EMPLOYMENT TRIBUNALS

Claimant: **Miss D Teyfik**

Respondent: **Blo Bar 67 Limited**

Heard at: **East London Hearing Centre (by CVP)**

On: **23 October 2024**

Before: **Employment Judge Knowles**

Representation
Claimant: Miss Teyfik (in-person with support of her friend Mrs Townsend)
Respondent: Miss Suleman (Senior Consultant Litigator)

RESERVED JUDGMENT

1. The claimant's complaint of unlawful deductions from wages succeeds. The respondent is ordered to pay compensation to the claimant in respect of the unlawful deductions of wages in the gross sum of £7,164.75 within 14 days.

REASONS

1. The claimant was employed by the respondent as a hair stylist in a beauty salon called the Blo Bar located in Essex and had continuous service from 24 October 2022 until 28 December 2023.

2. She resigned on 28 December 2023 with immediate effect. She is bringing a claim for unlawful deductions from wages and is claiming the sum of £7,164.75 in respect of unpaid wages during her employment.

The Hearing

3. As a preliminary matter I heard submissions from both parties and considered the respondent's outstanding application for an extension of time to submit an ET3 response. I granted the application giving reasons for the decision orally in the hearing. The hearing then proceeded to consider the claimant's claim for unlawful deductions of wages.

4. In the course of the hearing, I heard evidence under oath from Mrs Mcleod, director of the respondent company. I also heard evidence under oath from the claimant, Miss Teyfik.

5. With consent, the name of the respondent is amended to Blo Bar 67 Limited.

6. In reaching my decision, I had regard to the written evidence I was provided with in the 175-page bundle, the oral evidence provided by Mrs McLeod and Miss Teyfik and the submissions of Miss Suleman on behalf of the respondent and Mrs Townsend on behalf of the claimant. I also had regard to the law and briefly set out below the relevant parts in respect of the claim.

The Relevant Law

Unlawful Deduction From Wages

7. The right not to suffer an unlawful deduction of wages is set out in Section 13 (1) the Employment Rights Act 1996 (ERA):

> *"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."*

8. If what was paid by the employer to the worker on the relevant occasion was less than the amount properly payable (applying common law and contractual principles), then there has been a deduction for the purposes of s.13 ERA. Section 13 (3) ERA specifically provides that wages which are properly payable but not paid are to be treated as a deduction. There is no valid distinction to be drawn between a deduction from a sum and non-payment of that sum. Section 13(3) ERA states that:

> *"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."*

9. Section 23 ERA gives a worker the right to bring a complaint to an Employment Tribunal of an unlawful deduction from wages. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

> *"(2) Subject to subsection (4), 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.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."

10. The employer must show the amount of the deduction is justified and Tribunals are not to engage in a speculative exercise in the absence of concrete evidence.

The issues

11. The claimant contends that it was agreed that she would work full time in the salon working 40 hours per week over a Tuesday (8 hours), Thursday (9 hours), Friday (9 hours), Saturday (9 hours) and Sunday (5 hours). She would occasionally work additional hours and would on occasion in turn be sent home early if there were no further clients that day. In accordance with the contract (clause 6.3) she was not to be paid overtime for additional hours, the agreement was that she would be paid for 40 hours per week. The respondent's position is that the agreement was for the claimant to work variable hours, generally every Friday, Saturday and Sunday, and that she was paid on an hourly basis, at the minimum wage, for the hours which she worked and therefore there has been no underpayment. The respondent contends, albeit having provided no proof beyond oral assertion, that overall the claimant was overpaid for the hours she worked.

12. I must therefore decide on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasions. Of course, if an employer is contractually entitled to reduce a worker's wages — either because there has been an agreed variation of contract or because there is a flexibility clause giving the employer the right to do so — the wages 'properly payable' will be the reduced wages due under the varied contract or under the flexibility clause (and provided that this is the amount the worker receives, there will have been no unlawful deduction from wages).

13. Within the bundle there were two versions of a contract of employment. The respondent states that a contract was given to the claimant when she started and that she then asked for a new contract when her rate of pay increased. The first version of the contract appears to be a template version, albeit that version has a signature page signed by the claimant on 21 September 2023 (although the claimant's employment started in October 2022). Under clause 5.1 it states "Your salary is £ [left blank] per week payable monthly in arrears. This will be paid directly into your bank". Clause

6 provides "6.1 Your normal hours of work are Sunday 10 –3, Monday 10am – 5, Tuesday 10am –6, Wednesday 10am – 6pm, Thursday and Friday 10am to 7pm, Saturday 9am to 6pm subject to change (subject to training). 6.2 However, these hours are subject to variation as necessary to meet the requirements of your job. You may be required to work longer hours, including Saturdays, subject to the needs of the business. 6.3 No overtime will be paid unless specifically agreed and authorised by a Director of the Company".

14. The 2nd version of the contract of employment, which is unsigned, is the same as the template with some handwritten amendments including adding in the month of October (omitting the date) 2022 as the commencement of employment at clause 2. The respondent stated in evidence that this version was given at the request of the claimant when her rate of pay increased. At clause 5.1 the work week was crossed through and changed to 'hour' and the amount £11.50 added so that the clause provided "Your salary is £11.50 per hour payable monthly in arrears. This will be paid directly into your bank. Clause 6, detailing the hours of work had no amendments, and still provided normal working hours to be as set out in paragraph 13 above. It was agreed by the claimant and the respondent that the salon was not in fact open on Monday's and the inclusion of 10am to 5pm working on Monday's was not accurate. The claimant does not accept that either of the two versions of the contract of employment in the bundle are the actual and agreed version, she contends that there was a third version but she was not given the final copy, and the respondent has omitted to provide and include in the bundle (the respondent does not accept that there was a third version).

15. Within the contracts of employment there is a deductions clause at clause 26 which provides that any overpayment made can be deducted from pay. In the bundle there was also a Staff Handbook which the respondent sought to rely on in evidence in terms of overpayments being reclaimed. However, the Handbook which is stated to have first been issued in March 2024, was not in place during the claimant's employment. In any event, the specific issue to be determined is in relation to whether there were underpayments of wages rather than the lawfulness of deductions having been made during the employment for alleged overpayments.

16. The respondent sought to rely on a spreadsheet within the bundle purportedly setting out the hours which the claimant worked. In evidence Mrs McLeod said that she kept track of hours worked by completing this spreadsheet herself inputting the hours which the claimant had worked, she then provided this to her accountant who dealt with wages. On consideration of the spreadsheet it seems to be inaccurate, incorrectly recording holiday's taken and recording that the claimant worked hours when the Salon was closed (for example 25 December 2022). Later in evidence Mrs McLeod accepted that in fact the spreadsheet had only been produced for the purposes of the Employment Tribunal hearing. Mrs McLeod then explained that hours worked were calculated by going through what is known as the Forest Booking System which records appointments booked for clients, and she went through this and worked out the hours worked by the claimant. Mrs McLeod confirmed that the records from the

Forest Booking System could have been printed off and provided as evidence, but she had not provided this.

17. Mrs McLeod contended that the claimant worked variable hours including Friday, Saturday and Sunday each week and that further hours and when she was required to work was notified to the claimant by text message. Despite this, no evidence of these text messages or notification of the asserted variable hours the claimant was working each week was produced to the Tribunal.

18. It was accepted by the respondent that there were numerous issues with the claimant's wages during her employment. Mrs McLeod gave evidence of the number of overpayments and then subsequent deductions made to the claimant. She states that overall the claimant has been overpaid. The claimant does not accept that she was notified of any overpayments and subsequent deductions at all during her employment. It is accepted by the respondent that the claimant was not provided with pay slips each month when she was paid. There was evidence of numerous text messages from the claimant asking for a copy of her pay slips. During her employment the claimant was provided with 6 pay slips, the first pay slips received on 2 May 2023 for her February and March 2023 pay. She received her May 2023, June 2023, August 2023 and October 2023 pay slips on time. The other 8 outstanding pay slips were not received until 8th January 2024 after the claimant had resigned. The claimant contends that during her first 3-months of employment while in her probation period she did not feel she could raise an issue with her pay for fear of 'rocking the boat', but that subsequently she did verbally speak to Mrs McLeod to ask about her pay but was consistently told that payroll would sort it.

19. Within the claim form the claimant mentioned deductions in relation to pension contributions. However, that issue as part of the deductions claim was not proceeded with in evidence by the claimant (albeit it was addressed in the witness statement of Mrs McLeod) or submissions (from either party) and indeed has not been particularised in the document produced by the claimant setting out the calculations of the unlawful deductions made. I accordingly did not consider pension contributions as part of the claim.

Findings of Fact

Submissions

20. The submissions on behalf of the parties can be summarised as follows below.

21. The claimant says the wages were unlawfully deducted as it was agreed with the respondent on commencement of her employment that she would work and be paid for 40 hours per week. Instead, the respondent only paid the claimant for time spent on actual client appointments, not paying her for all the time she spent in the salon which the claimant says was an unlawful deduction.

22. The respondent says that there was no agreement that the claimant would work for 40 hours per week. The respondent's position is that the agreement was that the claimant would work variable hours, and that she was paid for all of the hours which she worked (the respondent contends that the claimant was in fact overpaid by a total of 60 hours during her employment (79 hours overpaid – 19 hours accepted by the respondent as underpaid = 60 hours the respondent states the claimant was overpaid). The respondent accepts that during her employment there were numerous errors with the claimant's pay, but contends that any errors were corrected and that she has received all wages due to her for the hours which she has worked. The respondent therefore contends that no unlawful deductions took place.

Conclusions

23. I heard evidence under oath from both Miss Teyfik and Mrs McLeod.

24. It is agreed between the parties that the claimant was paid at the rate of the national minimum wage, initially at £9.50 per hour from 24 October 2022 and then increasing to £11.50 per hour as from 1st April 2023.

25. There were inconsistencies with Mrs McLeod's evidence in terms of the spreadsheet produced and further she accepted that they could have provided evidence in terms of the Forest System which recorded client appointments and also alleged text messages confirming the hours the claimant was required to work, but failed to do so. In contrast, the claimant was clear in her evidence of the agreement between the parties that she was employed to work on a full-time basis 40 hours per week. She would not have access to other evidence confirming this, as on her evidence she worked Tuesday, Thursday, Friday, Saturday and Sunday each week as agreed; she would not be notified of different hours as her hours were not variable. It is the respondent who sought to argue that the claimant's hours were variable and she was notified by text, so they would reasonably be expected to have evidence of this, but failed to provide such evidence. I find that there was an agreement that the claimant would work 40-hours per week. There was no agreement between the parties which allowed the respondent to only pay the claimant for the appointment times with clients, rather than the full hours she was at the salon, and no agreement or statutory provision which allowed the respondent to make the deductions.

26. The claimant was only given 6 pay slips during her 13 months of employment. Further, during her employment there were matters which changed the amount she would be paid each month, including an increase in hourly rate from £9.50 per hour to £11.50 per hour, pension deductions not being made throughout, and further how the weeks fall each month so that the number and parts of weeks paid each month naturally fluctuated. I accepted the claimant's evidence that in the absence of her pay slips it was difficult to determine clearly if she was correctly being paid and that she did attempt to raise the matter throughout, but the respondent was dismissive stating that payroll would sort the matter.

27. The respondent consistently failed to give the claimant pay slips throughout

her employment. The Tribunal makes a declaration that the claimant was not given itemised pay statements (pay slips) in accordance with s.8 Employment Rights Act 1996, at or before the time at which the salary was paid to her. No compensation is ordered regarding this failure.

28. The claimant was entitled to be paid for the agreed 40 hours per week during her employment. The amount properly payable to the claimant was £380 per week at the rate of £9.50 per hour and from 1st April 2023 £460 per week at the rate of £11.50 per hour. The respondent consistently, each month of her employment, did not pay for the agreed hours to the claimant. It has therefore made a series of unlawful deductions from the claimant's wages in the gross sum of £7,164.75 the calculation of which is set out by the claimant within the table in the bundle and provided in clarification of her claim. For clarity the unlawful deductions are as follows:

October 2022	£380
November 2022	£940.50
December 2022	£114
January 2023	£826.50
February 2023	£361
March 2023	£408.50
April 2023	£368
May 2023	£529
June 2023	£408.25
July 2023	£368
August 2023	£575
September 2023	£345
October 2023	£580.75
November 2023	£500.25
December 2023	£460

The final in the series of deductions made was on the 29 December 2023. The claimant notified ACAS Early Conciliation on 14 March 2024, the ACAS Early Conciliation certificate was issued on 9 April 2024 and the ET1 Claim Form submitted on 1 May 2024. The claim was accordingly submitted in time.

29. The respondent is ordered to pay the gross sum of £7,164.75 to the claimant within 14 days.

Employment Judge Knowles
Dated: 6 January 2025