

EMPLOYMENT TRIBUNALS



Claimants

Respondent

Ms. J. Zivkovic

v

Independent Power Corporation PLC

Heard at: London Central

On: 22 February 2019

Before: Employment Judge Mason

Representation

Claimant: In person.

Respondent: No attendance or representation.

RESERVED JUDGMENT

The Respondent having failed to attend the hearing, and having heard from the Claimant, the judgment of the Tribunal is that:

1. The Tribunal declares that the Respondent made unlawful deductions from the Claimant's wages contrary to section 13 of the Employment Rights Act 1996. The Respondent also breached the Claimant's contract of employment and failed to make an agreed statutory redundancy payment.
2. The Respondent is ordered to pay the Claimant the sum of **£22,877.80** calculated as follows:

Unpaid salary 1 January 2018 to 31 March 2018:	£8,075.80
Unpaid salary notice period 1 April to 3 July 2018:	£9,000
Redundancy payment:	£8,802.00
Less loan from the Respondent	<u>(£3,000.)</u>
Net total:	£22,877.80
3. Interest on the sum awarded accrues from the day after this Judgment at the rate of 8% per annum unless the full amount is paid within 14 days i.e. on or before 8 March 2019.

REASONS

Background and issues

1. In this case Ms. Zivkovic (“the Claimant”) claims unlawful deductions have been made from her wages and/or the Respondent has breached her contract. She claims a total sum of £25,877.80 representing unpaid salary and a redundancy payment; she accepts from this amount a £3,000 loan should be deducted and therefore her claim is £23,877.80 together with interest accrued.
2. The Claimant’s employment ended on 3 July 2018. Having contacted ACAS, on 1 September 2018 she presented this claim against the Respondent on 18 September 2018.
3. The Respondent submitted a Response on 24 December 2018. The Respondent says in brief that it is “*not looking to avoid its responsibilities*” to the Claimant but is not in a position to make payment due to financial difficulties. It then purported to defend the claims on the basis that during the redundancy consultation process the Respondent told the Claimant that it would only be in a position to make redundancy payments when it received monies due under project contracts in Ghana and Turkey.
4. The issues to be determined by the Tribunal are as follows:
 - 4.1 Did the Respondent breach the Claimant’s contract of employment and/or make unlawful deductions from her wages by failing to pay her:
 - (i) salary for the period January 2018 to 31 March 2018 of £8,075.80 (gross)?
 - (ii) monies during her notice period (31 March to 3 July 2018) of £9,000 (gross)
 - 4.2 Did the Respondent fail to pay the Claimant a redundancy payment? The Claimant says this should be £8,802.

Procedure at the Hearing

5. The Claimant attended in person and was not represented; she was accompanied by Mr. R Zivkovic. The Respondent did not attend and was not represented. Prior to the start of the hearing, the Tribunal clerk telephoned the Respondent and spoke to Mr. Earl. Mr. Earl advised the Clerk that the Respondent was insolvent, that no one would be attending today and that the Claimant’s claims were not defended.
6. A Company search shows that the Respondent company is still active.
7. At the start of the Hearing, I explained to the Claimant that the Respondent was not attending and did not intend to defend her claims.
8. The Claimant provided me with copies of a letter dated 7 August 2018 from Mr Earl, her P60 for tax year to 5 April 2018 and a typed note of her calculations as to what she says is due.
9. I then asked the Claimant to tell me her version of events and she clarified the chronology.

10. At the end of the hearing, I gave the Claimant oral judgment with reasons; in view of the Respondent's absence, I have chosen to give these reasons in writing.

Findings of fact

11. Having considered all the evidence I make the following findings of fact having reminded myself that the standard of proof is the balance of probabilities.
12. The Respondent is an independent power producer based in Millbank Tower, Millbank, London. It develops, owns, and operates thermal and hydropower generation facilities in Latin America, North America, South Africa, Asia, and Europe. It is still "active".
13. The Claimant worked for the Respondent from 27 July 2005 to 3 July 2018 as Bookkeeper/Accounts Assistant. Her monthly salary was £3,000 gross (£2,293.32 net).
14. As she had continuous employment with the Respondent of just under 13 years, she was entitled to 12 weeks notice of termination of her employment. Her employment came to an end on 3 July 2018. The Claimant denies (and I accept) that there was no meaningful consultation regarding her redundancy.
15. On 7 August 2018, Mr. Earl of the Respondent wrote to the Claimant:
"This letter sets out your entitlement to arrears in salary, notice period and statutory redundancy pay... "You are currently entitled to the following payments

<i>Unpaid salary to 31/3/2018</i>	<i>£8,075.80</i>
<i>Notice period (12 weeks)</i>	<i>9,000.00</i>
<i>Statutory Redundancy Pay</i>	<i>8,802.00"</i>

Mr. Earl records that the Respondent has lent the Claimant £3000 to "mitigate hardship caused by lack of funds" and that "payments of amounts due to you cannot be paid until the current recapitalisation programme is complete ..."
16. It is not in dispute that the Claimant has not been not paid these payments; she accepts she has received the loan of £3,000.

The Law

Unlawful Deduction from Wages

17. Section 13 ERA 1996 gives workers the right not to suffer unauthorised deductions from their wages:
- "13 (1) An employer shall not make a deduction from 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.
- (2) In this section 'relevant provision', in relation to a worker's contract, means a provision of the contract comprised—*
(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

- (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."*

18. Sections 23-26 ERA 1996 sets out provisions relating to complaints to employment tribunal the relevant parts of which are as follows:

"23(1) A worker may present a complaint to an employment tribunal —

(a) that his employer has made a deduction from his wages in contravention of section 13 ..."

"24(1) Where a tribunal finds such a complaint under section 23 well-founded, it shall make a declaration to that effect and order the employer —

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of the deduction made in contravention of section 13."

Conclusions

19. Applying the relevant law to my findings of fact to determine the issues, I have concluded as follows.
20. It is clear that the Respondent made unlawful deductions from the Claimant's wages by failing to pay the arrears of salary between 1 January 2018 to 3 July 2018. It also failed to pay the redundancy payment of £8,802.00.
21. The Respondent may have financial difficulties but this is not a defence.
22. The Claimant's claims therefore succeeds. However, the Tribunal only has power to award interest on awards made in discrimination claims and therefore no interest is awarded.

Signed by _____ on 22 February 2019

Employment Judge Mason

Judgment sent to Parties on

22 February 2019