



EMPLOYMENT TRIBUNALS

Claimant: Mrs Courtenay Redpath

Respondent: Mr Sibi Kumar

Heard at: Croydon (by CVP)

On: 2 October 2024

Before: Employment Judge Lumby

REPRESENTATION:

Claimant: In person

Respondent: Mrs Shaina Kumar

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period **1 December 2023 to 31 December 2023**.
2. The respondent shall pay the claimant **£977.21**, which is the net aggregate sum deducted. The respondent is responsible for the payment of any tax or National Insurance.

Failure to provide a written statement of employment particulars

3. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section

38 Employment Act 2002 the respondent shall therefore pay the claimant **£423.08**.

REASONS PURSUANT TO A REQUEST FROM THE CLAIMANT

1. In this case the claimant Mrs Redpath brings monetary claims for unlawful deduction from wages against her ex-employer Mr Kumar. The respondent denies the claims.
2. This has been an online hearing held using CVP. Oral judgment was given at the hearing and the respondent has now requested written reasons.
3. I have heard from the claimant. I have heard from Mrs Kumar on behalf of the respondent. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

Facts

4. The claimant worked for the respondent (a care home operator) from 1 March 2023 until 31 December 2023 as a field care supervisor
5. The claimant's claims arise from deductions made from her wages by the respondent when the claimant left on 31 December 2023 without notice. The amounts deducted were £846.20 and overtime of £131.01; these amounts were not in dispute.
6. The respondent says that the amounts were deducted to cover the cost of paying someone to cover the weekend calls which the claimant was meant to cover, arguing that the claimant left 20 minutes before her shift was due to begin.
7. However, the same amount would have been payable to the claimant had she provided the cover. As a result, the respondent was not financially worse off as a result of the claimant's departure without notice, but was put to substantial inconvenience sorting someone else to cover the calls.
8. Mrs Kumar accepted that there was no legal basis to make the deductions they had made but argued there should be a remedy for the claimant leaving without notice. The tribunal confirmed that this was outside the ambit of this case and the respondent would need to bring a separate breach of contract claim against the claimant if they wished to pursue that argument
9. The deductions were made from the claimant's wages for December 2023. They did not relate to any notice period as no sums were paid by the respondent in respect of any period after the claimant left.

10. The claimant also contends that she did not receive any particulars of employment, simply a piece of paper with her role, salary and hours of working. This did not contain the name of the respondent or a start date. Mrs Kumar was unable to provide by evidence to the contrary. Accordingly, the tribunal finds that, on the balance of probabilities, no particulars of employment were provided to the claimant.
11. The tribunal questioned whether the respondent should be Curant Care Homes Limited or Mr Sibi Kumar. Mrs Kumar said employees were paid direct, not through the company and so the correct respondent was Mr Sibi Kumar. This was accepted by the tribunal.

Law

12. Having established the above facts, I now apply the law.
13. The claimant claims in respect of deductions from wages which she alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
14. Under section 24(2) of that Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.
15. Section 1 of that Act also requires an employer to provide a statement of initial employment particulars. The claimant claims she was not provided with these by the respondent, in breach of that section.
16. Section 38 of the Employment Act 2002 mandates a tribunal to award two weeks pay to an employee who has succeeded in a claim and at that time the respondent was in breach of section 1 of the Employment Rights Act 1996. This can be increased to four weeks where it is just and equitable to do so.

Conclusions

17. Applying the law to the facts, the tribunal determined as follows.
18. The respondent has no right in law to deduct the two amounts withheld by him from the claimant's December 2023 pay. The fact that the claimant left without notice does not affect this position. The amounts deducted are not in dispute and so the tribunal orders the respondent to pay the sum of £977.21 (being the sum of £846.20 and £131.01). This a net sum and the respondent is responsible for accounting to HMRC for any tax and national insurance payable.
19. The tribunal concluded that the respondent had not provided the claimant with a statement of initial employment particulars, in breach of section 1 of the

Employment Rights Act 1996. That breach was continuing at the date of the hearing and the claimant has succeeded in her claim for unlawful deduction of wages. The tribunal was therefore required pursuant to section 38 of the Employment Act 2002 to award the claimant two or four weeks' pay. The four weeks is only awarded if it is just and equitable to do so. In this case, I do not consider it is just and equitable given the circumstances of the claimant's departure. That will mean an award of two weeks' pay, being £423.08.

**Employment Judge Lumby
18 December 2024**

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