



EMPLOYMENT TRIBUNALS

Claimant

Mr J Hagan

Respondent

v

(1) J & S Forecourts Limited
(2) Ankhor Limited

Heard at: Bury St Edmunds

On: 1 October 2018

Before: Employment Judge Laidler

Appearances

For the Claimant: In person, assisted by Mr S Glasby, family member

For the 1st Respondent: Did not attend, was not represented

For the 2nd Respondent: Did not attend, was not represented

JUDGMENT

1. The respondent is ordered to pay the admitted sum of **£667.79**
2. The respondent is further ordered to pay the sum of **£365.41**, in respect of final deductions made from the claimant's salary, as no evidence has been produced of proper notification given to the claimant and / or that his consent had been obtained.
3. Case management orders are made as set out below.
4. This matter was last before the tribunal on 6 July 2018, when it was case managed by Employment Judge James. He identified that the claimant's claims were for unauthorised deduction from wages, but that the respondents relied upon certain deductions amounting to cash shortages, in relation to which they stated they were entitled to make deductions under the provisions of the claimant's contract and / or company handbook.
5. An order had been made for disclosure of the handbook. That was not before the employment judge. It was accepted by the claimant that it had been sent to the Watford Employment Tribunal, but it had not reached the tribunal file. A copy was produced from Mrs Hagan's mobile phone. That

was considered by the judge. From this it could be seen that the respondent had set out in its internal document, the provisions of sections 17 onwards of the Employment Rights Act 1996.

6. The respondent did not attend this hearing. On 24 September 2018, the representative for Ankhor Ltd., the second respondent, wrote to the tribunal and the claimant, advising that it was prepared to pay £667.79 as had been calculated by the claimant. The claimant replied upon 24 September 2018, that no settlement had been reached due to inappropriate offers being made and they intended to attend the hearing. Unfortunately, none of that correspondence was referred to a judge prior to this hearing. The claimant did send another letter direct to the respondent's representative and to the employment tribunal on 30 September 2018, (the day prior to this hearing), confirming he had not agreed to any settlement offer.
7. This hearing proceeded in the absence of the respondents. They had not been informed of any postponement but had merely chosen not to attend.
8. The judge was however, prepared to enter judgment for the admitted sum of £667.79.
9. Although the claimant had been ordered to file a full schedule of loss, which he had done on 13 July 2018, this hearing was advised that he had by mistake omitted to include the final deduction from his final pay of £365.41. That was referred to in Employment Judge James' summary of the last occasion at paragraph 2.5. That tribunal had had produced to it the letter that the respondent relied upon, which it noted was undated and had no signature attached to it from the claimant. The tribunal saw a further copy of that letter again from Mrs Hagan's phone.
10. The tribunal heard from Mr Hagan that he had not seen this letter at the time. It accepts his evidence and there was no one present from the respondents to refute it. It was therefore prepared to enter judgment also for that sum.
11. There is an issue between the parties as to whether or not a claim had been brought of a failure to inform and consult under regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006. This again was alluded to in Judge James' summary. Points had been raised in correspondence by the respondents about this issue, in particular in the letter of 12 June 2018, from the representative acting for the second respondent. What this judge could see had happened in the file, was that when the claimant was advised that he should have included his claim against the second respondent, he submitted a new ET1 form on 15 May 2017. That included the following, at paragraph 8.2:-

“Ankhor Ltd. should be added as a respondent because it there appears to have been a transfer of business from J and S Forecourts Ltd., to Ankhor

Ltd. in February. Therefore, I believe that the liability for the unlawful deduction of wages may rest with this other company.

This allows me to pursue an additional claim of an alleged breach of the TUPE consultation process and the reason unlawful deduction from wages that appears to have taken place within the past month.”

12. Employment Judge Moore accepted that document as adding Ankhor Ltd. as a respondent, (letter 22 May 2017), and the proceedings were served on that entity. What however was made clear in a letter from the tribunal of 22 May 2017, was that Employment Judge Moore had not,

“...granted any amendment to the claim at this juncture, I have simply added a respondent at the claimant’s request. The claims are those in the original claim form.”

13. The tribunal was therefore not satisfied that there was actually a claim before it of a failure to inform and consult, and an order has been made for the claimant to consider whether he wishes to pursue that argument, and if so to submit an application for leave to amend.

14. In the claimant’s schedule of loss, filed on 13 July 2018, (again not on the tribunal file, but obtained from a chain of emails), the claimant had claimed his time in attending the last hearing, that of his mother and her partner Mr Glasby who had missed days of work. A total claim in that respect of £680 was brought, plus mileage of £46.44. Mr Glasby explained to this tribunal that that was because Judge James had stated he could apply for costs against the respondents. What this tribunal had to explain, however, was that as a litigant in person the claimant’s right was to make an application for preparation time costs under the Employment Tribunal Rules, but this would not enable him to claim the costs of attending the final hearing, but only preparation time. Further orders have therefore been made if the claimant wishes to pursue that application.

CASE MANAGEMENT ORDERS

1. If the claimant wishes to pursue a claim of failure to inform and consult under regulation 15, TUPE 2006, he is to file and serve on both respondents and a copy to the employment tribunal, an application to amend the original claim form to include such a claim, by no later than, **22 October 2018**.
2. Both respondents have until **12 November 2018**, to file and serve their response to the application to amend.
3. The application to amend will then be determined on the papers by this employment judge.

4. If the claimant pursues an application for preparation time costs, he must file and serve the grounds upon which he bases such an application and a schedule of the time spent, also by, **22 October 2018**.
5. The respondents will have until **12 November 2018** to file and serve their response to the costs application.
6. If all parties signify their agreement in writing by the above dates, to this employment judge dealing with the costs application on the papers, then that will be done, otherwise there will have to be a further hearing to deal with the issue of costs.

Employment Judge Laidler

Date: 10/10/2018

Sent to the parties on: 17/10/2018

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For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.