



EMPLOYMENT TRIBUNALS

Claimant: Miss J Dodson

Respondent: Gail Marsden t/a Bake my Dayz

Heard at: Nottingham (by CVP)

On: 5 March 2024

Before: Employment Judge Welch

REPRESENTATION:

Claimant: In person

Respondent: No attendance

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 4 May 2022 until 27 May 2022.
2. The respondent shall pay the claimant **£985.00**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

Failure to provide a written statement of employment particulars

3. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant **£600.00**.

REASONS

1. The claimant was employed by the respondent as a cook/ server from 4 May to 27 May 2022.
2. On 5 August 2022, the claimant issued proceedings in the Employment Tribunal against Bake my Dayz, following a period of early conciliation that started on 27 June 2022 and finished on 3 August 2022. The claim was for unpaid wages.
3. There was no response to the initial claim, so this was ordered to be reserved on Gail Marsden t/a Bake my Dayz. The original hearing which had been listed when the claim was initially sent out was postponed and was not relisted at this time.
4. A response was received from the respondent on 29 September 2022 in which the respondent denied that it owed the claimant the wages claimed and stated that payment of £410 had been made in cash to the claimant, and for which she had signed. Also, that the claimant had failed to give appropriate notice of her resignation. The respondent also denied that the claimant was to be paid £10 an hour but stated that her hourly rate was agreed as £9.51.
5. Both parties were ordered on 27 October 2023 to send each other calculations of how much was owed together with copies of documents and witness statements.
6. A preliminary hearing for case management was held by telephone on 23 January 2024 before Employment Judge Cansick. The claimant attended, but there was no attendance by the respondent.

7. The preliminary hearing listed the final hearing for today to be held remotely via CVP. Also, case management orders were provided for the claimant to provide documents by 9 February and the respondent by 16 February 2024. The claimant provided a copy of her documents on 8 February 2024. No correspondence was received from the respondent.
8. Witness statements were ordered to be provided by 23 February 2024. The claimant had provided notes on the copy documents, and this was therefore taken as the claimant's witness statement.
9. The hearing took place remotely via CVP. The parties had been informed that it was a remote hearing (to be held via CVP) on 27 October 2024 and joining instructions had been sent to them in readiness for the hearing.

The hearing

10. The remote hearing commenced at 10am. The claimant attended but there was no attendance by the respondent.
11. The clerk called the respondent on two telephone numbers provided by the claimant. The respondent had not provided a telephone number on her response. The calls were not answered and there was no facility to leave a message. I therefore arranged for an email to be sent to the respondent saying that the hearing was proceeding remotely and that the respondent should immediately attend. It attached the joining instructions for the CVP hearing. The respondent was informed that the hearing would go ahead should no reply be received, or she failed to attend.

12. I considered it appropriate and in accordance with the overriding objective to proceed with the hearing in the respondent's absence. From the file, there appeared that no correspondence had been received from the respondent since 29 September 2022 when the response was received. The Tribunal had sent correspondence to the email address provided by the respondent on her response form. She had failed to attend the earlier preliminary hearing for case management and had not provided documents to the Tribunal despite a case management order to this effect. I was satisfied that the notice of hearing and joining instructions had been sent to the respondent.
13. I delayed hearing from the claimant until the respondent had had an opportunity to respond to the email. I therefore did not commence hearing from the claimant until 10.30am to give the respondent the opportunity to attend.
14. The issues to be determined at the hearing were set out in a Case Management Order dated 23 January 2024 as:
Unauthorised deductions
 - a. How many hours did the claimant work for the respondent between 4 May and 27 May 2022?
 - b. Was the claimant's agreed hourly rate with the respondent £10 or £9.51 an hour.
 - c. How much has the respondent paid the claimant?
 - d. How much was the claimant therefore owed?
 - e. Was this amount an unauthorised deduction from the claimant's wages?

Remedy

- f. How much should the claimant be awarded?
- g. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?
- h. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
- i. Would it be just and equitable to award four weeks' pay?

15. The claimant gave sworn evidence and was subjected to questions from me in relation to her claim. I put the respondent's case to her as set out in the response.

16. I gave my Judgment orally but have provided written reasons in any event as the respondent failed to attend.

Findings of fact

17. The claimant was employed by the respondent as a cook/server from 4 May 2022 until 27 May 2022. Early conciliation started on 27 June 2022 and ended on 3 August 2022. The claim form was presented on 5 August 2022.

18. The claimant's case is that she agreed to work for the claimant for £10 an hour and had left an alternative job to join the respondent. I accept the claimant's evidence that her hourly rate was £10 an hour and not £9.51 as suggested in the response. I also accept that there was no trial period and that, as discussions took place over the telephone, there was no documentary evidence of what had been agreed. She had not been provided with a written statement of employment particulars (a contract of employment) despite asking for one.
19. Between 4 May and 27 May 2022, the claimant worked 98 hours and 30 minutes for the respondent. These hours do not include 2 days' sickness absence, her unpaid breaks and the hour which she left her employment early. She is therefore owed £985 wages.
20. The claimant has been paid no money by the respondent in respect of the wages she is owed. As part of the evidence provided, the claimant sent a copy of a document which ACAS had forwarded to her, and which had been originally sent to ACAS by the respondent. This document showed purported cash payments to the claimant from the respondent totalling £410. I accept the claimant's evidence that these amounts were not paid to her. The signatures differed from her signature, the claimant's name was spelt incorrectly and on one of the dates, the claimant was not even in work (as shown by her timesheets). The respondent suggested that she got one of the dates wrong in her response, but I do not accept that to be the case.
21. I saw evidence of messages which the claimant had sent the respondent detailing the work she had done and asking for payment. The messages produced as part

of the evidence showed the claimant was claiming the full amount from the respondent at the time of her employment ending.

22. The claimant worked a minimum of 30 hours a week, although it was clear that the actual number of hours worked varied from week to week. She was not provided with a written statement of terms of her employment.
23. Her rate of pay was agreed at £10 an hour and not £9.51 an hour as alleged by the respondent.
24. The respondent does not accept the hours the claimant claims she worked but does not specify what the respondent considers are the actual hours she worked.
25. The respondent also made counter claims against the claimant. The Case Management Order made clear that none of these are within the Tribunal's jurisdiction.

Law

26. Section 13 ERA provides protection for employees in respect of unlawful deductions from wages. It 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.

...

(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...."*

27. Section 1 of the ERA provides:

"1 Statement of initial employment particulars

(1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.

(2) Subject to sections 2(2) to (4)(a) the particulars required by subsections (3) and (4) must be included in a single document; and

(b) the statement must be given not later than the beginning of the employment."

28. Section 38 of the Employment Act 2002 provides:

"38 Failure to give statement of employment particulars etc

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

...

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by an employee) under section 41B or 41C of that Act,

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of a worker shall—

(a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c 18), and

(b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay)."

Conclusion

29. I am satisfied that the claimant was entitled to be awarded the sum of £985 in respect of unpaid wages for the period 4 to 27 May 2022 which were unlawfully deducted from her pay. In light of these findings, the claimant's claim succeeds and she is awarded the gross total sum of £985 for unpaid wages.
30. As the claimant has succeeded in her unlawful deductions from pay claim, which is one of the jurisdictions contained within schedule 5, I must award the claimant a further sum of a minimum of 2 weeks' pay for the failure by the respondent to provide her with a written statement of employment particulars.

31. I consider that there are no exceptional circumstances which would make an award of 2 weeks' pay unjust or inequitable. However, I do not exercise my discretion to award the higher amount of 4 weeks' pay, as I do not consider it just and equitable to award the higher amount in light of the short service of the claimant in the respondent's employment. I therefore award the sum of £600 being two weeks' gross pay.

**Employment Judge Welch
5 March 2024**

Judgment sent to the parties on:
28th March 2024

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