



EMPLOYMENT TRIBUNALS

Claimant: Mr S Oyegunle
Respondent: GB Inter Security Ltd
Heard at: Leeds **On:** 12 May 2017
Before: Employment Judge Davies

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT

1. The Claimant's claim of unlawful deduction from wages is well-founded and succeeds. The Respondent shall pay the Claimant **£1480** gross. The Claimant is responsible for the payment of any tax and National Insurance.
2. The Claimant's claim of breach of contract (notice pay) is not well-founded and is dismissed.
3. At the time these proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars pursuant to s 1 Employment Rights Act 1996. There are no exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay pursuant to s 38 Employment Act 2002 and it is just and equitable to make the higher award of four weeks' pay. The Respondent shall therefore pay the Claimant **£1680** being four weeks' pay.
4. Pursuant to Rule 76(4) Employment Tribunal Rules of Procedure 2013 the Respondent shall pay the Claimant costs of **£390**, being the issue and hearing fees paid by him.

REASONS

Introduction

1. This was the hearing of the Claimant's claims for unlawful deduction from wages and breach of contract (notice pay). The Claimant attended. The Respondent did not attend. The Tribunal attempted unsuccessfully to contact the Respondent. I decided to go ahead with the hearing. I was satisfied that

the Respondent had notice of it, because the hearing notice was provided at the same time the claim was served on the Respondent, and it had provided a response to the claim.

Issues

2. The issues to be decided were:
 - a. Did the Claimant suffer an unlawful deduction from his wages by the failure to pay him for the period 1 November 2016 to 1 December 2016?
 - b. Did the Claimant suffer an unlawful deduction from his wages by the failure to pay him £25 for each of four occasions on which he was required to attend a different site during the course of his shift?
 - c. Was the Respondent in breach of contract by dismissing the Claimant without notice or had he committed gross misconduct?
3. In addition, the Claimant told me that he had not been given a written contract, so I explained the provisions of s 38 Employment Act 2002 to him. The issues that gave rise to were: whether at the time the claim was brought the Respondent was in breach of its duty to provide a written statement of employment particulars under s 1 Employment Rights Act 1996; if so whether there were exceptional circumstances that made it not just and equitable to make the minimum award of 2 weeks' pay; and, if not, whether it was just and equitable to award the higher award of 4 weeks' pay?
4. The Claimant also sought to recover his Tribunal fees. At the end of the hearing, he indicated that he did not wish to make an application for a preparation time order.

Facts

5. The facts based on the Claimant's evidence to me and the documents he provided are as follows. The Claimant saw an advert on the Job Centre website for work as a security guard with the Respondent. He applied and was interviewed and given the job. The Respondent's only response to these proceedings was to say, repeatedly, that the Claimant never worked for it and that it had no record of his employment. In response the Claimant provided copies of his bank statements showing payments from "GB Inter Ltd" in September and October 2016. He also provided copies of entries from a log book labelled "GB-Inter Security Ltd", which had on its cover the Head Office address of the Respondent. I am quite satisfied that the Claimant did indeed work for the Respondent.
6. The intention was that he would work four shifts per week, on Tuesdays, Thursdays, Saturdays and Sundays, totalling 56 hours at £7.50 per hour. Initially he worked fewer shifts. He asked for a written contract and was told that he would get one once his shifts increased to the full amount. His shifts did increase to the agreed four shifts in November 2016, but he was not provided with a written contract.
7. The Claimant was asked at an early stage whether he knew anyone else who could work for the Respondent. There were discussions and he agreed to

introduce them to a friend of his. However, that introduction had not taken place before the end of his employment.

8. During November he was asked on four occasions to drive from the location at which he was working to a different site, less than 5 miles away, to patrol that site and then to return to his original location. He was told they would add something to his wages and cover his fuel costs, but no precise figure was agreed.
9. On 1 December 2016 the Claimant was unable to work and sent his friend to cover the shift for him. It was the friend who was interested in working for the Respondent. The Claimant says that he tried to tell the Respondent in advance but could not get hold of them. The Respondent attended the site and discovered what he had done. He was summarily dismissed.
10. The Respondent then failed to pay the Claimant for the work he had done in November, which amounted to 192 hours at £7.50 per hour, or £1440.

Claims

11. Claims for unlawful deductions from wages are governed by s 13 and s 23 Employment Rights Act 1996. The question is whether the wages paid on any occasion were less than the wages properly payable. The Claimant was not paid his wages for the hours worked in November 2016. There was therefore an unlawful deduction of £1440.
12. In addition, the Claimant sought £25 in respect of each of the four occasions when he had to drive to a different site. Although the Respondent had told him it would add something to his wages, no figure had been agreed. I had to consider what implied agreement the parties should be taken to have reached at the time. The total time spent going to the second site was one hour on each occasion (within the Claimant's existing hours). The Claimant was told that something would be added to his wages and his fuel costs would be covered. In those circumstances, I considered that the parties should be taken to have agreed that the Claimant should have one extra hour's pay (i.e. double time for the hour in question) and something to cover his fuel costs. The parties would have agreed £10 in total. I therefore find that the Claimant was entitled to £10 on each of the four occasions and that there was a further unlawful deduction of £40.
13. The next claim is the Claimant's claim for notice pay. On the Claimant's own case as set out in his claim form, I was not satisfied that this claim was well-founded. The question was whether the Claimant committed gross misconduct so as to justify his summary dismissal. He said that he had sent a friend to cover his shift. He was not permitted to do so. I did not consider that the discussions about introducing his friend to the Respondent and his friend doing some shifts provided an answer to that. The Claimant was required to work the shift in question. He had not agreed in advance that anybody else could cover it. I find that this was conduct that justified his dismissal without notice.

14. In view of the Claimant's evidence that he did not receive a written contract I considered the provisions of s 38 Employment Act 2002. I was satisfied that he did not receive a written contract and that there were no exceptional circumstances making an award of two weeks' pay inappropriate. Further, I considered that in this case it was just and equitable to increase the award to four weeks' pay. The Claimant did ask for a contract and this was not provided. Further, it seemed to me that in its response to the Tribunal, the Respondent sought to take advantage of the fact that it had not provided a written contract by claiming that it did not know who the Claimant was and that he had never worked for it. In those circumstances, I considered it just and equitable to make the higher award of four weeks' pay. The Claimant had started working his agreed contractual hours in November. The expectation was that those would be his hours going forwards. His weekly pay was therefore $\text{£}7.50 \times \text{£}56 = \text{£}420$.
15. The Claimant was put to the expense of bringing these proceedings and attending a hearing in order to recover these sums. It is appropriate for the Respondent to reimburse him by way of a costs order under rule 76(4).

Employment Judge Davies

Date: 12 May 2017