

Neutral Citation Number: [2024] EAT 100

Case No: EA-2023-SCO-000070-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 20 June 2024

Before :

THE HONOURABLE LADY HALDANE

Between :

MR RONNIE BLAIR

Appellant

- and -

MR GEORGE BURR

Respondent

Mr Ronnie Blair, the Appellant

The **Respondent** being neither present nor represented

Hearing date: 19 June 2024

JUDGMENT

Unlawful Deduction From Wages

THE HONOURABLE LADY HALDANE:

Introduction

1. The matter called before me for a Full Hearing on 19th June 2024, pursuant to an order of HHJ Auerbach dated 29th December 2023. I shall refer to parties as the claimant and respondent, as they were below.
2. The claimant appeals against a decision of the ET dated 16th June 2023 in terms of which the ET determined that the claimant's claim that he suffered unlawful deduction from his wages failed, and was therefore dismissed.
3. The ET reached that conclusion having proceeded on the basis that the claimant's claims as set out in his claim were for (a) wages by way of some or all of the notice period; and (b) defamation. The second matter of course is not within the jurisdiction of the ET.
4. The claimant does not, in his appeal, challenge the disposal as such, but points out that the ET proceeded upon a misunderstanding of what he was actually claiming, specifically that he wished to claim for unpaid wages for a period of time prior to his leaving the employment of the respondent. That aspect of his claim has not been addressed at all in the Judgment of the ET.

Background

5. The claimant submitted an ET1 form dated 27th March 2023. In section 8 of that form he ticked a box claiming notice pay, but not any other box such as arrears of pay or other payments. However, in box 8.2 he provided the following details (emphasis added):

“I was paid in full for October 2022 but when I handed in my notice from 6th **November I was not paid for any days from 1st November to the 18th November,**

my 10 days holidays were paid but then deductions for a Hotel room and damage to a company vehicle were withheld without any letter stating why, i then heard from someone who told me that the above person had said i was relieved of my duties because of theft from my employment and also because i was working for someone else whilst employed by him”

6. The factual background to this matter is set out in the Judgment of the ET; none of those findings in fact have been challenged by the claimant. The claimant worked for the respondent for a relatively short period between May and November 2022. In or around 7th November 2022 he wrote to the respondent tendering his resignation and setting out his reasons for so doing. The respondent tried to persuade him to withdraw that resignation, but was unsuccessful in so doing.
7. The ET then records the somewhat confusing and apparently unsatisfactory evidence relating to exactly when the claimant’s period of notice began and ended. Largely as a result of the unsatisfactory nature of that evidence, the ET concluded that the claimant had failed to establish that he had suffered unlawful deductions from his wages, and nor had he proved a claim for unpaid wages to 2nd December 2022, having regard, amongst other things, to the fact that he began a new job on 28th November 2022.
8. However, the ET’s findings and conclusions are entirely silent in respect of that part of the claimant’s claim highlighted above. By dismissing the wages claim in its entirety without considering that aspect of matters, the ET has fallen into error. For the avoidance of doubt, that part of the Notice of Appeal suggesting that the ET failed to consider whether the claimant was owed wages for any period prior to 1st November 2022 does not amount to an error of law, any such claim not having been asserted in the claimant’s ET 1.

Disposal

9. In light of the failure of the ET to consider and determine that part of the claimant's claim relating to unpaid wages between 1st and 18th November 2022, the matter shall be remitted back to the same Employment Tribunal for determination of that discreet aspect of matters only.