



EMPLOYMENT TRIBUNALS

Claimant: Mr J Sanders

Respondent: Beamish Hall Limited

HELD AT: Newcastle CVP **ON:** 13th December 2024

BEFORE: Employment Judge Booth

REPRESENTATION:

Claimant: Not in attendance

Respondent: Mr J Gayer, Financial Controller of the Respondent

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant did not present his complaint before the end of the period of three months after the date on which the alleged deduction from wages was made and has provided no reason for why it was not reasonably practicable for him to do so.
2. Accordingly, the Tribunal does not have jurisdiction to consider the claimant's complaint and it is dismissed.

REASONS

Introduction

1. The claimant, Mr J Sanders, presented a complaint that the respondent, Beamish Hall Limited, made an unlawful deduction in the sum of £20.28 from

his April 2024 wages because they failed to apply the National Minimum Wage of £11.44 per hour to the hours he worked between 01.04.2024 and 22.04.2024.

2. The respondent disputes the claim and asserts that no deduction was made from the claimant's April 2024 wages because the increase in National Minimum Wage was not applicable to the pay reference period covered by the claimant's April 2024 wages by virtue of regulation 4B of the National Minimum Wage Regulations 2015.
3. The Tribunal reviewed documentary evidence contained within the ET1 claim form, ET3 response form, and the claimant's payslip date 30.04.2024.

Procedural Matters

4. The claimant did not attend the hearing.
5. The Notice of Hearing was sent to the parties on 11.10.2024. The Tribunal has received no communication from the claimant since he first presented his complaint on 06.09.2024. The Tribunal received no answer when telephoning the claimant on 13.12.2024.
6. The Tribunal heard the claimant's claim in his absence under Rule 47 of the Employment Tribunal Rules of Procedure, as set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Tribunal considered all information available to it, including the information set out in the ET1 claim form and on the Tribunal file.

Time Limits

7. The claimant's complaint is that an unlawful deduction was made from the wages paid to him under his payslip dated 30.04.2024.
8. Mr J Gayer, Financial Controller for the respondent, confirmed that the wages set out in the payslip of 30.04.2024 were paid to the claimant on 30.04.2024.
9. Section 23(2) Employment Rights Act 1996 (ERA 1996), requires a complaint for unlawful deductions to be presented before the end of the period of three months beginning with the date of payment of the wages from which the alleged deduction was made. The period of three months began on 30.04.2024 and ended on 29.07.2024.
10. The claimant did not commence early conciliation with ACAS until 21.08.2024. Early conciliation began on 21.08.2024 (day A) and ended on 05.09.2024 (day B).
11. The claimant did not present his complaint to the Tribunal until 06.09.2024, 39 days after 29.07.2024. The claimant has given no reason for the delay in commencing early conciliation or presenting his complaint.

12. As the claimant did not present his complaint before the end of the period of three months after the date on which the alleged deduction from wages was made, and there is no reason to believe it was not reasonably practicable for him to do so, the Tribunal does not have jurisdiction to consider the claimant's complaint and it is dismissed.

Merits

13. Notwithstanding the Tribunal's assessment that the claimant's claim was presented out of time, the Tribunal considered the merits of the claimant's claim.

14. The claimant's complaint is set out in the ET1 claim form and the payslip dated 30.04.2024 submitted with the ET1 claim form ("the payslip").

15. The payslip indicates that on 30.04.2024 the claimant was paid for 61.30 hours of work at an hourly rate of £11.00 per hour. This is not in dispute between the parties.

16. The claimant's complaint is that a proportion of the 61.30 hours worked were worked between 01.04.2024 and 22.04.2024 and, he believes, those hours should have been paid at the national minimum wage rate of £11.44 that came into force on 01.04.2024. Accordingly, the claimant's complaint is that a deduction of £0.44 per hour was made from his wages for each hour worked between 01.04.2024 and 22.04.2024

17. In the claimant's ET1 form, the claimant calculated the amount owed to him as £20.28. This indicates that the claimant worked 46.10 hours between 01.04.2024 and 22.04.2024.

$$46.10 \text{ hours} \times £0.44 = £20.28.$$

18. The respondent stated in the ET3 response form that the claimant is paid monthly, with the pay reference period beginning approximately 10 days before the end of the month and ending approximately 10 days before the end of the following month. The respondent stated that the pay reference period covered by the payslip began on 18.03.2024.

19. From the information provided by the claimant, it appears that the claimant is aware of and accepts that the pay reference period to which the payslip relates began at some time in March 2024 (when the first 15.2 hours of the total 61.30 hours were worked) and ended on 22.04.2024.

20. The Tribunal finds as fact that the pay reference period to which the payslip relates began on/around 18.03.2024 and ended on/around 22.04.2024.

21. Regulation 4B of the National Minimum Wage Regulations 2015, states:

"The hourly rate of the national minimum wage at which a worker is entitled to be remunerated as respects work, in a pay reference period, is the rate which applies to the worker on the first day of that period."

22. Accordingly, the national minimum wage rate to which the claimant was entitled to be paid in respect of hours worked in the pay reference period to which the payslip relates is the national minimum wage in force in March 2024 which was £10.42.
23. The claimant was paid £11.00 per hour. The wages paid to the claimant on 30.04.2024 were not less than the wages that should have been paid and so there was no deduction from the claimant's wages.
24. Accordingly, had the Tribunal had jurisdiction to consider the claimant's claim, it would have concluded that the claim was not well founded and should be dismissed.

Employment Judge Booth
Date 13th December 2024

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