



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Adedayo Ogunde

AND

Respondent

Ms Charity Earnshaw
(Trading as Charity Earnshaw Home Care Agency)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

ON

31 May 2024

By VHS Video Platform

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Miss C Ibbotson of Counsel

For the Respondent: In person

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim that the respondent has made unlawful deductions from his wages is well-founded; and
2. The respondent is ordered to pay the claimant the sum of £1,984.42 in respect of these deductions, together with an uplift of 20% or £396.88 for her failure to comply with the ACAS Code; and
3. The respondent failed to comply with the provisions relating to the initial statement of employment particulars and the respondent is ordered to pay the claimant two weeks' pay in the sum of £1,117.96; and
4. The respondent failed in its duty to provide accurate payslips and the respondent is ordered to pay a further sum of £250.00; and
5. The respondent is therefore ordered to pay to the claimant the total sum of £3,749.26.

RESERVED REASONS

1. In this case the claimant Mr Adedayo Ogunde brings a monetary claim for unlawful deduction from wages against his ex-employer Ms Charity Earnshaw. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by VHS Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which I was referred are in a bundle provided by the parties, the contents of which I have recorded.
3. I have heard from the claimant, and I have heard from the respondent. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The Facts:
5. The respondent Ms Charity Earnshaw is a sole trader who runs a home care agency in the East Devon area which provides domiciliary care services to predominantly elderly people. The claimant Mr Adedayo Ogunde was employed by the respondent as a care worker from 21 April 2022 until his resignation took effect on 5 September 2023. The respondent made deductions from his final salary which are the subject of this dispute.
6. The claimant is a Nigerian native working in the UK. When he commenced employment with the respondent in April 2022 the respondent paid £500.00 plus VAT to enable a solicitor to complete the claimant's visa application. The claimant concedes that the respondent is entitled to recoup this sum of £600.00.
7. The respondent prepared and the claimant signed a written contract of employment. Clause 14 of this contract provided the claimant was entitled to remuneration "at the rate as defined for the appropriate level of NVQ defined in the employee Handbook.". The contract did not set out what that rate of pay was. There was a page attached to the end of the contract which was expressed to be: "Schedule 1 - Particulars of Employment" but no specific pay rate was set out, and paragraph 14 simply said that there would be an hourly wage according to the current salary rates in the Employee Handbook. The respondent has explained that the rate of pay was set out in the offer letter which was originally sent to the claimant. The claimant denies ever having received an Employee Handbook. In summary there was no documentary evidence before me that the claimant was notified of the appropriate pay rate in a statement of terms and conditions of employment or an employment contract.
8. With regard to deductions, clause 15 of the contract of employment provided: "This remuneration will be payable once per month while the Agreement is in force. The Employer is entitled to deduct from the employee's remuneration or from any other remuneration in whatever form any applicable deductions (including training costs at the employer's discretion) and remittances as required by law."
9. The only evidence which the respondent has adduced relating to training fees are for three training courses are £250 each. The claimant agrees that he attended, but it is accepted by the parties that this was group training for at least 10 to 12 of the respondent's employees. In other words' the training fees of £750 were incurred generally on behalf of at least 10 to 12 employees and cannot be said to be specific to the claimant.
10. The relationship between the parties began to deteriorate April 2023 when the claimant sought alternative employment and the respondent received a request for a reference from a prospective new employer. On 25 April 2023 the respondent wrote to the claimant warning that the respondent would seek reimbursement of various training and development costs and disbursements in the event that the claimant chose to leave. In June 2023 the respondent sent the claimant a training agreement under which she sought to authorise deductions for training fees from the claimant, but the claimant did not agree this, and he did not sign it.

11. The claimant resigned his employment by letter dated 21 August 2023, giving four weeks' notice to expire on 18 September 2023. The respondent replied by raising an invoice, expressed to be payable by the claimant, in the sum of £6,600. This consisted of four items. The first was an NVQ2 training refund of £3,000. The second was lawyer fees of £600 (which the claimant concedes was due as noted above). The third was for office administration fees of £500. The fourth item was "training from the agency" fees of £2,500.
12. The wages properly due to the claimant for the month ending 31 August 2023 are agreed at £1,795.54. The respondent raised a payslip for this amount, showing that deductions had been made for tax and National Insurance and NEST payments, but no other deductions, in order to arrive at this net figure of £1,795.54. However, the claimant was not paid any of this sum. The payslip did not record that this sum was deducted by the respondent as reimbursement for the various training fees. In fact, the respondent issued a receipt dated 28 August 2023 to the effect that she acknowledged receipt of the £1,795.40 which left a balance of £4,804.60 due from the £6,600 originally claimed.
13. The claimant then raised a formal written grievance on 30 August 2023 complaining about the fact that the entirety of his pay had been deducted. He also complained about the deduction for the NVQ2 programme. This was a course which the respondent had arranged through a Government training scheme on the understanding that she would not claim repayment of any of the costs. The respondent decided to remove this part of her claim, and she reissued an invoice on 30 August 2023 claiming £3,600 being the solicitor's fees, office administration fees and training from agency fees set out above.
14. By letter dated 5 September 2023 the claimant then resigned with immediate effect because the respondent failed to agree to pay his wages due for August 2023. The claimant calculated that the hours which he had already worked in September meant that he was due a further £788.88, but these wages were never paid to the claimant either. In addition, no payslip was raised at that time. When the respondent entered a response to this claim, she attached a payslip of September 2023 suggesting that a payment of £881.90 had been made. This sum had in fact never being paid to the claimant, and he had never seen this payslip until the disclosure process for these proceedings.
15. The claimant asserts that the respondent ignored his written grievance and did not deal with it. The respondent says that she tried to telephone the claimant to progress this but that he refused to attend the meeting. The claimant denies that. Given that there is no documentary evidence of any nature to support the respondent's contentions in this respect, and given that there was a formal written grievance in the first place, I prefer the claimant's version of events to the effect that the respondent failed to acknowledge or deal with his formal written grievance.
16. Having established the above facts, I now apply the law.
17. The Law:
18. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996 ("the Act").
19. Section 1 of the Act requires an employer to give a worker a written statement of particulars of employment on the commencement of that employment. The particulars required by subsections 1(3) and (4) must be included in a single document. This includes in subsection 1(4)(a) the scale or rate of remuneration or the method of calculating remuneration.
20. Section 12(4) of the Act provides that were a reference has been made to a tribunal in connection with the failure to comply with the requirements regarding payslips, the tribunal may order an employer to pay the worker a sum not exceeding the aggregate of unnotified deductions which have been made.
21. Under section 38 of the Employment Act 2002, if the employer was in breach of his duty to give a written statement of initial employment particulars and the employment tribunal finds in favour of the employee or makes an award to the employee, then the tribunal must increase the award by an amount equal to two weeks' pay, and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks' pay instead.

22. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as “s. 207A(2)”) and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 (“the ACAS Code”).
23. Judgment:
24. in my judgment the respondent was not entitled to deduct from the claimant’s wages unspecified “office administration fees” of £500. The respondent has produced no evidence to support her contention that the claimant ever agreed to a deduction of this nature, nor that these so-called fees were incurred specifically in connection with the claimant. Similarly, in my judgment the respondent was not entitled to deduct training fees in the sum of £2,500. There is no evidence that the claimant underwent any training other than taking part in the group training for 10 or 12 employees which was not specific to him and for which the respondent paid £750.
25. I find that the claimant’s claim that the respondent made unauthorised deductions is well-founded. The deductions made from the claimant’s wages for August and September 2023 amounted to £1,795.54 and £788.88, being a subtotal £2,584.42. The claimant concedes that the respondent was entitled to deduct £600 for solicitors’ fees which meant that there were unlawful deductions of £1,984.42.
26. I award an uplift of 20% of this sum for the respondent’s failure to follow the ACAS Code when she failed to respond to the claimant’s grievance. This is a further sum of £396.88.
27. The respondent was also in breach of the requirements of section 1 of the Act with regard to the statement of initial employment particulars because the scale or rate of remuneration was not included as it is required to be under section 1(4)(a). The claimant has sought an award of four weeks’ pay under section 38 of the Employment Act 2002, but given that there was near compliance with the requirements, and a written contract of employment was in place, in my judgment it is just and equitable to limit an award under this section to two weeks’ pay. I therefore award a further £1,117.96 being equivalent to two weeks’ pay in respect of this breach.
28. Finally, the claimant seeks an award under section 12(4) of the Act which is an unspecified sum which the claimant suggests should be £750. I agree that there was failure to provide accurate payslips as required particularly with regard to the deductions made (by reference to section 12(3)(b)), and I consider that an appropriate amount toward should be limited to £250.
29. Accordingly, the respondent is ordered to pay the claimant the sum of £1,984.42 in respect of unlawful deductions; 20% uplift on this sum of £396.88; two weeks’ pay in respect of the defective employment contract in the sum of £1,117.96; and £250 for the failure to issue appropriate payslips. This is a total sum £3,749.26.

Employment Judge N J Roper
Dated 31 May 2024

Judgment sent to Parties on

20 June 2024

For the Employment Tribunal