



EMPLOYMENT TRIBUNALS

Claimant: Miss Z Gething

Respondent: LDC Decorating Contractors Ltd

Heard at: Leeds (by video) **On:** 8 August 2022

Before: Employment Judge Knowles

Representation

Claimant: In person

Respondent: Mr L Clay, Director

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim of unauthorised deduction from wages is well founded.
2. The amount of the deduction which the Respondent is ordered to pay to the Claimant is £198.
3. The Claimant's claims of breach of contract are well founded.
4. The Respondent is ordered to pay to the Claimant damages for breach of contract in the sum of £120.

RESERVED REASONS

Issues

1. The Claimant has brought a claim for wages and expenses and this is the final hearing to determine those complaints.

Evidence

2. This hearing was undertaken by video using HMCTS's Cloud Video Platform.
3. I heard evidence from the Claimant and from Mr Clay who described himself as the owner and Director of the Respondent.

4. The parties did not produce formal written witness statements however both gave evidence under oath that their claim / response forms were true together with their subsequent letters sent to the Tribunal attaching documents in support of their case.

Findings of fact

5. I made the following findings of fact on the balance of probabilities.

6. Some time before 22 March 2022 the Claimant, who was experiencing difficulties obtaining work as a self-employed decorator, emailed the Respondent looking for a job. She sought paid employment and a steady income.

7. On 22 March 2022 Mr Clay telephoned the Claimant and offered her work to being the following morning in Bristol. It was agreed that the Claimant's pay would be £12 per hour, she would be provided with transport from Halifax to Bristol, accommodation and would be paid her expenses. The basis of the arrangement was to be employment not self-employment.

8. At 3am on 23 March 2022 the Claimant was collected in a company van with two other employees to travel to Bristol to paint a fence surrounding a large retail trading outlet operated by "Go Outdoors". The work was expected to be completed in 3 days by the three employees. The journey was unpleasant because the two other employees were smoking in the van in breach of the Respondent's smoking policy and health and safety regulations.

9. They arrived in Bristol at 8am and immediately began an 8 hour shift. By 2.30pm the Claimant was feeling unwell and felt she had heatstroke. Her work colleagues took her to the client's staff canteen and advised her to drink water and rest.

10. Mr Clay then telephoned the Claimant at 2.51pm to ask if the Claimant was OK and asked her to confirm her bank details. She texted those to him. Mr Clay then telephoned again at 3.00pm and told the Claimant "this isn't working out...., you can make your own way home".

11. One of her work colleagues gave her a lift in the van to the train station. The Claimant reached the train station around 3.30pm then at 3.55pm paid £105 for a ticket home to Halifax.

12. The Respondent has not paid the Claimant anything, no wages or any expenses.

13. The Claimant's claim is for 6.5 hours wages for work at £12 per hour, £78. She also claims wages for 10 hours travel, £120. The Claimant's expenses claims equal £15 for dinner and her train ticket costs £105.

14. It will be readily apparent to the parties when reading those findings of fact that I have preferred the Claimant's evidence to that from the Respondent.

15. I have found that the Claimant has provided a consistent account of the circumstances on 22 and 23 March 2022. None of her evidence has been inconsistent. She has provided documentary evidence supporting her timeline and

telephone records recording when calls were received and made. The Claimant's has produced receipts for her train ticket which accords with her evidence.

16. Mr Clay's evidence I find inconsistent on material points. In evidence today Mr Clay has stated that he and the other two people working with the Claimant on 23 March 2022 were all self-employed earning £12 per hour. However, in the Response form he described the others as employees. Mr Clay has produced written letters from the two other employees but they are vague on timings and upon factual detail.

17. Although Mr Clay is more forthright and particular he was not in Bristol on 23 March 2022. He does not deny asking for the Claimant's bank account details but cannot recall why.

18. He has suggested, from the accounts of his other employees, that the Claimant refused to work immediately upon arriving in Bristol and that is why she has not been paid. That would seem odd and event the other employee's statements are consistent with the Claimant's account of having stated that she felt like she was suffering from heatstroke.

19. The original response form contained inconsistencies over whether or not the Claimant took herself to the canteen or was taken there and given a drink.

20. I felt that Mr Clay was not a credible witness and that his version of events was not likely to be true.

Submissions

21. Mr Clay made no submissions, stating that everything was in the paperwork he had sent in.

22. The Claimant clarified one point concerning how she first got in touch with the Respondent, which was by email and not through replying to an advertisement on "Indeed". The Claimant made no further submissions.

The Law

23. Section 13 of the Employment Rights Act 1996 set out the right not to suffer unlawful deductions from wages.

24. It provides:

13 Right not to suffer unauthorised deductions.

(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.*

25. The Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 confers upon this Tribunal jurisdiction to hear claims of breach of contract.

26. It provides:

- 3. *Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if-*
 - (a) *the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
 - (b) *the claim is not one to which article 5 applies; and*
 - (c) *the claim arises or is outstanding on the termination of the employee's employment.*

27. Article 5 covers exclusions as follows:

- 5. *This article applies to a claim for breach of a contractual term of any of the following descriptions-*
 - (a) *a term requiring the employer to provide living accommodation for the employee;*
 - (b) *a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation;*
 - (c) *a term relating to intellectual property;*
 - (d) *a term imposing an obligation of confidence;*

(e) *a term which is a covenant in restraint of trade.*

In this article, "intellectual property" includes copyright, rights in performances, moral rights, design right, registered designs, patents and trade marks.

Conclusions

28. The parties have presented very opposing versions of events and the outcome is driven by the above findings of fact.

29. The Claimant had an agreement concerning pay for work and travel time and the claim for 18.5 hours wages is in my conclusion what is properly payable under that agreement.

30. The Claimant's claim for unpaid wages is well founded and the amount of the deduction which the Respondent is ordered to pay to the Claimant is £198.00.

31. The Respondent had agreed with the Claimant that she would receive a means of travel provided by the Respondent to return home from Bristol. Whilst the Respondent may be within its right to ask someone to leave their client's premises this does not release them in any way from their obligation (under their agreement) to provide the Claimant with a means of returning home when released.

32. The Claimant had to make her own alternative arrangements owing to the Respondent's breach of their agreement. The cost to her was £105.

33. The Claimant had an agreement with the Respondent that a £15 dinner allowance would be paid.

34. The Claimant's claim for her train travel cost and dinner allowance is well founded and the Respondent is ordered to pay to the Claimant £120.00.

Employment Judge Knowles

8 August 2022