



EMPLOYMENT TRIBUNALS

Claimant: Mrs Karin Hodges

Respondent: Jumping Ships Limited

Heard at: Birmingham Employment Tribunals

On: 23 January 2019

Before: Employment Judge Ross

Representation

Claimant: In person

Respondent: No attendance

JUDGMENT

1. **The complaint of unlawful deduction from wages is upheld.**
2. **The Respondent is to pay the Claimant unpaid wages of £67.50.**

REASONS

1. The Hearing was listed today for two hours by way of a notice of Hearing dated 3 July 2018. The Respondent did not attend. Ms. Gaynor sent an email dated 22 January 2019 explaining why, but she did not seek postponement. The reason for her non-attendance was set out (that her daughter was taking her mock exams and she needed to take her to school). It appeared to me not be a good reason for postponement, in any event, given the late stage of notification and the lack of alternative arrangements made by the Respondent to cover the needs of her daughter.
2. The Claimant was employed by the Respondent as a Sales Assistant from 10 January 2018 to 16 March 2018. The Claimant claims unlawful deduction from wages equating to nine hours work which amounts to

£67.50 gross given the hourly rate of £7.50 per hour. After a period of early conciliation, the claim was presented on the 29 July 2018.

The Issues

3. I directed myself to Sections 13 and 23 of the Employment Rights Act 1996 which I will not repeat. On a fair reading, the Claim form c includes a breach of contract complaint for the same amount.
4. The dispute focused on the number of hours that the Claimant had worked. The Respondent contended that she had only worked 77 hours. The Claimant's case was that she had worked 86 hours and was entitled to some 10 hours holiday pay. The Respondent did not claim to have any contractual or statutory authority to make a deduction from the Claimant's wages equivalent to 9 hours pay.

The Findings of Fact

5. I heard evidence from the Claimant who verified her witness statement which is in letter form dated 20 April 2018, marked "AA". I found the Claimant to be an honest witness, I accepted the Claimant's copy documents were genuine. These formed a pack and included at part E an extract from the Claimant's 2018 diary. I found the entries within that were genuine.
6. Cross-referencing the Claimant's diary with the Respondents ET3 response, as suggested by Ms. Gaynor in her email of 22 January 2019, it is apparent the parties agreed the hours worked for January and March (16 hours and 22 hours respectively). The disputed hours appeared to be related to February 2019, the Claimant's diary showed that she worked 48 hours in February 2019, but the Respondent's records only showed 39 hours. I found that the Claimant worked 48 hours in February 2018 because: -
 - 6.1. I accepted her oral evidence corroborated by her diary, which I found to contain genuine entries.
 - 6.2. The evidence I heard led to the inference that the Respondent had poor recordkeeping in place such as by a failure to provide pay slips unless requested and had no form of staff rota or schedule issued to staff.
7. The last payment made by the Respondent was on 11 April 2018 when £62.50 was paid. There was no evidence of a contractual term as to when wages would be paid. From the evidence, wages were not paid on the same day each month, but were often paid subsequently.

Conclusion

8. In conclusion, applying the relevant law to the facts, the complaint of unlawful deduction from wages is upheld and the Respondent is to pay the Claimant unpaid wages of £67.50.

9. Further, if I had not found an unlawful deduction of wages, I would have concluded that there was a breach of the contract of employment, with £67.50 owed to the Claimant at termination.

Employment Judge Ross

Date: 31 January 2019