



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr G Sprogis

v

Mick George Limited

Heard at: Cambridge

On: 8 June 2018

Before: Employment Judge G P Sigsworth

Appearances

For the Claimant: Did not attend and was not represented.

For the Respondent: Mr J Gossage, Logistics and Compliance Director.

JUDGMENT

1. The Claimant not attending the hearing but providing written submissions and copy documentary evidence; and
2. The Respondent attending the hearing and making oral submissions, and thereafter (in response to the Claimant's submissions and evidence) providing written submissions and evidence;
3. It is adjudged that the Claimant's claims for unpaid wages and expenses have not been made out.

REASONS

1. The Claimant was employed by the Respondent as a lorry driver from 7-10 August 2017, some four days. He then resigned. By his claim form, he claims that he was not paid at all for the work that he did. Further, he asserts that his agreed rate of pay for work was £10.00 per hour, not £9.25 per hour. He also alleges that the Respondent took deductions from his wages for personal protective equipment provided to him and for training fees. The Claimant returned most of the PPE unused, and he alleges that he and other drivers were told that the training fees were for "proper" training, and not just internal training with a day out with another driver on their first day.

2. The Claimant did not attend the hearing. However, he provided the Tribunal with a written submission and some copy documents. These documents had not been provided to the Respondent in advance of this hearing. The Claimant asserts that Mr Kevin Stocking, the Respondent's manager who had interviewed and recruited him, said that as he had more than two years' experience and had additional FORS certificates, he would be put on the experienced drivers' rate of pay straightaway. The Claimant provided a copy form on which it is written by Mr Stocking that he had completed all FORS including SUD. No classroom training was provided to him. His total gross pay, according to his pay slip, was £352.50. However, PPE at £146.40 and training costs at £206.10 were deducted from the pay slip, leaving a balance of nought due to the Claimant. The Claimant then started driving for the Respondent the following day, carrying out muck away tasks. As the Claimant only worked for the Respondent for a couple of days or so, he only used one pair of trousers and one t-shirt and returned the rest of the items in their original packaging. He later received a letter from the Respondent, in response to his queries, that the total deductions amounted to £381.40, and therefore he was owed nothing.
3. The Respondent's response or ET3 asserts that the Claimant signed a PPE and uniform agreement detailing that if his employment terminated within three months of the start of it, he would be liable to repay all of the costs of the equipment issued to him. Again, if he undertook training as part of his induction into the business then, if he ceased employment within 12 months of completing the training, 100% of the costs would be repaid, and he signed a form to that effect. He also signed an agreement stating that his rate of pay was £9.25 an hour and not £10.00, referred to in the claim form, as he was on the starter rate. It would increase to the advanced rate of £10.00 per hour once he had completed several voluntary classroom-based courses. The response attaches a training agreement signed by the Claimant on 7 August 2017 and interview summary with the Claimant dated 3 August 2017. The agreement supports the Respondent's contention in the response that external training courses and the cost of providing internal training was recoverable in the circumstances set out and that the starter rate of pay was £9.25 per hour.
4. Mr Gossage attended the hearing to represent the Respondent. However, the Claimant had not copied the documentation provided to the Tribunal to the Respondent, and therefore Mr Gossage had not had an opportunity to investigate the Claimant's case and obtain further evidence. The hearing was therefore adjourned to allow him to do so, and write to the Tribunal with the results, within 14 days. Mr Gossage, however, also made some oral submissions at the hearing. The Claimant had not completed the e-learning and a course on cycle awareness, so he would be on a lower rate of pay until he had completed these. The Claimant was trained by another driver on day one and day two, which would no doubt be useful to him in his future career.

5. On 19 June 2018, Mr Gossage sent a letter to the Tribunal comprising his written submissions and two witness statements from colleagues involved with the pre-employment driving assessment marking sheets for the Claimant. The witness statement from Mr Stocking denies the Claimant's version of events or that he ever offered the Claimant a starting wage of the higher rate of pay. The Claimant told Mr Stocking that he had been driving an automatic at his previous employment and had never driven a four over four manual gear box. Therefore, the Claimant required training on that. Mr Stocking says that he never told the Claimant that his induction training was not included in the training agreement. In Mr Paul Johnson's statement, it says that he took Mr Sprogis out on 8 August for his initial on the job training. The Claimant told Mr Johnson that he had not driven a manual HGV for some time, if at all, so Mr Johnson explained the use of the gears and coached him on the gear changes and usage throughout the course of the day. He went through the systems and safe procedures at work, and every aspect of the job throughout the day, and gave the Claimant advice and tips regarding the vehicle systems and on road considerations. The day was focused more on learning and training, rather than on productivity. Mr Johnson wanted the Claimant to have the time and opportunity to understand all the information and to ask any questions. In his written submissions, Mr Gossage acknowledges that the Claimant had been charged for PPE and uniform, and that he had in fact not kept it although he would have been expected to keep it. The Claimant should contact the site manager at the storage facility in Wyton to arrange collection of those items. Mr Gossage relies on the evidence of Mr Johnson and Mr Stocking to establish that the Claimant was provided with on the job training, and that was part of the deductible training expenses in the circumstances, and that he was only entitled to the starter rate of pay, and there is no evidence to the contrary on the form that was filled out.

6. Section 13 (1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from the 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.

Thus, the Respondent's case is that the Claimant had signified in writing his consent to the making of the deductions for training expenses and for PPE. Those were the deductions that were made, and in fact to the value of more than the wages earned by the Claimant. However, the Respondent indicated that they were not seeking the difference in their favour of the sum of £28.90 from the Claimant.

7. In all the circumstances, and in particular having regard to the fact that Mr Sprogis was not present at the hearing to give evidence in support of his case and be questioned about it, or challenge the Respondent's case, I conclude that the Claimant has failed to make out his case on unauthorised deductions from wages, or breach of contract in the context of expenses. The burden of proving his claim is on him, and he has failed to satisfy that burden.

Employment Judge G P Sigsworth

Date: ...20 August 2018.....

Sent to the parties on: .23 August 2018.

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For the Tribunal Office