



EMPLOYMENT TRIBUNALS

Claimant: Mr M Woodall

Respondent: Bibo Solutions LLP

Heard at: Birmingham (by CVP)

On: 4 October 2024

Before: Employment Judge Wright

Representation

Claimant: In-person

Respondent: Mr J Chapman (Respondent CEO)

JUDGMENT having been sent to the parties on 8/10/2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Summary of the hearing

1. The Respondent confirmed that the sums claimed by the Claimant were not in dispute and that the sums claimed for holiday pay, notice pay and outstanding wages were agreed as owing and it was agreed they had not been paid. They had not been paid owing to the Respondent financial difficulties.
2. The Respondent had provided to the Claimant the holiday pay figure of £94.95 and, whilst there was some discussion clarifying whether a further 2 days holiday was owing, the Claimant confirmed his agreement to the 1-day figure and the calculation for this which had been provided by the Respondent.

Issue

3. The Respondent argued that whilst it was agreed the Claimant's January wages had not been paid, his claim for unlawful deduction of wages related

to this of £865.38 had been submitted late to the tribunal and were therefore out of time.

Relevant law

Unlawful deduction of Wages:

4. Section 13 of the Employment Rights Act 1996 (ERA 96) provides that a worker has the right not to suffer unauthorised deductions from their wages. The relevant sections are set out below:

13. Right not to suffer unauthorised deductions.

(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.

5. As there was no dispute that the sums owing were wages and should have been paid, the rest of section 13 is not relevant.

6. Section 23 ERA then provides that:

(1) A worker may present a complaint to an employment tribunal

(a) that his employer has made a deduction from his wages in contravention of section 13...

(2) ...an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made...

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received."

7. Section 207B Extension of time limits to facilitate conciliation before institution of proceedings

Section 207B addresses how the deadline referred to in Section 23 (2) is impacted by the requirement for a Claimant to enter ACAS conciliation before being able to issue a claim to the tribunal.

"(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period...

The Facts

8. The Claimant is paid his wages monthly and was due to be paid his wages at the end of January 2024. The Claimant was employed by the Respondent until 8 February 2024. He entered ACAS early conciliation on 16 April 2024 until 13 May 2024 and presented his claim on 13 May 2024.
9. In accordance with the above provisions the time in early conciliation is not to be counted. The Claimant should have received his January wages on 31 January 2024. He did not receive these. He also did not receive further payments owed that would have been due to be paid to him at the end of February 2024. The Claimant therefore suffered a serious of unlawful deduction of his wages with the final one being the Respondent's failure to pay him in February 2024. However, in any event, even if the Claimant was

only pursuing his January claim, he had entered ACAS early conciliation on 16 April 2024, which was within 3 months of when his wages should have been paid and therefore before the expiry of the 3-month original deadline. As set out above, the dates in ACAS early conciliation are not counted (from the day after 16 April (Day A) -13 May 2024 (Day B)). His original limitation date for bringing his claim in respect of his January wages would have expired during the ACAS conciliation period. Therefore, Section 207B (4), as set out above, applies and the time limit for submitting his claim expires 1 month after Day B. He submitted his claim on the same day as Day B and it is therefore in time regardless of whether it is part of a serious of deductions.

10. I found that there were no time limit issues with the Claimant's claim and stated that, in any event, even if there had been, he could also categorise his unlawful deduction of wages claim as a breach of contract claim (which his notice pay had been) and bring his claim to the tribunal within 3 months of the breach to his employment contract. As the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) also applies to breach of contract claims within the tribunal, again, whilst it was not necessary to go into this for these proceedings as there were no issues regarding limitation in respect of breach of contract claims, the deadline operates in the same way as outlined above.

Employment Judge Wright
16 November 2024