



EMPLOYMENT TRIBUNALS

Claimant
Miss M Sikorska

Respondent
Brookstreet

v

Heard at: Watford

On: 13th February 2019

Before: Employment Judge Henry

Appearances

For the Claimant: In person

For the Respondent: No response entered – no attendance

JUDGMENT

1. The claimant's claim for an unlawful deduction from wages is well founded.
2. The respondent is ordered to pay to the claimant, the sum of £1,018.82 gross, from which tax and national insurance is to be deducted, in respect of the deduction suffered by the claimant.

REASONS

1. The claimant, by a claim form presented to the Tribunal on 5th August 2018, following a period of early conciliation between 12th June 2018 and 12th July 2018, complains that she has suffered an unlawful deduction from her wage on the respondent failing to pay an increase in her wage after 12 weeks of employment, as per her terms of engagement.
2. On application of the claimant to amend her claim for wages until 28th December 2018, before the Tribunal, the Tribunal grants the amendment, for the continuing loss to 28th December 2108

Evidence

3. The tribunal received oral evidence from the claimant upon which the Tribunal asked questions. The Tribunal had before it a bundle of documents, Exhibit C1.

4. The claimant has furnished a tabular breakdown of the hours worked and payments received for the period 11th May 2018 – 28th December 2018, calculated in gross figures from which tax and National Insurance are to be deducted. The Tribunal was also furnished with the claimant's pay slips for the relevant periods.
5. From the documents seen and the evidence heard the Tribunal finds the following facts.

Facts

6. The claimant commenced employment with the respondent on 16th February 2018. By the claimant's contract of engagement, she was to receive an increase in her wage after 12 weeks of employment, to £11.48; due from 11th May 2018.
7. It is not in dispute that the claimant did not receive the increase in her wage as had been stipulated, and for which the respondent have advised the claimant that there was an error in the rate specified, for which the respondent have paid the claimant at the alleged correct rate. This however, is less than the stipulated rate.
8. For completeness, it is noted that the respondent, in acknowledging their error, have offered the claimant an alternative assignment at the higher rate of pay which the claimant has not accepted, remaining in her current role and for which she has received pay at the lower rate of £10.66 per hour.
9. In respect hereof, on 12th June 2018, the claimant communicated the same to the respondent by e-mail correspondence, stating that, if they did not correct the rate per hour, she would be taking the matter higher. The respondent by correspondence of 15th June 2018, explaining that the rate of pay for her assignment, advised, "I have noted your comment in progressing this matter further, which of course you can do and this will be picked up by the relevant team".
10. The claimant has received no further correspondence from the respondent addressing the matter.
11. The claimant has presented her complaint to the Tribunal following a period of early conciliation, to which the respondent has not entered an appearance.

The Law

12. The law relevance to the issues in this case is provided for by Section 13 of the Employment Rights Act 1996, which provides:
 - (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.
- (4) ...
- (5) For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
- (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
- (7) ...

Conclusions

- 13. On it not being in dispute that the stipulated rate of pay for the claimant, after the first 12 weeks of employment was to raise to £11.48 per hour, and on the respondent having paid the claimant at the rate of £10.66 per hour, the respondent has not paid the claimant her wage at the appropriate rate.
- 14. On the respondent having identified their having committed an error, which error has not been accepted by the claimant, and on the claimant not having otherwise signified in writing to the deduction in her wage, so as to accept the £10.66 per hour, the Tribunal finds that the claimant has suffered an unlawful deduction from her wage.
- 15. The Tribunal accordingly orders the respondent pay to the claimant, the difference between her hourly rate of pay of £10.66 per hour as paid, and £11.48 per hour, to which the claimant was entitled, for the period 11th May 2018 to 28th December 2018.
- 16. The respondent is ordered to pay to the claimant, the sum of £1,018.82 gross, from which tax and National Insurance are to be deducted.

Employment Judge Henry
1 April 2019

Date:
3 April 2019

Sent to the parties on:

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For the Tribunal Office