



EMPLOYMENT TRIBUNALS

Claimant

Mr C Dorji

Respondent

Synergy Cleaning Ltd

v

Heard at: Sheffield (by video link – Kinly Cloud)

On: 5 July 2024

Before: Employment Judge James

Representation

For the Claimant: In person

For the Respondent: Did not appear and was not represented

JUDGMENT

(1) The claim for unauthorised deduction of wages succeeds. The respondent must pay to the claimant the sum of £782.68.

REASONS

Facts

1. The claimant Mr Dorji is from Bhutan. English is not his first language. He has lived in the UK for about 15 months.
2. In about March 2023, the claimant started work for the respondent. He was employed as a cleaner, working 12.5 hours a week, (2.5 hours a day), cleaning the offices of Gray's solicitors, Monday to Friday.
3. The respondent has suggested that the claimant was paid an advance of wages of £400 in April, having only started in April 2023. The claimant says that is not correct. The respondent has not attended the hearing. The only witness before me is Mr Dorji. I have found him to be a credible and honest witness. I accept his evidence in full.
4. Mr Dorji tells me that he worked 50 hours in March, and so should have been paid £525. He is therefore still owed a further £125 for March.

5. On 1 May 2023 the claimant was interviewed by the police about an alleged offence of fraud by false misrepresentation. The details need not concern us. He was subjected to bail conditions, which prevented him from having any contact with his employer. He was not paid his wages for April 2023. He worked 122 hours in April, @ £10.50 per hour, for which he was entitled to be paid £1281.
6. Mr Dorji believed that he could not contact his former employer about the wages owed, because he genuinely understood that the bail conditions prevented him from doing so. He consulted a solicitor about the criminal charges, but not about the money that was owed to him, for that reason.
7. At the end of January 2024 the claimant was told that the criminal investigation would go no further and the bail conditions were removed. It was only after this date, that the claimant believed that he could take any further action in relation to the wages owed to him.
8. The claimant researched online and came across the Employment Tribunal website. That directed him to start Acas Early Conciliation. He completed the relevant form and that was sent to Acas. Acas Early Conciliation formally commenced on 4 February 2024. Acas contacted the claimant. The conciliation process lasted until 8 February. On receipt of the Acas Early Conciliation Certificate, the claimant submitted his claim to the employment tribunal on the same day.
9. In the response to the claim, the respondent says that the claimant has been paid £623.32. The claimant accepts that. On the claimant's case therefore, he is still owed £657.68.
10. The respondent says it made deductions of £620 made up of the following.
11. First, £400 for the alleged advance of wages. I accept the claimant's evidence that he worked in March, and that the £400 paid to him was properly due for work done, not as an advance. I am also satisfied that the claimant is owed a further £125 for March.
12. Next, the respondent says that £125 was deducted for private use of the van to go to Scarborough on two occasions leading to mileage and valeting costs as the claimant had smoked in the van. The claimant told me and I accept that he did not smoke in the van. Further, the visits to Scarborough were with the permission of his employer. He agreed to put his own fuel in which he did. No evidence has been provided by the respondent as to how the £125 is made up, regarding the alleged valeting costs and mileage.
13. The respondent deducted £95 for two parking fines. The respondent has said that actually £145 should have been deducted but it was charged at £95 by mistake. The claimant accepts that the £45 would have been due in relation to his parking at Lidl on James Street in York on 18 April 2023. The claimant denies that the parking charge was applicable in relation to the notice sent on 17 April 2023, for parking in the York St John University main campus. He said he went to the campus as a student at the University and the parking charge notice has been cancelled.
14. The respondent also complains that the claimant did not return his uniform and that it was entitled to deduct £70 for that. The claimant told me he did not believe that he could return the uniform, until the bail conditions had been

removed. The uniform has since been returned, albeit very recently. The respondent accepts that, although they say that it is worn. In any event, no deduction has been made for that.

Conclusions

15. Bearing in mind the above facts, the first issue I have to determine is whether it was reasonably practicable for the claimant to submit his claim in time; and if not, whether it was submitted within a reasonable period thereafter. I am satisfied in the circumstances of this case, and in particular the fact that Mr Dorji is not a UK national; English is not his first language; and he genuinely believes that contacting his former employer about the wages owed to him would put him in breach of his bail conditions; that it was not reasonably practicable for him to submit the claim in time.
16. After the bail conditions were lifted, the claimant acted swiftly, in order to find out how he could pursue a wages claim in the Employment Tribunal. He then commenced Acas early conciliation within a reasonable period thereafter - a matter of days. The ET1 was submitted on the same day that Acas Early Conciliation concluded. I am therefore satisfied both that Acas Early Conciliation was commenced, and the claim form was issued, within a reasonable period thereafter.
17. In these circumstances, the tribunal has jurisdiction to hear the claimant's claim because it was, in these unusual circumstances, submitted in time.
18. The claim before the tribunal is one of unpaid wages. I am satisfied that £125 is due for March, on the basis of the evidence presented to this tribunal, which has not been disputed by the respondent.
19. I am further satisfied that the sum of £657.68 has been unlawfully deducted from the claimant's wage in relation to the hours worked in April. The sum of £400 should not have been deducted in relation to an alleged advance - that was properly payable for work done. As for the use of the van for private use, I am not satisfied that £125 is due to the respondent. No evidence has been presented in relation to the amounts claimed. I am satisfied on the basis of the evidence before me that the claimant did have permission to use the van, he put in the fuel he used and that he did not smoke in it. In any event, the contract gave the respondent no right to withhold the sums which were deducted.
20. As for the parking charges, the claimant accepts £45 is due, but under the law relating to wages, deductions must not be made unless the contract gives the employer permission to do so. Although the Drivers Handbook confirms that drivers are responsible for their own parking fines, neither the contract nor the Drivers Handbook gives the respondent permission to withhold any parking fines from the final wage. Since that has been unlawfully deducted, the respondent is prevented from suing the claimant for the balance (see s.25(4) Employment Rights Act 1996).
21. I am therefore satisfied that the claimant is due the total sum of £782.68. I award that amount to him.

Employment Judge James
North East Region

Dated 5 July 2024

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