



EMPLOYMENT TRIBUNALS

Claimant: Mr Davis

Respondents: PBS4

Heard at: Bristol (by CVP)

On: 7 June 2024

Before: Employment Judge Murdoch

Representation

Claimant: In person

Respondent: Ms Gillie, HR representative

REASONS

JUDGMENT having been sent to the parties 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:

Introduction

1. The claimant was employed by PBS4 as an “enablement assistant”, providing care to individuals. The claimant started employment with the respondent on 5 October 2019. By a letter dated 16 November 2022, the claimant was dismissed with immediate effect on the ground of gross misconduct. The claimant appealed against dismissal but was notified on 13 January 2023 that his appeal had been unsuccessful. The decision to dismiss summarily was upheld.
2. The claimant wished to bring Tribunal proceedings against his employer in relation to his pay and so he contacted ACAS to start the Early Conciliation process on 13 January 2023. A certificate naming PBS4 as prospective respondent was issued on 8 February 2023.
3. By a claim form presented on 28 February 2023, the claimant complained of unlawful deductions from wages pursuant to Part 2 of the Employment Rights Act 1996. The claimant’s claim was two-fold as follows:
 - a. A sum of £619.62 wrongfully deducted from his pay. The respondent’s position was that this was an overpayment in the tax year 2022-23 as a result of the claimant taking holiday in excess of his holiday entitlement.

- b. Arrears of pay totalling £1650 in respect of 150 hours of work (at his contractual hourly rate of £11 per hour) on occasions when he was on a “sleep-in” shift, but was working for up to 3 hours during the shift.
4. A hearing took place on 20 June 2023. The judge decided to adjourn the hearing until 15 September 2023 and carried out some case management instead.
5. At the hearing on 15 September 2023, the claimant’s complaint relating to work carried out during sleep-in shifts was dismissed. The judge decided that the complaint regarding the deduction from the claimant’s final pay could not proceed because further disclosure and clarification of the issues was necessary. The following agreed facts were recorded in Judge Ferguson’s Case Management Order dated 18 September 2023:
 - a. The respondent’s holiday year ran from 1 April to 31 March.
 - b. The alleged overpayment was in the period 1 April 2022 to 16 November 2022 (the claimant’s effective date of termination).
 - c. That period amounts to 230 days, which is 0.63 of a year.
 - d. The claimant’s holiday entitlement for that period was 3.528 weeks.
6. Two matters were left in dispute:
 - a. The correct figure for the average weekly hours worked by the claimant for the purposes of calculating outstanding or overpaid holiday on termination.
 - b. The amount of holiday taken in the period 1 April 2022 to 16 November 2022. The respondent says the claimant took 156 hours of annual leave.
7. The respondent’s initial figure for the average weekly hours worked was 28.27, but it was accepted that an incorrect reference period had been used. Employment Judge Ferguson stated that the respondent needed to recalculate using a 52-week reference period that ignored weeks when the claimant did not work.
8. The respondent agreed to provide its payroll records accordingly. Employment Judge Ferguson then noted that he hoped the parties would thereafter be able to agree whether the deduction was authorised, and if not, what amount is owing to the claimant. He asked the parties to inform the Tribunal should they reach an agreement. They were also reminded that the services of ACAS remain available to them.
9. Ms Gillie then emailed the Tribunal and the claimant on 13 October 2023 providing its records as directed. The calculations in this document show that the respondent did over-deduct pay from the claimant. The respondent admits it made a mistake by deducting £676.50 as it should have deducted £484.11. The respondent calculated that it therefore owed the claimant £192.39. This is the relevant extract:

Total hours paid for in 52 week reference period:

Average weekly paid hours in reference period:

FULL YEAR Annual leave entitlement for 2022/23 leave year:

PRO RATA Annual leave entitlement for 2022/23 leave year:

Annual leave taken in 2022/23 leave year:

Annual leave over taken:

Salary deduction required @ £11.50 per hr:

10. The claimant then emailed on 31 October 2023 to say that he disagreed with the accuracy of the respondent's data.

11. On 22 November 2023, Employment Judge Ferguson directed as follows:

“The claimant's email of 31 October 2023 says that he disagrees with the accuracy of the respondent's data but does not say on what basis. There is no entitlement to interest or compensation for “significant hardship” caused by the error. It is the claimant's case and it for him to set out the amount claimed and the basis for his calculation. At a hearing it would be for the claimant to prove that he is owed more than the respondent says. The Tribunal therefore proposes to issue a judgment in the sum of £192.39 unless the respondent confirms that the sum has already been paid. If either party disagrees with this proposal they must write to the Tribunal by 29 November 2023 explaining their reasons.”

12. The claimant did write to the Tribunal to state again that he disagreed with the accuracy of the respondent's data. The case was listed for 7 June as a two-hour hearing via CVP.

The hearing

13. I heard the claim on 7 June 2024. The claimant represented himself and gave sworn evidence. As the claimant did not have a witness statement, I took the ET1 claim form as his evidence in chief, which he confirmed under oath to be true and accurate. The respondent was represented by Ms Gillie, an HR representative. I took her witness statement as her evidence in chief, which she confirmed under oath to be true and accurate. The parties cross-examined each other and gave closing submissions. I then adjourned briefly and gave oral judgment.

Issue for the Tribunal to decide

14. The claimant's complaint of unauthorised deduction from wages relates to the deduction made from his final pay of £619.62. For clarity, I sought the party's agreement at the outset of the hearing that the figure was in fact £676.50 gross, and £619.62 net. They agreed these figures.

15. It is not in dispute that the respondent was entitled to deduct any overpayment from the claimant's final pay, as is set out expressly in the

employment contract, but the claimant disputes that there was any such an overpayment.

16. I agreed with the parties that the only issue for me to decide in this hearing was whether the gross quantum of the amount wrongfully deducted from the claimant's pay was either £676.50 or £192.39.

The law

17. Section 27(1) Employment Rights Act 1996 defines 'wages' as any sums payable to the worker in connection with his employment.

18. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make unauthorised deductions from the wages of a worker.

19. The provisions of section 13 of the Employment Rights Act 1996, to the extent relevant to this claim, state:

(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.

20. Section 13(3) provides that a deduction occurs where the total amount of wages paid to the worker on any occasion is less than the amount properly payable to the worker on that occasion.

Findings of fact and conclusions

21. The respondent's position is that it has provided detailed data with regards to number of hours that the claimant worked. Ms Gillie noted in sworn oral evidence that the data provided was a direct download from the online rota system that the respondent used at the time, which was called Rota Cloud. She said that the system allows you to download the data directly into an Excel spreadsheet, which is what she did.

22. The calculations at the end of this document show that the respondent did over-deduct pay from the claimant. The respondent admits it made a mistake by deducting £676.50 as it should have deducted £484.11. The respondent calculates that it therefore owes the claimant £192.39.

23. The document shows that the claimant worked 32.7 hours per week. The respondent explained under sworn oral evidence that this new figure takes into account all the overtime that the claimant worked above his normal contracted hours. This new figure also excludes all the days/weeks of the year where the claimant did not work (unlike the first figure that was produced by the respondent).

24. The claimant contends that the respondent has got the figures wrong multiple times already so he has no basis on which to trust the accuracy of

the data being provided this time. He states that he has no information on which to do his own calculations as the respondent has withheld data from him. He alleges that the respondent has written false documents and manipulated the data. He says he just wants to recover the whole amount that was deducted.

25. I prefer the respondent's account. The reason for this is that the respondent has provided documentary evidence that shows its workings, as set out above. I accept the legitimacy and accuracy of the documentation. I found Ms Gillie evidence to be consistent and reliable. The claimant has not provided any information or evidence to show on what basis he disagrees with the accuracy of the respondent's data, nor any evidence to show that the data has been corrupted or manipulated. It is the claimant's case and it for him to set out the amount claimed and the basis for his calculation. He has not proved that he is owed more than the respondent says.

Summary

26. The complaint in respect of holiday pay is well-founded. The respondent made an unauthorised deduction from the claimant's pay and is ordered to pay the claimant the gross sum of £192.39.

Request for written reasons

27. The claimant requested written reasons on 15 July 2024 but this was not seen by way of administrative error. The claimant requested written reasons again on 6 November 2024, which was seen, registered, and actioned accordingly.

Employment Judge Murdoch
Date 18 November 2024

JUDGMENT SENT TO THE PARTIES ON
06 December 2024 By Mr J McCormick

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