



EMPLOYMENT TRIBUNALS

Claimant: Mr K Phillips

Respondent: Celsius Home Improvements Limited

Heard at: Liverpool

On: 13 April 2018

Before: Employment Judge Grundy

REPRESENTATION:

Claimant: Mrs R Phillips, Wife

Respondent: Mr M Monaghan of Counsel

JUDGMENT

1. The Tribunal has no jurisdiction to hear the claimant's claim in respect of unfair dismissal as he does not have qualifying service under section 108 of the Employment Rights Act 1996.

2. The Tribunal has not got jurisdiction to hear the respondent's counterclaim as the claimant did not bring claims under contract.

3. The claimant's claims in respect of unauthorised deductions under section 13 of the Employment Rights Act 1996 are declared to succeed, and the Tribunal makes the following awards:

- (1) In respect of unpaid wages the Tribunal awards £570.
- (2) In respect of unpaid annual leave holiday pay the Tribunal awards £2,400.
- (3) The total award is therefore £2,970.

REASONS

1. Firstly in relation to the claims and counterclaims the claimant in his claim form intimated claims in respect of unfair dismissal, unpaid wages to include holiday pay and notice pay on the termination of his employment. He was employed from 8

February 2016 until 17 November 2017 as a plasterer. He does not have two years' qualifying service and therefore the Tribunal declined jurisdiction in respect of the unfair dismissal claim.

2. In respect of the remaining claims, the claims for unpaid wages and therefore unauthorised deductions at the termination of employment related to a claim in respect of a worked week in hand and a week's work unpaid amounting to £600, two weeks' notice amounting to £600 and nine weeks' holiday pay over two years broken down to be four weeks at £1,200 and five weeks at £1,500 totalling £2,700, and three full days' overtime amounting to £270.

3. The respondent counterclaimed in respect of poor workmanship, damage to vehicles and other costs, but the Tribunal declined jurisdiction on the authorisation of Employment Judge Shotton on 16 March 2018 as all of the claimant's claims were statutory rather than brought by way of breach of contract. The issues for this Tribunal to consider have narrowed considerably relating now to unauthorised deductions including holiday pay and notice.

4. I have heard the evidence of the claimant today on oath and the evidence of Mr Ian Hall, the respondent's project manager, and each side has brought a bundle of documents.

5. It is right to say that I found both witnesses who gave oral evidence to be honest witnesses and doing their best before me to tell me the truth about matters. The burden of proof lies on the claimant to prove issues on a balance of probabilities. There is no issue between the parties that his take home pay was £300.

6. So far as the law is concerned, as I have already referred to section 13 of the Employment Rights Act 1996, which is my primary consideration in a case regarding unauthorised deductions.

The Facts

7. The claimant was employed as a plasterer from 8 February 2016 until 17 November 2017. It makes no sense that he was employed, as the respondent says, as a general labourer, particularly as Mr Hall accepted that he had done plastering at his rental property.

8. The letter of resignation that the claimant accepts he signed on 20 November, although 17 November, is in the bundle and is extremely peremptory:

“Kevin Phillips, 21 York Road, Maghull, I resign on 17/11/17 from Celsius.”

9. The claimant says, and I accept, that he did not sign an employment contract. The respondent has not produced one and there are no written terms and conditions upon which I can rely.

10. The respondent says it had concerns about the claimant's workmanship, but again that is difficult to accept if Mr Hall himself had employed the claimant to do plastering work on his rental property.

11. I accept that when the claimant resigned on 17 November 2017 it was because he did not want the police at his door. What I cannot determine from the evidence which is heavily in dispute before me, and from which I have only the oral testimony of both witnesses who seem to be doing their best to tell me the truth, is whether or not there is any truth in the allegations against the claimant. I do accept from the claimant that he worked a week in hand and therefore he is owed £300.

12. I do accept that from the payroll sheets which the respondent has produced the claimant was paid up until 17 November and therefore there is a week's wage outstanding. I have not determined notice pay in the claimant's favour because I cannot be sure of the circumstances which unravel in relation to the resignation so I have not awarded that. What I do accept, because it had the ring of truth to it, was that the claimant had worked three Saturdays between his birthday and the termination of his employment for which he was not paid, and the evidence that on occasion Mr Drury paid cash to some of the employees in relation to overtime, so I have awarded the £270 overtime in respect of the three days for time and a half.

13. So far as the annual leave is concerned, on the respondent's payroll document it is clear from the face of that document that no item of holiday pay was paid and itemised as such to the claimant, and I accept that the claimant had not taken any holidays and there would be a period at Christmas when holidays were due, hence the award being eight weeks in total, which would be £1,200 in 2016 and £1,200 in 2017, amounting to £2,400. In any event the respondent had agreed that 16½ days' holiday pay would be payable.

14. In conclusion, therefore, the total award made is £300 unpaid wages; £270 in respect of the overtime; and £2,400 in respect of holiday pay. That totals £2,970 which it is declared the respondent shall pay as it is unauthorised deductions from the claimant's pay.

Employment Judge Grundy

Date 30 April 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
4 May 2018

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2424526/2017

Name of case: Mr K Phillips v Celsius Home Improvements 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: 4 May 2018

"the calculation day" is: 5 May 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office