



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Dahir

Respondents: (1) Paradise Logistics Limited
(2) Ms Adomaitiene

Heard at: East London Hearing Centre (by video)

On: 15 May 2024

Before: Employment Judge Howden-Evans

Representation

For the claimant: Ms Charalambous (Pupil Barrister, acting on a pro bono basis)

For the respondents: Neither present nor represented

JUDGMENT

1. Today's final hearing was listed to determine this case. An earlier final hearing (6th February 2024) was postponed after the respondents were granted an extension of time to file an ET3 response. Having filed ET3 responses, the respondents have not taken any further steps to comply with case management directions. There has been no communication from the respondents since January 2024 and they have not complied with case management orders of 5th February 2024 and 18th April 2024.
2. There is no attendance by or on behalf of the respondents. Having considered all the documents available to me, including the ET3 responses, the Claimant's witness statement and bundle of documents, I have decided it furthers the overriding objective for me to proceed in the absence of the respondents (see Rule 47 Employment Tribunal Rules of Procedure 2013).

3. Having considered all the documents available to me (including the ET3 responses and attachments) and having considered the Claimant's evidence, the judgment of the Tribunal is as follows:

Employment Status

1. At all relevant times, the Claimant has been an employee (and worker) of the First Respondent. The claims against the Second Respondent are not well-founded and are dismissed.
2. The Claimant's employment with the First Respondent commenced on 11th July 2023 and the effective date of termination of his employment was on 21st August 2023, when the First Respondent effectively dismissed the Claimant by removing him from the group chat that had previously been used to convey instructions and work to the Claimant.

Wages

3. The complaint of unauthorised deductions from wages is well-founded. The First Respondent made unauthorised deductions from the Claimant's wages in the period 11th July to 21st August 2023.
4. The First Respondent shall pay the Claimant **£1,050**, which is the gross sum deducted. The Claimant is responsible for the payment of any tax or National Insurance.
5. The First Respondent shall also pay the Claimant **£255** to compensate the Claimant for financial loss attributable to the unauthorised deductions.

Notice Pay

6. The complaint of breach of contract in relation to notice pay is well-founded.
7. The First Respondent shall pay the Claimant **£560** as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the Claimant will have to pay tax on it as Post Employment Notice Pay.

Holiday Pay

8. The complaint in respect of holiday pay is well-founded. The First Respondent made unauthorised deductions from the Claimant's wages by failing to pay the Claimant for holidays accrued but not taken on the date the Claimant's employment ended.
9. The First Respondent shall pay the claimant **£392**. The Claimant is responsible for paying any tax or National Insurance on this.

Failure to provide daily rest breaks

10. The complaint that between 11th July to 21st August 2023 the First Respondent refused to permit the Claimant to exercise his right to rest breaks within a working day under Regulation 12(1) Working Time Regulations 1998 is well-founded.
11. The First Respondent shall pay the Claimant **£61.53**. This is the compensation the Tribunal considers just and equitable in all the circumstances under regulation 30(4).

Written Itemised Pay Statements

12. The First Respondent failed to give the Claimant written itemised pay statements as required by section 8 Employment Rights Act 1996 in the period 11th July to 21st August 2023.
13. The First Respondent made unnotified deductions totalling £1,050 from the pay of the Claimant in the 13 weeks prior to presentation of the claim form. The First Respondent shall therefore pay the claimant **£1,050** in respect of those deductions.

Non-compliance with ACAS Code

14. The First Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the compensatory award payable to the Claimant by 25% in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992.

Failure to provide a written statement of employment particulars

15. When the proceedings were begun the First Respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the First Respondent shall therefore pay the Claimant **£2,240**.

Total Liability

16. This means the First Respondent's total liability to the Claimant is **£6,450.66**
17. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to these awards.

18. Interest will accrue at a rate of 8% per annum on any amount of compensation that remains outstanding 14 days after the date of this judgment.

**Employment Judge Howden-Evans
Date: 15th May 2024**

Calculations

The Claimant's weekly pay was £560 gross (£464.52 net). His daily pay was £112 gross (£92.90 net). His net hourly pay was £11.61.

Wages

Gross pay the Claimant was entitled to for hours worked during the period 11th July to 21st August 2023 was £1,640 (see table at para 36 in Claimant's witness statement)

Gross pay the Claimant received during this period was £590 (bank transfers received on 29th July and 8th August 2023)

Unauthorised deduction is £1,640 - £590 = **£1,050**

Financial losses attributed to unauthorised deductions are:

| | |
|------------------------------|-------------|
| Paypal charges: | £40 |
| HSBC overdraft charges: | £50 |
| Santander overdraft charges: | £15 |
| TFL charges: | <u>£150</u> |
| | £255 |

Notice Pay

The Claimant was contractually entitled to receive 1 week's notice of dismissal (see s86 Employment Rights Act 1996 (statutory minimum notice periods)).

1 week's gross pay = **£560**

Holiday Pay

Holidays accrued by not taken was 3.24 days (rounded up to 3.5 days – see Regulation 15A Working Time Regulations 1998)

3.5 days x £112 gross daily pay = **£392**

Compensation for breach of Regulation 12(1) Working Time Regulations 1998: rest breaks

20 minute rest break per 6 hour period worked = 5.3 hours in total

5.3 hours @ £11.61 net hourly pay = **£61.53**

Non-Compliance with ACAS Code

25% uplift to the following awards:

Wages £1,050

Financial losses attributed to unauthorised deductions £255

Notice Pay £560

Holiday Pay £392

Compensation for rest breaks £61.53

Failure to provide itemised pay statements £1,050

£3,368.53

Acas Uplift = £3,368.53 x 25% **£842.13**

Failure to provide a written statement of employment particulars

4 x £560 (gross weekly pay) = **£2,240**

Total owed to the Claimant

£3,368.53 + £842.13 + £2,240 = **£6,450.66**