EMPLOYMENT TRIBUNALS

Claimant: **Mr. J. Mc Golpin**

Respondent: **Marissa Leisure Limited**

Heard at: **Newcastle Civil and Family Courts and Tribunal Centre via CVP**

On **30 July 2024**

Before: **Employment Judge T.R. Smith**

Representation

Claimant: **Mr. Mc Golpin, in person**

Respondent: **Ms. D. Clark, director**

Written reasons provided following a request dated 12 August 2024

The issue

The issue the tribunal was required to determine was a simple one, namely whether there was an unlawful deduction from the claimant's wages, that deduction being a partial non-payment of holiday pay.

It is important to emphasise what this case was not about. It was not about the claimant's competency as a head chef, the respective behavior of each party, their various faults and peccadilloes and the reason why the claimant's employment was terminated.

The claimant had also sought an award for injury to feelings. The tribunal explained to the claimant it did not have jurisdiction to make such an award.

Findings of fact

The facts are essentially agreed and can be summarised shortly.

The claimant started employment with the respondent on 25 August 2023 and his employment ended when he was dismissed by the respondent on 07 April 2024.

It was common ground that at termination the claimant was owed accrued holiday pay.

At termination he received a pay slip which showed, after deduction of tax and national Insurance, the claimant was entitled to £650.

It was common ground between the parties that was the correct figure for the accrued holiday pay.

The claimant however was not paid £650. He was paid £200.

The respondent deducted £450 because it contended the claimant owned it that sum as rental for a use of the room for four nights a week at its premises.

What had occurred, to save the claimant travelling costs and, no doubt, to make the appointment more attractive, was to allow the claimant to lodge above the premises after his work was completed.

There was no formal documentary evidence in respect of the lodging placed before the tribunal, but it did appear that both parties agreed the rental was £50 per week.

The evidence before the tribunal was the claimant did pay the £50 per week from time to time.

It is not for this tribunal to make any finding of fact on incomplete evidence as to whether any sum was or was not owed by the claimant to the respondent in respect of arrears of rental. Suffice to say, however, the respondent deducted £450 at termination, hence why the deduction was made.

The law and discussion

The tribunal applied sections 13 and 14 of the employment Rights act 1996.

"(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.

(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion……

(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

The first question for the tribunal was whether the sum of £450 was money that was "properly payable". There is express admission by the respondent that this sum was owed to the claimant, and holiday pay constitutes wages for the purpose of the Employment Rights Act 1996.

It is then for the respondent to show that once a deduction has been made either it was authorised under provisions of section 13 or fell within exceptions set out in section 14 of the Employment Rights Act 1996.

The respondent did not rely on, and indeed the tribunal said concluded it could not rely upon the limited exceptions section 14.

The respondent could not produce any evidence that it had the power to make deductions under the claimant's contract.

The respondent could point to a number of WhatsApp posts. In those posts the claimant accepted that he thought £50 per week was reasonable for the use of a room for four nights. That however is as far as it went.

That is not sufficient to justify the deduction. For the respondent to rely upon an agreement in writing there must not only be an acceptance that the sun is due but that the repayment can be made for the employees' wages, see **Potter -v- Hunt Contracts Limited 1992 IRLR 108.**

Whether the respondent may have a right to make recovery elsewhere is not a matter that this tribunal need comment upon.

For the above reasons the claimant is entitled to the declaration sought and an award of £450, being the sum sought.

Case number 2501116/2024

Employment Judge **T.R.Smith**

Date 21 August 2024

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/