EMPLOYMENT TRIBUNALS

Claimant: **Mr Paul Coulthard**

Respondents: **Mr Thomas Gaskin (1), Mrs Theresa Gaskin (2), and Mr Nathan Gaskin (3) t/a T.G. Commercials**

Heard at: **Leeds (by video link)** **On:** **04 March 2022**

Before: **Employment Judge R S Drake**

Representation:

Claimant: Mr A Adamou (of Counsel)
Respondent: No Response entered

JUDGMENT

1. The title of the Respondent is amended to describe them as Mr Thomas Gaskin, Mrs Theresa Gaskin, and Mr Nathan Gaskin whom I find trade as "T.G Commercials". They are a family of father, mother and son who are jointly and severally liable in these proceedings.

2. I rejected the Respondents' application for an extension of time to validate filing of a Response to these claims out of time on 6 December 2021 and thus the Respondents could take no part in this hearing other than to observe and answer any questions I thought necessary in the interests of justice.

3. The Claimant has established that he was entitled to £380 unpaid wages and a further £138.12 unpaid holiday pay both unlawfully deducted from his final pay. Therefore, he is awarded, and the Respondents shall pay to him the total gross sum of £518.12.

4. Under Rule 76 I award and the Respondents shall pay to the Claimant's solicitors the sum of £983.68 for costs incurred in respect of the ineffective hearing listed for 7 January 2022

REASONS

5. I first heard Mr Gaskin's application to extend time to permit late filing of his ET3 after he explained that T.G Commercials was not a corporate entity but a partnership between himself, his wife and son now named as above.

6. I rejected the application for leave to file an ET3 out of time as inadequate explanation was offered for delay, but I noted that in the Claimant's evidence, various points raised by Mr Gaskin in his proposed ET3 were addressed by the Claimant. I dealt with them accordingly.

7. I ensured that the Claimant gave his evidence in solemn form under Affirmation. I accepted all his evidence as being plausible, credible, and unchallenged and this included his Schedule of Loss and the additional Schedule of Cost incurred in preparing for and attending the hearing of this case originally scheduled for 7 January 2022 but adjourned because of non-attendance by the Respondents despite them knowing of the hearing date and having means to connect.

8. The facts I found are as follows:-

   8.1 The Claimant was engaged by the Respondents from 4 May 2021 to 8 July 2021 as a checker of vehicles they hire out to customers, but he was not given a contract and certainly did not sign any such document;

   8.2 Reference was made in the evidence to the existence of a company handbook which was said to include a provision permitting deduction from pay to cover any damage caused negligently by an employee but only subject to there first being a disciplinary procedure;

   8.3 There was never any form of formal written agreement, either discrete or incorporated in a contract or handbook, signed by the Claimant permitting deduction from his pay;

   8.4 The Claimant left the employ of the Respondents because he was unhappy about being required to undertake driving duties. Though the Respondents sought to argue that an oral agreement was entered into by the Claimant permitting deduction from pay, and though the Claimant accepts there was a discussion about this at the time he left the Respondents employ, there was no conduct of a disciplinary procedure nor anything agreement writing signed by the Claimant said to have been orally agreed;

   8.5 It was accepted that the Respondent deducted £380.00 gross from the Claimant's final pay, ostensibly to cover trailer repair costs described as damages. Further, holiday entitlement was 28 days per year of which 2.8 days had accrued but only part of which was taken during the total

period of the Claimant's employment which at a rate of £160.25 per day produces an outstanding figure of £297.50 less £159.38 paid leaving a balance of £138.12 outstanding.

9. Section 13 of the Employment Rights Act 1996 provides as follows:-

"(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 workers contract or
(b) - the worker has previously invited him into the making of the deduction"

10. Applying this statutory provision to the facts as I have found them, I conclude that the Claimant has suffered an unlawful deduction not only from his basic wages but also from holiday pay and that the total amounts to the sum of £518.12.

11. Counsel for the Claimant applied for a costs order against the respondents in accordance with the provisions of rule 67. Though the Respondents were not permitted to argue any substantive point on the merits of the case, I considered it in the interests of justice to permit them to respond to the costs application. They made no response whatsoever.

12. Accordingly, as I had a schedule before me of the costs incurred by the Claimant solicitors in respect purely and only of the abortive hearing on 7 January 2022 in the sum of £433.68 and Counsel's fee of £550, I concluded that the Respondents had serially failed to comply with Directions and Case Management Orders and that their behaviour in failing to attend Tribunal on 7 January 2022 amounted to unreasonable behaviour. Accordingly, I made an order that they should pay to the Claimant's Solicitors the total sum of £980.68 costs.

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Employment Judge R S Drake

Date 04 March 2022