



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110817/2021 (V)

5

Held in Glasgow (by CVP) on 27 October 2021

Employment Judge B Beyzade

10

Mr. A O'Donoghue

**Claimant
In person**

15

Cetad Limited

**Respondent
Represented by:
Dr R Cheshmehdoost
Director**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The judgment of the Tribunal is that the complaint of unauthorised deduction from wages in respect of arrears of pay between 1 May 2021 and 27 May 2021 is well founded and the respondent is ordered to pay the claimant the sum of FIVE HUNDRED AND SIXTY-TWO POUNDS AND ONCE PENCE (£562.01) net. In addition, the respondent shall pay any Income Tax and National Insurance due to Her Majesty's Revenue and Customs in respect of this sum. The claimant's claim of unauthorised deduction of wages in respect of arrears of pay between 28 May 2021 – 31 May 2021 is not well founded and is dismissed.

30

35

REASONS

Introduction

1. The Claimant presented a complaint of unlawful deduction from wages (arrears of pay) which the respondent denied.
5
2. A final hearing was held on 27 October 2021. This was a hearing held by CVP video hearing pursuant to Rule 46. I was satisfied that the parties were content to proceed with a CVP hearing, that it was just and equitable in all the circumstances, and that the participants in hearing were able to see and hear the proceedings.
10
3. The claimant prepared and filed a Bundle of Productions in advance of the hearing consisting of 18 pages. The Tribunal was provided with a copy of the Tribunal file containing a copy of the Claim Form, Response Form, orders made with Notice of Hearing dated 18.8.2021, along with Employment Judge Whitcombe's direction increasing the listing of the final hearing to 3 hours, and several correspondences between the parties and the Tribunal. A number of additional documents were also sent to the Tribunal including documents titled Ryan Malone – Witness Testimony; Ryan Malone Evidence; Tribunal Supporting Evidence Bundle; Mr O'Donoghue Tribunal Evidence; Contract-of-Employment-Angus-William-Donoghue; and ET1 With service Agreement with Peninsula Legal. The respondent's evidence included messages that were exchanged by electronic communications using WhatsApp.
15
20
4. Upon an application made by the respondent to rely on late evidence that was submitted at 16.59 and 19.25 the day before the hearing and at 10.38 on the morning of the hearing; upon the claimant objecting to the late production of this evidence on the basis that he had not had time to adequately prepare his cross examination and submissions; upon the Tribunal having issued standard directions to the parties with the Notice of Hearing on 18.08.2021 directing parties to send any evidence to the Tribunal and to the other party at least 7 days before the hearing; and considering the overriding objective
25
30

(Rule 2), the Tribunal's determined that the respondent shall not be given permission to adduce the evidence submitted to the Tribunal the day before the hearing and on the day of the hearing, except that the respondent was given limited permission to rely on the Contract of Employment submitted the day before the hearing if it wished to do so. The Tribunal considered the overriding objective, the need for the hearing to proceed fairly and expeditiously, and the undesirability of a postponement. The Tribunal also considered that the claimant could have a short break if required to consider the content of the Contract of Employment and that the respondent would have an opportunity to address the Tribunal in oral evidence and in submissions on the issue of whether there was an agreement for deductions to be made between the parties. Further detailed reasons for my decision on this preliminary matter will be provided in writing if a request for written reasons is made by a party.

5. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, both parties being in agreement with these:

- (i) Is the claimant entitled to be paid his pay arrears in respect of May 2021 in the sum of £695.00 net?
- (ii) Were any deductions from the Claimant's wages lawful in accordance with section 13(1) of the Employment Rights Act 1996? Did the Claimant agree in writing to any deductions that were made?

6. The claimant gave evidence at the hearing on his own behalf and Mr R Malone, Marketing Manager and Company Secretary gave evidence on behalf of the respondent. The respondent was represented by Dr R Cheshmehdoost, who was a director of the respondent.

7. Both parties made closing submissions.

Findings of fact

8. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -
- 5 9. The claimant was employed by the respondent between 05 November 2019 and 28 May 2021. His job title was Administration Assistant. His duties included administration, customer service, entering receipts and payments into accounting software.
- 10 10. The respondent is a private limited company whose registered offices are located at 11 Commerce Street, Glasgow, South Lanarkshire, G5 8AB. The nature of the respondent's business was retail sale of carpets and rugs.
11. The claimant worked for 35 hours per week and his gross salary was £20,000.00 per year. His normal working hours were from 10am until 5pm Mondays to Fridays, and he was able to take rest breaks on a casual basis
15 during these times, although there were no formal allotted times.
12. His monthly gross salary was £1,666.67, and his net monthly salary for the month of May 2021 was £1,445.46.
13. The claimant was provided with a Contract of Employment dated 5 November 2019 and clause 16.1 stated:
- 20 *“At any time during your employment or upon its termination (howsoever arising), the Company will be entitled to deduct from your salary, or from any other payment due to you in respect of your employment, any monies due from you to the Company. This can include but it is not inclusive of un-agreed or unavailable days leave and absence due to sickness.”*
- 25 14. The claimant was off from work due to sickness between 10 May 2021 and 13 May 2021, and he notified the respondent in relation to his absence on those dates.

15. On 18 May 2021 the claimant sent a WhatsApp message to the respondent advising *"I will bring back dads rug – he doesn't use in cupboard. I'll pay you a few hundred either in cash or off wage. Up to you."*
- 5 16. On 25 May 2021 the claimant sent an email to Dr Cheshmehdoost stating that he was upset by his threat that morning to deduct the rent owing for his home from his wages and he advised that only lawful deductions can be made from his salary for example National Insurance and Income Tax. He said there was no link between his employment with the respondent and the flat rental and that for the past 16 months he had paid his rent by direct debit or in cash.
- 10 17. Dr Cheshmehdoost replied on 26 May 2021 advising that the claimant was in debt arrears, if he caught up with these his wages would be reinstated to normal, and that there would be *"no point for rent money to go out to come back in again into Cetad Ltd. £200 arrear is the issue which is towards your arrear."* The claimant replied on the same day stating this was a personal matter and that any change in his salary would be illegal. He asked him to ensure that his wage paid into his bank account that month would be £1,445.46.
- 15 18. The claimant was provided with a payslip dated 31 May 2021 which stated that his gross pay for that month was £1,666.67, and his net pay would be £1445.46 after deductions for Income Tax and Employee National Insurance Contributions had been made.
- 20 19. The claimant received a payment into his bank account in the amount of £750.66 on 28 May 2021. On 28 May 2021 the claimant had resigned from his employment with immediate effect as he was dissatisfied about not receiving his correct pay. The claimant's final working day was 27 May 2021 and he decided not to work on the following day.
- 25 20. The claimant sent an email to Dr Cheshmehdoost on 11 June 2021 with the subject 'Formal Grievance' advising that an unlawful deduction was made from his salary on 28 May 2021 in the amount of £700.00 and he required this

sum to be paid into his bank account, in the absence of which he would make a Tribunal claim.

21. On 23 June 2021 Dr Cheshmehdoost sent an email to the claimant advising him that he had approximately 2 weeks off work in May 2021 which was unauthorised and that he did not provide a doctor's note, so these days would not be paid. He advised that 2 weeks' wages amounted to approximately £700.00 and the value of the rugs he purchased was £575.00 which totalled to £1,275.00, but the respondent had deducted £695.00 from his wages. He further advised that the claimant's June 2021 rent had been added to his rent arrears.

22. The claimant responded to him on 28 June 2021 to advise that he was absent from work due to sickness for 4 days and that on the fifth day he was advised he could not return to work without undertaking a COVID-19 test, and he said he was not advised verbally or in writing that this period would be deducted from his salary. He stated that the deduction of £700.00 from his salary was not lawful and the rental agreement was a separate matter.

23. During his employment the claimant made a handwritten note at the request of the respondent in relation to payments that he owed to the respondent in respect of rent and other matters. He removed the handwritten note from the respondent's notebook before he left work as he felt he had to protect himself.

Observations

24. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

25. The respondent provided the Tribunal with a copy of a contract of employment dated 05 November 2019. Although the claimant said he had never signed this document, I was satisfied that this was provided to the claimant during his employment, and he continued to work for the respondent thereafter. The particulars of employment including the claimant's start date, working days and hours were consistent with the evidence the claimant gave. The Tribunal

was satisfied that these terms were applicable during the course of the claimant's employment with the respondent.

26. The payslip dated 31 May 2021 showed the claimant's gross pay for that month was £1,666.67, and his net pay would be £1,445.46 after deductions for Income Tax and Employee National Insurance Contributions had been made. However, this did not reflect the fact the claimant terminated his employment on 28 May 2021 with immediate effect and he did not work after 27 May 2021. The claimant was not ready or willing to work on 28 May 2021 or any date after this. His absence on 28 May 2021 was not agreed by the respondent.
27. The respondent purported to make deductions for unauthorised sickness absence of 2 weeks, rent arrears and a rug purchase for which they said the claimant had not paid. The correspondences between the parties showed the claimant was off work due to sickness for three days and he returned to work on the fourth day. Neither the WhatsApp evidence I was taken to on 18 May 2021 nor clause 18.1 of the Contract of Employment evidenced an agreement to deduct a specified amount of money by the respondent from the claimant's May 2021 salary.
28. Furthermore, Mr Malone referred the Tribunal to a message from the claimant on 11 February 2021 in which he agreed to make monthly rent arrears repayments. The messages in question were not before the Tribunal. In any event from the description of their content, these did not in fact evidence any agreement by the claimant for deductions to be made from his salary. The Tribunal was also referred to a handwritten note made by the claimant setting out the debts he owed to the respondent, but this document did not show that the claimant agreed for these or any sums to be deducted from his May 2021 salary.

Relevant law

29. To those facts, the Tribunal applied the law –

30. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.

31. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230 ERA).

32. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.

33. Under Section 27(1) of the ERA "wages" means any sums payable to the worker in connection with their employment including salary and holiday pay.

34. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.

Discussion and decision

35. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

36. As recorded on the claimant's payslip dated 31 May 2021, the claimant was entitled to receive gross pay for that month in the sum of £1,666.67 or £1,445.46 net pay.

37. He did not work from 28 May 2021 – 31 May 2021. The claimant agreed that the amount of deduction from his net pay for this period should be £132.78. Deducting this from his net pay would mean that the claimant was due to receive a net amount of £1,312.67.

5 38. The claimant received a payment on account of £750.66 on 28 May 2021.

39. The claimant is therefore owed the total amount of £562.01 (£1,312.67 net pay - £750.66 payment on account made).

40. The respondent submitted that a deduction was made in respect of the claimant's sickness absence. Having considered clause 16.1 of the Contract of Employment, this did not enable the respondent to make any deduction from the claimant's May 2021 salary as there was no evidence before the Tribunal that any period of sickness absence was unagreed or unauthorised. The claimant was off sick for a period of time and given this was a short period of absence (3 days), the claimant was not required to provide a fit note and the respondent did not impose any additional requirements at the material time. The claimant also gave evidence that in the past he had been paid sick pay and his sickness absence days were not deducted from his wages.

10

15

41. The Tribunal was referred to a handwritten document containing figures that the claimant recorded that he owed in respect of rent arrears and the purchase of rugs from the respondent and reference was also made to WhatsApp messages that were sent on 11 February 2021 and 18 May 2021. Whilst these may have showed that the claimant owed monies to the respondent in respect of rent arrears and the purchases of rugs from the respondent, and that he intended to pay these to the respondent, these do not evidence an agreement by the claimant that the respondent could deduct any sum owed from his May 2021 salary. On the 18 May 2021 WhatsApp communication from the claimant, he indicated that he intended to make a payment from his wages or a payment in cash in respect of the debts he owed to the respondent. The respondent did not thereafter communicate with the claimant to reach an agreement as to how the debt will be paid, an amount

20

25

30

that will be deducted from the claimant's wages, what this will be credited towards and when the deduction will be made.

42. Taking into account all the circumstances, the Tribunal was not satisfied that there was a written agreement or consent that was previously signified from the claimant to deduct from the claimant's May 2021 salary the sum of £562.01 (net) in respect of his rent arrears, sick pay or payments owed in relation to the claimant's purchases of rugs as required under section 13(1) of the ERA 1996. Any such agreement must be recorded in writing, previously signified and sufficiently clear in terms of giving consent to the making of a specified deduction, but these requirements were not satisfied, so the deductions made by the respondent of £562.01 were not lawful.

Conclusion

43. The claimant's claim for wage arrears in the net amount of £562.01 succeeds.

15

Employment Judge: Beyzade Beyzade
Date of Judgment: 29 November 2021
Entered in register: 30 November 2021
and copied to parties

20

I confirm that this is my judgment in the case of 4110817/2021 Mr A O'Donoghue v Cetad Limited and that I have signed the order by electronic signature.

25