



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MR R TOMIN

V

MY E-MOTION LIMITED

HELD REMOTELY ON: 24TH JANUARY 2024

BEFORE: TRIBUNAL JUDGE MCLEESE SITTING AS AN
EMPLOYMENT JUDGE
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT:

IN PERSON

FOR THE RESPONDENT:

MR MICHAEL NEWMAN

JUDGMENT

Employment Tribunal Rule of Procedure 2013 – Rule 21

1. The claim of unlawful deduction from wages is well founded and is upheld.
2. The Respondent is to pay the Claimant the withheld wages of £1,000 as outlined in the Judgment issued on the day of the hearing. That was ordered to be done withing 14 days.
3. The Tribunal would like to apologise to the parties for the delay in their receipt of this document. This was due to an administrative difficulty in the Tribunal which meant the Judge was not made aware of the need to produce this document at the time it was requested.

REASONS

4. This is a claim by Mr Tomin, who was employed by the Respondent as a Parkour Instructor/Stunt artist from the 9th January 2023 until he resigned on the 3rd February 2023, giving one weeks notice. He was not asked by the Respondent to work his final week.
5. He brings a claim for unlawful deduction from wages.

6. There had been a Rule 21 order made on the 3rd November 2023 due to the Respondent's lack of response to the claim.
7. The Tribunal permitted Mr Newton on behalf of the Respondent to question Mr Tomin but did not permit the admission of evidence from the Respondent who only sent evidence to the Tribunal on the 22nd January, some 48 hours before the hearing and nine months post the claim being made.

The Hearing

8. In the course of the hearing, I heard from Mr Tomin.
9. In reaching my decision, I had regard to the written evidence I was provided with and the evidence I heard during the hearing. I also had regard to the law and briefly set out the relevant parts in respect of these claims.

The Relevant Law

Unlawful Deduction From Wages

10. The right not to suffer an unlawful deduction of wages is set out in Section 13 (1) the Employment Rights Act 1996 (ERA):

“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.”
11. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
12. The employer must show the amount of the deduction is justified and Tribunals are not to engage in a speculative exercise in the absence of concrete evidence.
13. This is illustrated in the cases of Clark v. Chapmans of Sevenoaks Ltd ET Case No.1102232/10 and Ziolkowski v JJ Food Service Ltd ET Case No.1102435/11 to which the Tribunal had regard.

The Issues

14. Mr Tomin contended that he had moved from London to South Wales and was employed on a contract that stipulated he would be paid £1,000 per month.
15. He contends he started on the 9th January 2023 and had worked 72 hours over the first, just over, three weeks of his contract.

16. He resigned on the 3rd February and was not asked to work the final week of notice he gave.
17. The Claimant contends that he was told on the 13th February his wages would be paid.
18. On the 15th February an issue was raised about payment and he has never been paid the wages owed.

Findings of Fact

19. The Claimant signed a contract, which was before the Tribunal and contained the Claimant's details and which shows a £1,000 per month agreement as salary and a start date of the 9th January.
20. The salary was also alluded to and agreed in a series of texts messages between Mr Michael Newman and the Claimant prior to his move from London to South Wales in December 2022.
21. Mr Tomin agreed to move from the London area to South Wales to work for the Respondent as a Parkour Instructor/Stunt Artist.
22. Mr Tomin moved as a result of the job offer, was living in Mr Newman's address and was anticipating being paid at the rate in the contract and as agreed.
23. Mr Tomin worked 72 hours in just over three weeks of his contract and was fulfilling his contractual obligations.
24. He resigned on the 3rd February but was not asked by the Respondent to work his final week of the first month of his contract.
25. A series of text messages between Mr Newman and Mr Tomin on the 13th February illustrate that Mr Newman was expecting Mr Tomin to be paid £1,000 in wages.
26. Only on the 15th did Mr Newman indicate an issue raised by the other directors which appears to have been about Mr Newman actioning payments to the Claimant.
27. Mr Tomin was told he had broken the contract in the first week and the "other directors" had instituted grievance procedures but a text on the 15th February from Mr Newman to Mr Tomin indicated, "Any accusations being made towards your conduct will only come to light after my disciplinary".
28. The grievance appeared to be against Mr Newman but he appears as taken aback as the Claimant.

29. The Claimant accepts there is no other evidence of financial loss sustained by him attributable to the matter complained of beyond the £1,000 in wages.
30. The Claimant was not made aware of any disciplinary or grievance issues prior to the failure to pay his wages.

Submissions

31. The submissions on behalf of the parties may be summarised as follows.
32. The Claimant says the wages were unlawfully deducted.
33. The Respondent did not provide a response to the claim but appear to suggest there were grievance and disciplinary issues, based on the questioning, only allowed out of an abundance of fairness, by the Tribunal.
34. Mr Newman accepted he had had a fair opportunity to ask questions and that he was given an opportunity he would not normally have been allowed.

Conclusion:

35. The Tribunal heard from Mr Tomin.
36. It is not for the Tribunal to provide advice to parties or to make their cases for them.
37. Mr Tomin gave evidence in line with his claim and that he had not been paid £1,000 in wages.
38. He gave clear evidence which the Tribunal accepted that he had moved to work for the Respondent company.
39. The Respondent company knew he had resigned and he had returned to London having moved out of Mr Newman's home by the time the wages fell due.
40. Mr Newman had told him he did not have to go into work after he had resigned on the 3rd February by giving one week verbal notice to Mr Newman.
41. He was due to be paid on 12th February 23.
42. No disciplinary or grievance matters were raised with Mr Tomin prior to the 15th February.
43. If, as it was suggested in questioning, he had broken the contract in the first week of work it is inexplicable and incredible that he was allowed to

continue to work or that no disciplinary or grievance procedure was then invoked.

44. Further, if that were the case and whatever is suggested had occurred had some legal bearing on wages payable then it is inexplicable and incredible that Mr Newman would be making clear Mr Tomin was to be paid and requesting the Claimant's bank details on the 13th February 2023.
45. The contract that was signed and that the Respondent allowed the Claimant to continue to work under specified a salary of £1,000 and a start date of the 9th January 2023.
46. The Respondent cannot legally justify the withholding of wages unilaterally because of matters that were never raised with the Claimant prior to his resignation.
47. As such, the claim of unlawful deduction of wages is well founded and is upheld.

**Tribunal Judge DS McLeese Sitting as an
Employment Judge**

Dated: 1st May 2024

Order posted to the parties on
2 May 2024

For Secretary of the Tribunals
Mr N Roche