



EMPLOYMENT TRIBUNALS

Claimant

Mr J Wilson

Respondent

JAAVA Limited
t/a Peterborough Dairies

v

Heard at: Cambridge

On: 4 November 2019

Before: Employment Judge Ord

Appearances

For the Claimant: In person

For the Respondent: Ms A Asch-D'Souza, Paralegal

JUDGMENT

1. The Respondent has made unlawful deductions from the Claimant's wages in the Net sum of **£811.80**

REASONS

1. The Claimant brings a claim for Unlawful Deduction from wages. He worked for the Respondent for a very limited period from 6 December 2018 to 3 January 2019. During that time the only payments he actually received were a payment of £350 by way of an advance at the commencement of employment, and one payment for wages for £155.48 which was for his first week of work.
2. No other payments were made at all, until yesterday when a bank transfer representing £803.84 Gross, £659.23 net was made to the Claimant.
3. There were outstanding claims for earnings, for notice pay and for holiday pay.
4. The position in what should have been a straight forward matter was made complicated by two things. First of all, the Respondent, for reasons which I cannot understand, issued a payslip to the Claimant showing a net

payment of £350 for his loan. That is a problem because it suggests that the Claimant earned gross £418.82 subject to tax and national insurance deductions. The Claimant was and is in receipt of in-work benefits and that affects his benefits materially. He did not earn that money, he had borrowed it and he was repaying it. There is no reason at all why that payslip should have been produced. There is also a payslip produced to cover the period 1 April to 7 April 2019 when the Claimant had long since ceased to work for the Respondent, suggesting a gross payment to him of £469.80 and a net payment of £384.66 and that money was never sent to the Claimant. The respondent says this was to “cover deductions”.

5. Those matters have complicated today’s hearing quite unnecessarily. The ultimate position is that the Respondent says and subject to one matter it appears to be correct, that they have paid the Claimant everything owed subject to one single deduction. That single deduction was for £811.80 for the cost of repair to an apparently damaged hand held computer.
6. Under the Employment Rights Act 1996, a deduction from wages is not an unlawful deduction if it is made in pursuance of arrangements which have been established in accordance with a relevant provision of an employee’s contract to the inclusion of which the worker has signified his agreement or consent in writing.
7. In the contract which has been produced before me today, the Respondent says that it has the right to make a deduction in the event of damage or theft to a hand held computer issued, to the extent of £500.
8. The Claimant says he did not sign this contract. It has a signature on it at a point where it says name and signature of employee, no name is written and the Claimant says that is not his signature. There are two other recorded signatories to the document, the first being Mr Chaudhari who gave evidence before me today. But he did not in his statement, nor was he asked about it in cross examination or in evidence in chief, confirm that he had signed it and had signed it at the same time as the Claimant. In his statement, Mr Chaudhari merely refers to the contractual term. The second witness has initialled and the name is Henryk. The Claimant says he did not know who that person was and denied ever signing the relevant document.
9. The burden of proof is on the Respondent to show that this is a lawful deduction and in my judgment, they fail and they fail on two counts.
10. First, I accept the Claimant’s evidence that he did not sign that document. I say that because I was shown today a copy of the Driving Licence and the Passport in the Claimant’s name. The signatures to those two documents are similar to each other but different from that on the contract. In addition, Mr Chaudhari himself did not confirm that he was present at the signing of the document and no evidence has been produced from Henryk.

11. The second reason is that the deduction is not made in accordance with that agreement in writing in any event. It is a deduction of £811.80 and the maximum deduction that could be made under the contract was £500. I am not, in these circumstances, of the view that the Respondent is entitled to the benefit of part of the deduction. The deduction must be made in accordance with the terms of the contract and the deduction was not.
12. In any event, the deduction purports to include £135.30 of VAT which was charged to the Respondent for repair which they can recover and it is for a repair including circuit board and electronic parts. The evidence from the Claimant (and there was no evidence led to contradict this), was that the only damage to the machine which he had been using up until the date his employment ended was to the screen of the machine.
13. In those circumstances I am not satisfied that this was a lawful deduction from wages and the claimant is due the net sum for unlawful deduction from his wages of £811.80.
14. I must emphasise this, that is the amount to be paid to the Claimant. It does not require the generation of a payslip with that as the net figure because payslips have already been generated.
15. **The Claimant is to receive a payment of £811.80.**
16. I expressed concern at the beginning of this judgment about the fact that this matter had been made rather more complicated than it should have been as a result of the creation of documents which have no basis in reality whatsoever. In particular, a payslip for the period 17 December to 23 December 2018 in the gross sum of £418.82 and the net sum of £350.00; those were not wages paid to the Claimant. He received a loan of £350. Further, the final payslip issue for the period 1 – 7 April 2019 was generated months after the Claimant left the Respondent's employment. The sum of £384.66 was never paid to the Claimant. The purpose of that payslip is utterly lost upon me. No money had been received by the Claimant since he received £155.48 which was for money earned, and apparently paid on 24 December 2018, according to the payslip itself.
17. Those matters give me concern and I will forward a copy of this Judgment to the President of the Employment Tribunal. He will make a decision as to whether or not these matters need to be reported to HM Revenue and Customs.
18. A further concern which we have been able to resolve today, is that the Claimant notwithstanding the fact that it is 11 months since he ceased working for the Respondent, had not received a P45. This was creating substantial difficulty for him in claiming benefits, including a Carer's Allowance because as far as the HM Revenue and Customs were aware, the Claimant was still employed by the Respondent. The Respondent had not notified them to the contrary. The Claimant had not received a P45. In an adjournment today, I required a copy of the P45 which the Respondent

said had already been sent, to be sent to the Claimant's email address, for what the Respondent would say was the second time. That document was received during the adjournment. It shows the final date of employment as 1 March 2019 which is quite wrong. It may be that somebody is Americanising the date; the Claimant's employment ended on 3 January 2019. It also demonstrates that the document was produced today. That may also warrant some investigation.

19. In any event, the Claimant is due to receive the sum of **£811.80** and Judgment will be made in that sum and the Claimant will be entitled to enforce it through the County Court if payment is not made.

Employment Judge Ord

Date: 7 November 2019

Sent to the parties on:

.....
For the Tribunal Office