

THE INDUSTRIAL TRIBUNALS

CASE REF: 24621/19

CLAIMANT: John Rooney

RESPONDENT: Metro Surveillance Group Ltd

JUDGMENT

The unanimous judgment of the tribunal is as follows:

- (i) the claimant did suffer an unlawful deduction from wages and the Tribunal awards the claimant the full sum claimed, namely **£500.00**.
- (ii) the respondent was in breach of its obligation to give a written statement of employment particulars to the claimant. The tribunal awards the claimant 4 weeks' gross pay which amounts to **£1,920.00**.
- (iii) the claimant has not been paid below the national minimum wage.

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Sturgeon

Members: Mr S Pyper
Mrs M J McReynolds

APPEARANCES:

The claimant represented himself.

The respondent did not lodge a response and was not represented.

BACKGROUND

1. The claimant lodged his complaint with the Industrial Tribunal on 18 November 2019. In that complaint, he alleged that he had suffered an unauthorised deduction from his wages, that he had failed to receive statutory particulars of employment and that he had been paid below the national minimum wage.
2. A copy of the claimant's claim was sent to the respondent on 19 December 2019.

The respondent failed to lodge a response with the tribunal by 16 January 2020 which was the deadline for lodging a response.

3. A Case Management Preliminary Hearing (CMPH) took place on 19 March 2020. The claimant represented himself at this CMPH. The respondent did not attend this CMPH.
4. A hearing was listed for 11 September 2020. However, this hearing was postponed due to the Covid-19 pandemic.
5. A further review CMPH was listed on 12 October 2020. The claimant represented himself at this CMPH. The respondent did not attend this CMPH. The hearing was relisted for 14 December 2020.
6. The claimant represented himself at the hearing on 14 December 2020. The respondent, who had not lodged a response, did not attend the hearing.

THE ISSUES

7. It was necessary for the tribunal to determine the following issues in order to consider the claim:-
 - (i) has the claimant suffered an unauthorised deduction from wages by having £500.00 deducted from his final wages?
 - (ii) did the respondent fail to provide statutory particulars of employment to the claimant?
 - (iii) in deducting £500.00 from the claimant's final wages, has the respondent breached the National Minimum Wage Act 1998?

THE LAW

8. This section of the decision sets out the relevant law in respect of the claims for:
 - (i) unauthorised deduction from wages;
 - (ii) failure to provide a main statement of employment terms; and
 - (iii) breach of the National Minimum Wage Act 1998.

(i) Unauthorised deduction from wages

9. The following various sections of the Employment Rights (Northern Ireland) Order 1996 apply in relation to a claim for unauthorised deduction from wages:

Employments with no normal working hours

20.—(1) *This Article applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.*

- (2) *The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending—*
 - (a) *where the calculation date is the last day of a week, with that week, and*
 - (b) *otherwise, with the last complete week before the calculation date.*
- (3) *In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to twelve the number of weeks of which account is taken.*
- (4) *This Article is subject to Articles 23 and 24.*

Right not to suffer unauthorised deductions

- 45.—**(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.*
- (4) *Paragraph (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

...

Complaints to industrial tribunals

- 55.—**(1) *A worker may present a complaint to an industrial tribunal—*
- (a) *that his employer has made a deduction from his wages in contravention of Article 45 (including a deduction made in*

contravention of that Article as it applies by virtue of Article 50(2)),

...

- (2) *Subject to paragraph (4), an industrial tribunal shall not consider a complaint under this Article unless it is presented before the end of the period of three months beginning with—*
- (a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
 - (b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

- (3) *Where a complaint is brought under this Article in respect of —*

- (a) *a series of deductions or payments,*

...

the references in paragraph (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

- (4) *Where the industrial tribunal is satisfied that it was not reasonably practicable for a complaint under this Article to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

Determination of complaints

- 56.—(1)** *Where a tribunal finds a complaint under Article 55 well-founded, it shall make a declaration to that effect and shall order the employer—*

- (a) *in the case of a complaint under Article 55(1)(a), to pay to the worker the amount of any deduction made in contravention of Article 45,*

...

Meaning of “wages” etc.

- 59.—(1)** *In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—*

- (a) *any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise, ...*

(ii) **Failure to provide a main statement of employment terms**

10. The law relating to the failure to provide main statement of employment particulars is set out at Article of 27 of the Employment (Northern Ireland) Order 2003 and Article 33 of the Employment Rights (Northern Ireland) Order 1996. These Articles state as follows:-

Employment (Northern Ireland) Order 2003

Failure to give statement of employment particulars, etc.: industrial tribunals

27.—(1) *This Article applies to proceedings before an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4.*

(2) *If in the case of proceedings to which this Article applies—*

(a) *the industrial tribunal finds in favour of the employee, ... and*

(b) *when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change), the tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.*

...

(4) *In paragraphs (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 paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.*

Employment Rights (Northern Ireland) Order 1996

Statement of initial employment particulars

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

- (2) *The statement may (subject to Article 34(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.*
- (3) *The statement shall contain particulars of—*
- (a) *the names of the employer and employee,*
 - (b) *the date when the employment began, and*
 - (c) *the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).*
- (4) *The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—*
- (a) *the scale or rate of remuneration or the method of calculating remuneration,*
 - (b) *the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),*
 - (c) *any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),*
 - (d) *any terms and conditions relating to any of the following—*
 - (i) *entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),*
 - (ii) *incapacity for work due to sickness or injury, including any provision for sick pay, and*
 - (iii) *pensions and pension schemes,*
 - (e) *the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,*
 - (f) *the title of the job which the employee is employed to do or a brief description of the work for which he is employed,*
 - (g) *where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,*

- (h) *either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,*
- (j) *any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and*

...

Statement of changes

- 36.—**(1) *If, after the material date, there is a change in any of the matters particulars of which are required by Articles 33 to 35 to be included or referred to in a statement under Article 33, the employer shall give to the employee a written statement containing particulars of the change.*

...

(iii) Breach of the National Minimum Wage

11. The law relating to the right to be paid a national minimum wage is set out at section one of the National Minimum Wage Act 1998 as follows:-

Entitlement to the National Minimum Wage

1. Workers to be paid at least the national minimum wage.

- (1) *A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage.*
- (2) *A person qualifies for the national minimum wage if he is an individual who—*
 - (a) *is a worker;*
 - (b) *is working, or ordinarily works, in the United Kingdom under his contract; and*
 - (c) *has ceased to be of compulsory school age.*
- (3) *The national minimum wage shall be such single hourly rate as the Secretary of State may from time to time prescribe.*
- (4) *For the purposes of this Act a “pay reference period” is such period as the Secretary of State may prescribe for the purpose.*

SOURCES OF EVIDENCE

12. The tribunal considered the claim form, the response form, the record of proceedings of the two Preliminary Hearings and the claimant's email to the tribunal of 8 December 2020. This email consisted of a number of attachments as follows:
 - (i) Email letter of grievance to the respondent after not being paid on time (dated 14 November 2019).
 - (ii) Email conversations, between the claimant and respondent, regarding the processing of payments.
 - (iii) A payslip dated 9 November 2019.
 - (iv) WhatsApp conversations between the claimant and Mr John Coyle, of the respondent company, after the claimant left the respondent company.
13. The claimant gave sworn evidence on his own behalf. The claimant gave his evidence in chief orally. As the claimant was a litigant in person, a significant proportion of the claimant's evidence was established by questions from the tribunal panel. The tribunal deemed this to be an appropriate measure in the interests of justice and in line with the overriding objective of the tribunal regulations.
14. No evidence was given by or for the respondent who had neither put in a response nor attended the hearing. In the absence of any evidence from the respondent, the tribunal accepted the claimant's unchallenged evidence as the tribunal found the claimant to be a very credible witness.

RELEVANT FINDINGS OF FACT

15. The tribunal considered the contents of the claim form together with the relevant legal provisions and the evidence of the claimant at the hearing. Based on the sources of evidence, the tribunal makes the following findings of fact on the balance of probabilities.
16. The claimant commenced employment with the respondent on 4 June 2018. He handed in his notice of employment on 14 October 2019.
17. The claimant was not provided with a written statement of particulars, within 2 months after the beginning of his employment, as required by Article 33 of the Employment Rights (Northern Ireland) Order 1996.
18. The claimant's role was that of a control room manager. His role was to manage "Go" Petrol Stations at various locations throughout Northern Ireland and to ensure that there was always security available for each of the stations.
19. The respondent operated a three tier shift system from 6.00 am-2.00 pm, 2.00 pm to 10.00 pm and 10.00 pm to 6.00 am.
20. Each week, the claimant's hours would vary. Hence, one week he could work forty eight hours but the following week he could work 72 hours. He received a payslip and his wages were paid on the ninth day of every month for the previous month.

21. On 28 August 2019, the claimant was involved in a road traffic accident while driving a company car of the respondent's. On that particular day, he had arrived into work at 7.00 am and left at 5.30 pm. The following day, 29 August 2019, he had to go to Carrickfergus to start a shift 6.00 am shift which meant leaving home, the next morning, at 5.00 am. Accordingly, he went to the A29 station, on the evening of 28 August 2019, and used his Metro fuel card to fuel the company car in advance of his early morning start on 29 August. However, while driving to get the petrol, he was involved in a road traffic accident for which the other party claimed full responsibility.
22. As soon as the accident happened, the claimant phoned John Coyle, of the respondent company, to inform him of same.
23. On 14 October 2019, the claimant handed in his resignation to John Coyle.
24. The claimant received a payslip on 9 November 2019, in accordance with normal practice as set out at paragraph 20 above, which indicated that the claimant would receive £934.71 net for the hours he had worked in October 2019.
25. However, as the claimant had still not received his net pay by 14 November 2019, he lodged a grievance, by email, to John Coyle at 15.46 that day. The email stated as follows:

"Dear John Coyle and all management

I am writing to raise a formal grievance against Metro CCTV and its owner Mr John Coyle.

I have a complaint that I have not received my wages.

I have evidence in the form of my payslip dated 9/11/19 and still no wages after 5 days.

I would be grateful if you could rectify this.

I am required to give you 7-14 days to rectify this situation.

Yours sincerely

John Rooney"

26. John Coyle replied to the claimant at 15.51, on the same day, stating that *"your final pay will be in your account soon once the company has worked out your deduction."*
27. In a further email, on that same day, John Coyle indicated to the claimant that a deduction of £500 was made, from the claimant's net wages, to cover insurance excess which the respondent had to pay for the damaged vehicle the claimant was driving on 28 August 2019.
28. On that same day, a sum of £434.71 was lodged into the claimant's account which was £500.00 short of the £934.71 stated as the net pay amount on the claimant's payslip.

29. On the morning of 15 November 2019, at 09.25, the claimant emailed John Coyle stating that the deduction of £500 was “*illegal*”. In a further email, at 10.04am, the claimant stated that the removal of the £500 from his net pay was “*an unauthorised deduction of my wages.*”
30. The claimant again requested, by email, that John Coyle return the £500 deducted from the claimant’s pay. John Coyle’s reply to the claimant, in response to this request, was “*Right o.*”
31. The respondent company did not pay the claimant the £500 deducted and so the claimant lodged his claim with the tribunal on 18th November 2019.

CONCLUSIONS

32. The Tribunal has reached the following conclusions having applied the legal principles to the facts found: -

(i) Unauthorised deduction of wages

33. The tribunal accepts the claimant’s unlawful deduction from wages claim and we award the full sum claimed, namely **£500.00**. The reason for this is there was no agreement pre dating the accident of 28 August 2019 entitling the respondent to deduct any sum in the circumstances. For the respondent to be able to deduct any money for insurance excess, he should have entered into such an agreement with the claimant before the accident on 28 August 2019. Furthermore, at no stage, after the accident occurred but before the claimant handed in his notice, did the respondent indicate to the claimant that it would be deducting £500.00 for the insurance excess. The first the claimant was made aware of the deduction was only after the deduction was made and only when John Coyle communicated to the claimant, in his email of 14 November 2019, that he would be making the deduction.

(ii) Failure to provide a main statement of employment terms

34. The tribunal is satisfied that the respondent was in breach of its obligation to give a written statement of employment particulars to the claimant. The tribunal is also satisfied that it is just and equitable in all of the circumstances to make an award of the higher amount of four weeks’ pay as there was no response lodged and no exceptional circumstances put forward by the respondent. The respondent organisation is of a size and nature where it would be expected that statements of terms and conditions would be issued to employees as a matter of course. The tribunal awards the claimant 4 weeks’ gross pay which amounts to **£1,920.00**.

(iii) Breach of the National Minimum Wage Act 1998

35. The claimant’s pay slip, for October 2019, showed accumulated hours for the month of 168.5 hours at a rate of £10.00 per hour. (The national minimum wage, as of October 2019, was £8.21). The claimant was therefore entitled to a gross pay of £1,765.00. Taking various deductions into account for SIA training (£180.00), SIA licence (£330.00), PAYE tax (£132.00), National Insurance (£125.64) and Pension (£62.65), the claimant’s net pay was 934.71. This is what is stipulated on the claimant’s payslip. Therefore, in theory, the claimant has not been paid below the national minimum wage. If the claimant had received the payment of £934.71, as

was due to him, instead of £434.71, which he received, he would have been paid above the national minimum wage.

36. The £500.00 difference amounts to an unlawful deduction from wages. This was accepted by the claimant in evidence. The tribunal cannot therefore conclude that the claimant has been paid below the national minimum wage.

SUMMARY

37. In summary, the tribunal concludes as follows:
- (i) the claimant did suffer an unlawful deduction from wages and we award the claimant the full sum claimed, namely **£500.00**.
 - (ii) the respondent was in breach of its obligation to give a written statement of employment particulars to the claimant. The tribunal awards the claimant 4 weeks' gross pay which amounts to **£1,920.00**.
38. The claimant has not been paid below the national minimum wage.
39. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 14 December 2020, Belfast.

This judgment was entered in the register and issued to the parties on: