



EMPLOYMENT TRIBUNALS

Claimant: Mr D Holden

Respondent: Premier Support Services Limited

Heard at: Nottingham Employment Tribunal (Respondent's witness attending remotely via CVP)

On: 12 April 2024

Before: Employment Judge Welch

REPRESENTATION:

Claimant: No attendance
Respondent: Mr W Haines, Consultant

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

REASONS

1. On 26 October 2023, the claimant issued proceedings in the Employment Tribunal following a period of early conciliation that started on 8 August 2023 and finished on 19 September 2023. The claim was for unlawful deductions from wages.

The hearing

2. The claimant was employed by the respondent as cleaner from 20 October 2022 until 5 September 2023. The claimant claimed unlawful deductions from wages in respect of his wages which he assessed to be in the sum £102.08 in his ET1 claim form.
3. Judgment in default was issued against the respondent in error in the sum of £102.08, in the belief that no response had been received from the respondent. However, a response had been filed within the time limit in which to do so. Therefore, the default judgment was reconsidered and revoked and today's hearing was listed to be held in person to consider the claim.
4. Case Management Orders were sent with the Notice of Hearing to the parties on 24 November 2023. These provided that the parties were to send each other documents and witness statements well in advance of the hearing.
5. The claimant had contacted the Tribunal to ask for copies of the notice of hearing which was sent to him again on 8 July 2024. I am satisfied that the claimant knew that the hearing was taking place.
6. The Tribunal had received no documents or witness statements on the eve of the hearing from either party and I therefore organised for the clerk to telephone the parties to request that they send documents and witness statements to the Tribunal in readiness for the hearing. The clerk was able to speak with the claimant but was unable to speak to the respondent and so sent an email.
7. The claimant sent three emails to the Tribunal on the evening of 18 July 2024. The emails enclosed copies of screenshots of text messages between himself

and Ms Gelder of the respondent together with pages from what appeared to be the ACAS website relating to constructive unfair dismissal. The final email sent at 11.18pm said:

"I have looked on Google earth etc and a parking site for a place to park doesn't appear available around the court. Regrettably I cannot now attend as I can't handle the stress of circulating around Nottingham to attend a building that is beset by double yellow lines everywhere etc. The train booking sites and times are equally daunting. I believe you have enough information to make a judgement but it looks like the process is now very stacked against me."

8. On the morning of the hearing, I was provided with a bundle of documents from the respondent, and a witness statement. The respondent requested that its witness attended remotely as he was based in Bristol.
9. I arranged for an email to be sent to the parties to confirm that:
 - a. The claimant's three emails and respondent's email had been received;
 - b. I was unable to consider the correspondence between the claimant and ACAS as this was privileged and could not be referred to in the hearing;
 - c. The only claim before the Tribunal was a claim for unpaid wages;
 - d. the hearing would be a hybrid hearing so that the claimant and the respondent's witness could attend remotely if they wished but could also attend the Tribunal in person;

- e. the hearing would proceed in any event, as there was no indication that the claimant would attend any future hearing should it be postponed.
10. The claimant did not attend the hearing and did not respond to the letter from the Tribunal. I proceeded to hear the claim in his absence, since I considered it was in accordance with the overriding objective to do so.
11. I heard evidence from Mr Richard Sears, the respondent's strategy director who had provided a witness statement and was subjected to questions from me.
12. I gave my decision orally on the day. I provide these written reasons despite there being no request for them, in order that the claimant may see the reasons why his claim has failed.

Findings of fact

13. The claimant was employed by the respondent as cleaner from 20 October 2022 until 5 September 2023.
14. It was clear that the respondent made errors in the calculation of the claimant's pay in respect of paying some hours at £10.82 and some at £11.52. All hours should have been paid at £11.52 per hour. Additionally, there were errors in respect of the calculation of the claimant's holiday pay.
15. The claimant's text messages refer to underpayments of wages in February, March and April 2023. There were messages from 24 March 2023 which refer to the claimant being paid an extra 5 hours "*3 for this month and 2 for last month. Is that you all sorted wages wise?*" to which the claimant replied, "*...Yes, that is me correct wages wise...*"

16. The messages suggested that he had not been paid for some hours he worked in April and May 2023, totalling, from his calculations in those messages, £167.36. However, it was unclear how the numbers of hours had been calculated, as the messages made clear that as the site on which the claimant worked was fully staffed, overtime would only be paid if someone was off. Further, it did not relate to the £102.08 claimed in the ET1 claim form.
17. The messages made clear that on 16 March 2023 that “*overtime can only be authorised if someone is off*”, to which the claimant replied, “*okay*”.
18. The claimant was underpaid in April, May, June, July, August and September 2023 in the total sum of £244.67. He was also paid less than his holiday entitlement by the sum of £30.17. Therefore, the claimant was owed £274.84, but had been paid this sum by receiving back pay in September, November and December 2023 totalling £274.84.
19. When considering the claimant’s claim form, the text messages he emailed and the respondent’s evidence and documents, it was difficult to see how the claimant had been underpaid.

Law

20. Section 13 ERA provides protection for employees in respect of unlawful deductions from wages. It provides:

“(1) 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.

...

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion...."

Conclusion

21. I had some sympathy with the claimant, as it was clear that the respondent had made many mistakes in the calculation of his wages and therefore, I could understand why the claimant may have believed that he had been underpaid.
22. The claimant has the burden of proving the amounts owed to him. In not attending the hearing, either remotely or in person, he has been unable to give evidence of the amounts he considers are due and the basis for this. It was not clear the exact amount he was claiming particularly in light of the pay slips provided by the respondent.
23. On the basis of the evidence before me, including the pay slips showing that back pay of £274.84 in respect of wages and holiday pay was paid between September and December 2023, it appears to me that the claimant has been paid in full in respect of his wages. Therefore, the claim must be dismissed.

Case Number: 2602639/2023

Employment Judge Welch

19 July 2024

Judgment sent to the parties on:

...01 August 2024.....

For the Tribunal:

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Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.