Section provides that an employer shall not make a deduction from wages of a worker employed by that employer unless 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 the worker has previously signified in writing their agreement or consent to the making of the deduction.
6. When one reads on in this Section one also sees that effectively what that Section means is that if the wages properly payable to an employee on any occasion are greater than the amount that they in fact receive on that occasion, then there has been a deduction from those wages and that deduction can only be properly made if it is authorised in one of the ways that I have just described.
7. I will now move on to the evidence that I have received. There is not a lot of evidence that I have received, certainly not documentary evidence. The documents that I have been provided with amount to this:
 - a) the claim form,
 - b) the response form,
 - c) a typed document that was attached to the response form by Ms Perry when she responded to the claim,
 - d) an email dated yesterday from Mrs Chinnery setting out some details together with some documents attached to it which are basically screenshots of social media comments and other messages.
8. In addition to those documents, I have received oral evidence from both parties during the course of the hearing today.

9. The findings that I need to make cover the following issues which I outlined at the start of the hearing. Firstly, I have to address the issue of who the employer was given that appears to be in dispute. Secondly, I need to deal with the point of how much is properly payable to Mrs Chinnery for the work that she did. Thirdly, I need to decide how much she has in fact been paid; on that point it is of course agreed she has been paid nothing. Fourthly, I need to decide whether any deduction has been authorised in a permitted way. I will pause at this stage to say there is no evidence before me of any written authorisation agreed to by Mrs Chinnery for any deductions to be made either in a contract or otherwise and I certainly cannot see any statutory provision which would allow a deduction to be made from any wages.
10. Therefore, in reality, principal issues in this case are a) who was the employer and b) how much was properly payable to Mrs Chinnery for the work that she undertook at the end of September of last year.
11. Much of that really depends upon my view of the evidence that I have received in all its forms and the findings of fact that I am going to now make in respect of those matters. By and large those findings depend upon which parties evidence I prefer. Clearly, they both cannot be right about what they say and therefore the question for me to weigh up is who I think is more likely to be accurate in the evidence that they have given to me.
12. For the reasons which I am going to give in a moment I take the view that the more accurate evidence that I have received today is the evidence of Mrs Chinnery, the Claimant not Ms Perry, the Respondent.
13. The reasons I have come to that conclusion are as follows. Firstly, the case presented by the Claimant and the evidence which she has presented to me is clear, it is straightforward, and it has been consistent throughout. Her case is (as I have already summarised it) that she had worked a number of hours, which she tells me today were 12.5 hours in total, that she agreed to work at a rate of £8.50 per hour and therefore she is entitled to receive (by my calculation) £106.25. That account has not changed in any material way at any point during these proceedings.
14. I should note that of the facts which the Claimant has put forward to me the Respondent agrees with two of them. Firstly there is no dispute that the agreed rate of pay was £8.50 per hour. Secondly, there is no dispute that the Claimant has not been paid any wages whatsoever.
15. In my judgment, the Respondent's evidence was weaker evidence than the Claimant's evidence. I have come to that view for the following reasons. Firstly, the Respondent's evidence has not been as clear or as consistent

- as the Claimant's evidence. There is an inconsistency in what she has said to the Tribunal in writing compared to today about the rate of pay that was agreed. In the initial response to the claim, she said that the rate agreed was £10.42 per hour; today she has agreed with the Claimant that it was in fact £8.50 per hour. There is an inconsistency also in respect of who it is the Respondent says was liable to pay wages. Today, the Respondent says it is in fact somebody else who is liable to pay the wages yet that was a matter not clearly expressed in my view in the initial response to the claim.
16. A third inconsistency arises in her evidence about the number of hours that the Claimant in fact worked. In the response to the claim the Respondent said that it had been 10 hours in total but 8 hours of that had been a trial for which the Claimant was not due to be paid and therefore the Claimant was only entitled to be paid for 2 hours. There has been a significant change in that evidence today from the Respondent in that she said 4 hours (i.e., one shift) was a trial and that in addition to that the Claimant worked for 6.5 hours for which the Respondent accepts she should be paid.
 17. I also consider there was an inconsistency in the Respondent's position and evidence in respect of the keys for the property. A suggestion prior to today, as I understood it, was that the Claimant had taken keys away from the property that she was not entitled to have. In fact, as I understand the Respondent's evidence today, it is accepted that some keys were in fact given to the Claimant when she was carrying out her work.
 18. Other documents, by which I mean the exhibits provided by the Claimant, are also in my view consistent with my conclusion that the Claimant is more consistent and more accurate in the evidence that she has provided.
 19. Firstly, her position is supported by the message from Rob, who I understand is one of the owners of the building that the pub operates from. His message is clear that any employment relationship was between the Claimant and the Respondent and was not any concern of his.
 20. Secondly, there is also evidence of the Respondent having said different things to different people about the Claimant on social media, which again suggests an inconsistency of evidence being given.
 21. All of those matters taken together leads me to the conclusion that the more reliable witness that I have heard from today is the Claimant and on that basis, I will make the following findings.
 22. Firstly, that the Respondent was her employer for the purposes of the work that she carried out at the end of September. Secondly, that they reached an agreement whereby the Claimant would carry out work at the pub during the end of September of last year. I reject any suggestion that any part of

that work was on trial and was not to be paid work and therefore I conclude that the Claimant has established that she was entitled to be paid for all of the work that she did. In total, I find that she worked for 12.5 hours spread across 3 shifts and that the agreed rate of pay was £8.50 per hour. The total wages she was entitled to receive when her employment came to an end was £106.25. By concession, it is accepted that she has not received anything at all. There is no authorisation having been given and no basis on which any deduction could have been made from her wages.

23. In those circumstances, in my judgment, this claim is well-founded and the Claimant is entitled to receive payment of the unpaid wages of £106.25.

Employment Judge R Vernon

Dated: 18 April 2024

REASONS SENT TO THE PARTIES ON 19 April 2024

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche