EMPLOYMENT TRIBUNALS

Claimant: Mr L Smith

Respondent: DSE Logistics Limited

HELD AT: Manchester **ON:** 3 October 2017

BEFORE: Employment Judge Tom Ryan

REPRESENTATION:
Claimant: In person
Respondent: Mr D Slifkin, consultant

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint of unlawful deductions from wages is well-founded.

2. The respondent is ordered to pay the claimant compensation for unpaid wages calculated as follows:

   Pay due from 13 - 22 March 2017 (8 days) at the weekly rate of £500 in the sum of £800.

3. The respondent shall make payment to the claimant of that sum by 22 October 2017.

REASONS

1. By a claim presented to the tribunal on 13 June 2017 the claimant alleged that the respondent had made unauthorised deductions from his wages. He asserted that he worked for the respondent as an HGV class I driver for 50 hours a week at a pay rate of £10 per hour.

2. By its response the respondent disputed the claim stating that the claimant's dates of employment were wrong, disagreeing with the hours claimed "due to no timesheets or driving card records". Further, the respondent asserted that the

claimant's rate of pay was £9 pounds per hour and disputed that the claimant had supplied timesheets or evidence to back up his claim for working the hours stated or to justify the rate of pay.

3. Case management orders were made listing the matter for hearing and requiring the parties to disclose documents, for the claimant to produce a joint bundle and to exchange witness statements. In the event documents were eventually exchanged at the hearing and neither the claimant nor Mr Slifkin had written or exchanged a witness statement.

4. On 10 July 2017 the claimant submitted to the tribunal a breakdown of the sums he says the respondent had failed to pay him as:

1st week	50 hrs	£500
2nd week	30 hrs	£300
3rd week	30 hrs	£300

5. From his claim form it was apparent that, according to the claimant those were the weeks of 13, 20 and 27 March 2017. The claimant also submitted a letter from Mr Brian Robinson, transport manager for the respondent dated 8 March 2017. The letter confirmed that the claimant's employment was to start on Monday, 13 March 2017 and said, "Salary details are £10 per hour with a guarantee of 50 hours per per week".

6. At the outset of the hearing I was told that Mr Slifkin was also involved in the running of the business. He submitted 4 documents of which two were copies of timesheet forms completed in manuscript and signed by the claimant. Both these documents relate to the week of 20 March 2017. They purport to record the claimant's hours for the Monday, Tuesday and Wednesday of that week. It was not disputed that the claimant did not work on the Thursday and Friday that week because he was attending his sister's funeral. The claimant's total hours are shown as 29.5 on one form and 29.75 on the other. One of those forms records the hourly rate as £10 per hour which was the rate claimed by the claimant but disputed by the respondent.

7. Mr Slifkin accepted that must have been placed on the form by the respondent. He also accepted that the letter produced by the claimant from Mr Robinson was a genuine letter. He told me that Mr Robinson had left the company but was still contactable. This was an indication to me that had Mr Slifkin wish to call Mr Robinson to give evidence to support the dispute of the claimant's case he could have done so. Mr Slifkin accepted on the basis of those documents that the correct hourly rate was £10 per hour. He also accepted that the claimant had not been paid for any of the work he performed the respondent. He did not dispute that the claimant should receive £300 in respect of the work performed on those three days in the light of Mr Robinson's letter guaranteeing the claimant's earnings, in effect, at a rate of £100 per day.

8. On behalf the respondent Mr Slifkin's case was in effect to challenge the claimant's entitlement to be paid for the first and third weeks. He accepted that the respondent owed the claimant wages for the week commencing 20 March 2017.

9. In respect of the first week Mr Slifkin accepted that the claimant was offered work to start on 13 March 2017 but stated that Mr Smith elected to start one week later on 20 March 2017.

10. In respect of the third week, Mr Slifkin disputed that the claimant worked for that week at all. His case was that when the claimant was dropping a trailer at a client of the respondent, Ribble Packaging Ltd, on 22 March 2017 he had driven into collision with a toilet building on those premises and caused a small amount of damage. When he had returned to the respondent's yard and been spoken to about this Mr Slifkin asserted that the claimant had slammed the keys for the vehicle down on the desk and left the premises and had never returned to work thereafter. Mr Slifkin explained there was no independent evidence of the hours that the claimant worked since he had not provided his driver's card which he would have inserted into a machine in the vehicle to record his hours and which could then be examined digitally by the respondent, as I understand it, on his return to the yard at the end of the week. Although the card itself records the hours, it only stores that information for a month.

11. In support of his case in respect of the events of 22 March 2017. Mr Slifkin produced two further documents. The first was an incident report dated 22 March 2017 signed by the claimant which he accepted referred to the incident at Ribble Packaging which contained an admission that he thought he had hit a ramp but did not realise he had hit a wall. The second was an invoice in respect of that damage in the sum of £300 it was not suggested that the claimant should be paid less wages to reflect the damage to the wall.

12. Although I asked Mr Slifkin specifically whether there was any other documentary evidence to show the hours worked by the claimant he maintained there were none. He said that the only record that the company would have was derived from the driver records and they would only be recorded if the driver had submitted his card to be read by the relevant computer. The claimant stated that he had provided his card for that purpose. Mr Slifkin stated that he had not.

13. In the circumstances, I only had the oral evidence of the two protagonists on which to make a judgment. I found the evidence of each of them unsatisfactory in some respects.

14. I thought the insistence of Mr Slifkin that the hourly rate was £9 pounds per hour, a position which he maintained until I pointed out the figure on the timesheet to him, reflected poorly on his credibility. To me it indicated a decision not to pay even the wages that he accepted were due that was tinged with a degree of dishonesty.

15. The claimant maintained before me that he had never damaged the wall at Ribble Packaging and that the contents of the incident report were untrue notwithstanding that he had signed the report on the day in question. He said that he had had a good driving record over many years without incident. He gave no cogent explanation for having signed the paper. In my judgment it is hard to believe that he would have signed that incident report if at the time he had thought he had not collided with the wall.

16. In addition, so far as the claimant's evidence was concerned, his case was that he returned to work in the third week and handed in his notice but that the respondent had behaved in such a way that he put his paperwork and his lorry keys on the desk on the Wednesday evening and decided not to return to work thereafter. He told me that he had not informed the respondent that was what he was doing or intending to do on that day. I found that evidence unconvincing. The claimant was wholly unable to give any clear account as to why, having given notice on the Monday, and having been out on the road for the next three days, as he maintained, the respondent had done something which caused him to act in such a way.

17. Balancing that evidence against the description of Mr Slifkin as to what had happened on the Wednesday of the second week when the claimant returned to the yard and was confronted with the incident at Ribble Packaging I consider it more likely that that was when the employment came to an end. On balance I consider that the claimant's evidence was vague and confused as to the week in which his employment ended. I cannot find on the balance of properties for that reason that he worked in the week of 27 March 2013.

18. On the other hand I do accept that he worked in the week of 13 March 2013. The claimant gave an account of having telephoned the respondent on the Monday of the previous week in response to an advertisement he had seen in a local paper. He described having visited the yard and spoken to Mr Robinson on the following day and they agreed he was to start the following Monday. He then received the letter in respect of his terms in the form produced to me. It seems to be inherently unlikely that the claimant would have agreed at that point to start on the following Monday had he not wished to start until 20 March 2013. I accept people may change their minds but it was not suggested to the claimant that was what he had done.

19. Whilst I acknowledge that in the response the dates of employment were put in dispute no mention was made of the respondent denying that the claimant had worked at any stage in the first week. The mere assertion by Mr Slifkin that the respondent had wanted the claimant to start on 13 March but that the claimant had other things to do was unpersuasive.

20. On the balance of probabilities, I accept the claimant's account of working in that first five-day period. It was supported also by his evidence of the kind of driving work he had done travelling not only in the local area but having made deliveries to Birmingham and Coventry and Cannock via Northwich. There was no contradiction of that detail by Mr Slifkin. The extent of the work described by the claimant seemed likely to me to exceed the work that he could have done in the two days prior to the incident at Ribble Packaging on the Wednesday of the second week. If those were the only three days he worked, as Mr Slifkin maintained, I think it unlikely that the claimant could have completed that work in addition. In my judgment it is probable that the sum of that work was done in the preceding week.

21. In the circumstances I find the claimant worked for the respondent for eight days between 13 and 22 March 2013. The respondent having acknowledged that the

letter from Mr Robinson was genuine, I find that the hourly rate was £10 per hour and that the claimant's guaranteed earnings for a week were £500. I therefore consider that in failing to pay the sum of £800, as a gross sum, the respondent made unlawful deductions from his wages.

22. Finally, I note that the claimant has paid fees to the tribunal in connection with this claim. In **R (on the application of UNISON) v Lord Chancellor** [2017] UKSC 51 the Supreme Court decided that it was unlawful for Her Majesty's Courts and Tribunals Service (HMCTS) to charge fees of this nature. HMCTS has undertaken to repay such fees. In these circumstances I shall draw to the attention of HMCTS that this is a case in which fees have been paid and are therefore to be refunded to the claimant. The details of the repayment scheme are a matter for HMCTS.

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Employment Judge T Ryan

Date 6 October 2017

JUDGMENT SENT TO THE PARTIES ON
6 October 2017

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2403072/2017

Name of case: Mr L Smith v DSE Logistics Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 6 October 2017

"the calculation day" is: 7 October 2017

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office